



DUBE AIROAD

Standard Terms and Conditions



SOUTHERN AFRICA'S PREMIER
AIR LOGISTICS PLATFORM

1. Definitions

- 1.1. **Dube AiRoad**, referred hereafter as **AiRoad**, is a division of the Dube TradePort Corporation, and includes its employees and agents, and any person or persons carrying any goods under and in terms of a subcontract with AiRoad.
- 1.2. **The Customer** means the party described on the **Waybill: Customer Order Form** to whom the transport services are rendered, whether acting on its own behalf or in the capacity as agent or in any other capacity for a third party.
- 1.3. **The Goods** means the goods transported on behalf of the Customer from time to time, whether contained in one or more parcels or packages and whether consigned singly or in parcels or in bulk.
- 1.4. **Dangerous Goods** means Goods considered to be dangerous by AiRoad or in terms of any legislation, and includes poisonous, corrosive, caustic, explosive, inflammable or combustible gases, fluids or substances.
- 1.5. **The handling of the goods** includes the Goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by AiRoad for any purpose whatsoever.
- 1.6. **Transport services** mean the transport of Goods by road and includes the handling, storage, loading and unloading of Goods.

2. Transport Services

- 2.1. AiRoad will provide the transport services requested by the Customer on the terms and conditions set out in this and our associated documents.
- 2.2. AiRoad will not be bound by and conditions stipulated by the Customer, whether in order forms, instructions or otherwise, unless specifically agreed to in writing.

3. Fees and Tariffs

- 3.1. AiRoad's fees and charges for the transport of specific loads will be quoted when a specific order is accepted. AiRoad's standard tariffs will apply if no quote has been issued.
- 3.2. AiRoad's standard tariffs are subject to review by AiRoad without prior notice to the Customer.
- 3.3. The fees and tariffs are calculated on the shortest or most effective routing. If AiRoad must deviate from this route for any reason (such as but not limited to, adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, or the instructions of any competent authority), then the Customer will be liable for any additional charges arising as a result thereof.
- 3.4. In the event of AiRoad being obliged to take out or obtain any licences or permits, or to comply with the requirements of any lawful authority, AiRoad shall be entitled to make an additional charge to cover any ensuing expenses not already included in AiRoad's standard tariffs. The Customer is liable for any duty, tax, impost, fine or outlay of whatsoever nature levied by the

authorities at any port or place in connection with the Goods, and shall reimburse AiRoad for any amount disbursed or losses sustained by AiRoad in connection therewith.

4. Payment Terms

- 4.1. Unless otherwise agreed to in a credit application, payment for all charges must be deposited in advance into DTPC's bank account. Proof of such deposit must be provided to the DTPC representative before any services is rendered by AiRoad.
- 4.2. Interest will accrue on all payments not made on due date at a rate equal to the prime overdraft rate of Absa Bank plus 2% from the due date for payment to the date on which payment is made.
- 4.3. AiRoad shall in its absolute discretion be entitled to appropriate all payments made by the Customer towards the payment of any debt or obligation of whatsoever nature owing by the Customer to AiRoad, irrespective of when such debt or obligation arose.
- 4.4. The Customer may not raise any claim, dispute or counter-claim as a reason for deferring payment and the Customer may not withhold any payment or set off any claim or counter-claim which it may wish to raise against the amount invoiced by AiRoad.

5. Goods

- 5.1. The onus of proving the quantity, type, physical properties and composition and the condition of the Goods and/or the condition of any container at the time of receipt thereof by AiRoad shall at all times remain with the Customer, and no delivery note, receipt or other document furnished or signed at such time by or on behalf of AiRoad shall constitute conclusive proof thereof.
- 5.2. Unless otherwise agreed in writing, the Customer warrants that all Goods handled are fit to be so handled in the ordinary way and are not dangerous Goods.
- 5.3. Unless otherwise agreed in writing, AiRoad will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive Goods or any Goods that in its opinion are likely to cause damage.
- 5.4. The Customer is liable for all losses or damage caused to AiRoad and/or a third party by all Goods handled and indemnifies AiRoad against any ensuing claims.
- 5.5. Should AiRoad agree to handle any dangerous Goods for any purpose:
 - (a) The Customer must furnish with the Goods a written declaration detailing the trade name, chemical composition and characteristics of the Goods; and
 - (b) The declaration must define the precise respects or circumstances in which the Goods are dangerous; and
 - (c) The Customer must ensure that the Goods bear the warning labels and declarations required in terms of the laws and regulations applicable to the transportation of dangerous Goods.
- 5.6. If, in the opinion of AiRoad any Goods (whether they have been declared as dangerous or not) become a danger to any person or property, AiRoad shall be entitled immediately and without notice to the Customer to dispose of the Goods in question or take such other steps as it in its sole discretion deems prudent to avert danger. In such event AiRoad shall:

- (a) Not be liable under any circumstances for the value of the Goods or for any other loss or damage whether direct or consequential sustained by the Customer or owner as a result of such disposal or other steps; and
 - (b) Still be entitled to recover from the Customer its remuneration for the handling of the Goods together with any costs incurred by it in disposing of them or taking other steps.
- 5.7. Unless written instructions are given to AiRoad, it shall be under no obligation to make any declaration or to seek any special protection or cover in respect of any Goods falling within the definition by that body -
 - (a) Of dangerous or hazardous Goods; or
 - (b) Of Goods liable to be stored in the open.
- 5.8. Perishable Goods which are not taken up immediately upon arrival at their destination or which are not sufficiently marked or otherwise identifiable may be disposed of without notice to the Customer, and the payment or tender to the Customer of the net proceeds of any disposition (after deduction of all charges incurred by AiRoad) shall be equivalent to delivery.
- 5.9. The Customer acknowledge that there is no onus on AiRoad to establish the quantity or condition of the Goods at any time whatsoever and agree that the onus is on the Customer to ensure that the Consignor and Consignee establish the quantity and condition of the Goods at the time of loading and delivery of the Goods by AiRoad, unless otherwise agreed in writing.
- 5.10. AiRoad has the right to weigh the load after it has been loaded to ascertain the mass of the load. In the event of the mass being more than indicated by the Customer or Consignor, AiRoad will be entitled to increase its remuneration in respect of the said load to make provision for the mass so added. A penalty of 20% of total recomputed cost will be charged for false disclosure of weights.
- 5.11. The Customer shall properly and accurately furnish to AiRoad the name and addresses of the Consignor and the Consignee and all documents as such of necessity to accompany the Goods or such documents as AiRoad may require and AiRoad shall not be responsible nor incur any liability for any loss or incorrect delivery of the Goods due to the name and address of the Consignor or the Consignee being improperly stated and in the absence of wilful default of AiRoad shall not be liable for any loss in the event of delivery being effected to some person other than the Consignee in the event of the Consignee, or his agent not being present to receive and accept delivery of the Goods.
- 5.12. The Customer undertakes to ensure access for AiRoad to the loading and off-loading sites prior to the loading of the Goods and the arrival of the Goods.
- 5.13. AiRoad shall not be liable to the Customer in respect of any damage to the Goods arising out of the use of any such additional tackle, plant, power equipment or labour and the Customer indemnifies AiRoad against any loss or damage arising out of any injury of the employees or property of AiRoad or any third person by reason of any defect in such tackle, plant, power equipment or the negligence of such labour.
- 5.14. AiRoad shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other competent authority. Any extra costs incurred by AiRoad as a result of compliance with any such instructions shall be added to its charges. AiRoad shall not be liable for any damage to Goods when it is compelled to unload.
- 5.15. The Customer accepts a Four (4) hour limitation for loading and off-loading Goods including the waiting period unless agreed in writing in situations that do not allow this time limit. AiRoad will be entitled to charge the Customer for every hour or part thereof a R500.00 loss of income fee (standing fee).

6. Loading and Off-loading

- 6.1. The Customer must ensure that:
- (a) The Goods shall be ready for loading on the date specified;
 - (b) All documentation necessary in connection with the Goods and the transportation thereof shall be fully and correctly prepared;
 - (c) At all places where AiRoad is to collect and off-load the Goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for AiRoad to do so by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour or equipment;
 - (d) The Goods will be sufficiently packed and prepared for carriage;
 - (e) The Customer shall sign such certificates and receipts on loading and off-loading as AiRoad may require.
- 6.2. AiRoad shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or unloading of any Goods. Any assistance given by AiRoad in such loading or unloading shall be at the sole risk of the customer.
- 6.3. Any Customer (or owner) conducting any packing or other operation or activity in any area or premises provided by AiRoad shall do so at its own risk, and the Customer indemnifies AiRoad against all claims or losses arising out of the presence of the customer in such area or premises.

7. Authority

- 7.1. The Customer will be bound to any Customer Order Form and instruction, whether in writing or not, in respect of transport services and AiRoad will be entitled to act thereon.

8. Carrier's Lien

- 8.1. As security for all moneys (whether past or present) owing for the handling of Goods, whether forming the subject matter of this agreement or otherwise, AiRoad shall 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.
- 8.2. In addition, AiRoad shall be entitled to hold all Goods as security for any other moneys that may be owing to it by the Customer from any cause whatsoever.
- 8.3. Even though credit may have originally been granted by AiRoad to the Customer, AiRoad may at any time in its sole discretion retain possession of any Goods pending the discharge of all the Customer's indebtedness to AiRoad, whether or not such indebtedness is related to the handling of the Goods in question.

- 8.4. In the event of AiRoad retaining possession as contemplated above, AiRoad shall be entitled to store or warehouse the Goods at such place as it deems fit, at the Customer's expense.
- 8.5. If any moneys owing to AiRoad are not paid by the Customer within 30 days after they have become due, AiRoad shall be entitled without further notice:
- (a) To open and examine the Goods;
 - (b) To sell the whole or any part of the Goods in such a manner and on such terms and conditions as it deems fit;
 - (c) To apply the proceeds of any sale after deducting all expenses, in payment or reduction of any amount due by the Customer to AiRoad (including the storage charges envisaged above), provided that any surplus shall be paid over to the Customer without interest immediately after the sale, if the Customer's address is known, and if not, upon demand made by the Customer within 90 days of the sale.
- 8.6. AiRoad is not liable for any loss, damage or deterioration of such Goods attributable to the implementation of this clause.
- 8.7. AiRoad's rights under this clause are not exhaustive and are in addition to any other rights that it may have against the Customer.

9. Warranties, Liability and Indemnities

- 9.1. The Customer is bound by and warrants in favour of AiRoad:
- (a) The accuracy of all descriptions, values and other particulars furnished to AiRoad for customs, railage and other purposes. The Customer indemnifies AiRoad against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars (even if the inaccuracy or omission of descriptions, values or other particulars occurs without negligence);
 - (b) That the carriage of the Goods will not violate or infringe any Act, regulation or law and the Customer hereby indemnifies and holds AiRoad harmless against any claims and/or damages which AiRoad may suffer by virtue of the Customer's breach of this warranty;
 - (c) That the Goods are the Customer's sole property, alternatively, the Customer is authorised by the person owning the Goods to enter into this contract subject to these terms and conditions, and the Customer indemnifies AiRoad against any claim of any nature made by the owner.
- 9.2. The Goods shall be carried at the sole risk of the Customer (or owner).
- 9.3. The Customer hereby exempts AiRoad from and indemnifies AiRoad against all liability of whatsoever nature, arising directly or indirectly from the handling of the 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 AiRoad, its servants, agents or employees, or otherwise.

10. Demurrage

10.1. AiRoad shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising. Where any such demurrage and/or storage charges are paid by AiRoad, such charges shall be refunded to AiRoad by the Customer on demand. The Customer hereby appoints AiRoad irrevocably and in *rem suam* as its agent and in its name, place and stead, to contract for the storage of the Goods upon such terms and conditions as AiRoad may, in its sole discretion elect, and without any liability whatsoever attaching to AiRoad to attend to such storage.

11. Subcontracting

11.1. AiRoad reserves the right to employ sub-contractors or agents to act for it. Where AiRoad employs independent third parties to perform all or any of the functions required of AiRoad, AiRoad shall have no responsibility or liability to the Customer for any acts or omissions of such third parties, even although AiRoad may be responsible for the payment of their charges. However, if AiRoad is suitably indemnified against all costs (including attorney and own client costs) AiRoad shall take such action against the third party concerned on the Customer's behalf as the customer may direct.

12. Permits and Consents

12.1. If any permit, consent or approval to handle Goods is required under any law, by-law or regulation, none of AiRoad's obligations or duties shall take effect unless and until it obtains the relevant permit, consent or approval. The Customer shall provide all assistance and information required by AiRoad for the purpose of applying for or obtaining any such permit, consent or approval.

13. Insurance

13.1. AiRoad does not provide Customer-specific insurance, and Customers should obtain their own insurance cover. All risks in and to the Goods remain with the Customer. AiRoad is covered by a Carriers Legal Liability Insurance Policy, and does not cover consequential losses. The maximum limit of cover provided for any one occurrence is limited to a total value of R2 million for the vehicle, or as determined by AiRoad Insurers in the case of multiple Customers cargo being carried on one conveyance. The Customer is required to obtain any additional insurance coverage for all damages, which it may suffer at its own cost.

13.2. AiRoad will not accept or entertain and / or be held liable for any Goods in Transit claim whatsoever unless the Customer has clearly indicated the value of the Goods prior to collection.

13.3. Subject to the terms and conditions contained in this Agreement, the liability of AiRoad in respect of any loss or damage to the Goods, however such loss that may arise will under no circumstances exceed the actual amount paid by AiRoad's insurer in terms of the aforesaid Goods in Transit Policy.

13.4. All claims are subjected to an investigation conducted by AiRoad's assessors. The Customer shall have no claim against AiRoad, in the event such claim is repudiated by AiRoad's Insurers.

- 13.5. In the event of a claim, the Customer will be liable to pay to the insurance company as excess on any claim:
- (a) Claims other than for hijacking/armed robbery/theft of an entire load are subject to an excess of 10% (Ten Percent) of claim with a minimum R 10 000.00 (Ten Thousand Rand) in respect of each and every claim.
 - (b) Claims for armed robbery/theft of an entire load or hijacking recoverable in terms of the Hijacking Clause herein are subject to an excess of 25% (Twenty Five Percent) of claim with minimum R 25 000.00 (Twenty Five Thousand Rand) in respect of each and every claim.
 - (c) Excess amounts stated are subject to change without notice and are available to Customers on request
- 13.6. The Customer shall immediately advise AiRoad of any loss or damage of the Goods or part thereof and then confirm it in writing by filing a claim within 7 (seven) days after delivery of the Goods. Claims not finalised within one year of the event occurring, shall become null and void.
- 13.7. AiRoad has no authority to carry hazardous Goods of whatever nature and no such cargo may be loaded onto any of AiRoad's vehicles without the prior explicit written consent from AiRoad. AiRoad and the Customer agree that should any claim for damages and/or pollution and/or environmental damages and/or clean-up costs arise consequential to the carriage of hazardous and/or dangerous Goods, then all such claims will be for the Customer's account.

14. Sole Agreement

- 14.1. This agreement constitutes the sole record of the agreement between the parties. AiRoad shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

15. Variation

- 15.1. No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless recorded in writing and accepted by AiRoad in writing.

16. Indulgence and Waiver

- 16.1. No relaxation or indulgence which AiRoad may grant to the Customer shall constitute a waiver of the rights of AiRoad and shall not preclude AiRoad from exercising any of its rights which may have arisen in the past or which may arise in the future.

17. Applicable Law

17.1. The proper law of this agreement is the law of the Republic of South Africa, and accordingly any dispute about this agreement, including any dispute about its validity, existence, interpretation, rectification, breach or termination or any dispute about any matter arising out of this agreement, its avoidance, interpretation, rectification, breach or termination shall be determined according to the laws of the Republic of South Africa

18. Domicilium and Notices

18.1. The Customer chooses its street address set out in this agreement as its *domicilium citandi et executandi* ("domicilium") for all purposes under this agreement, whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this agreement.

19. Presumptions as to Notices

19.1. Any notice required to be given by AiRoad to the Customer will be deemed to have been validly given if posted by registered post to the *domicilium* of the Customer and will be deemed to have been received by the Customer within 7 days of the date of posting.

20. Legal Costs

20.1. The parties agree that the law of the Republic of South Africa is the applicable law to the Agreement between AiRoad and the Customer.

20.2. In the event of AiRoad instructing its attorney to recover monies from the Customer, the Customer shall be liable for and shall pay all legal costs incurred by AiRoad on an attorney-client scale, inclusive of collection commission.

21. Force Majeure

21.1. AiRoad shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

21.2. If a force majeure situation arises, AiRoad shall promptly notify the Customer of such condition and the cause thereof. AiRoad shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.