



# STANDARD TERMS AND CONDITIONS

## 1. INCIDENTAL CREDIT FACILITY

- 1.1. The grant of incidental credit facility and the terms and conditions applicable hereto, will be at the sole and exclusive discretion of RIEKS TOWING.
- 1.2. The APPLICANT acknowledges that the representation made in the application form are material to such grant of the credit facility.
- 1.3. In the event that RIEKS TOWING agrees to grant the APPLICANT the credit facility, the APPLICANT will be notified, by phone or in writing thereof, and in terms of the terms and conditions applicable to such grant. Such written notification will form part of the Agreement.
- 1.4. RIEKS TOWING may, without incurring any form of liability, and at any time without notice to the APPLICANT:
  - 1.4.1. Withdraw the APPLICANT'S credit facility;
  - 1.4.2. Amend or vary the terms of RIEKS TOWING'S credit facility.

## 2. RECOVERY OF LEGAL / COLLECTION COSTS

Should RIEKS TOWING instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against the APPLICANT in the implementation or protection of RIEKS TOWING'S rights, RIEKS TOWING will be entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.

## 3. PAYMENT TERMS

- 3.1. The APPLICANT will pay for the services rendered within 30 (thirty) days from date of statement, unless otherwise agreed.
- 3.2. All payments will be made by the APPLICANT without any deduction or set-off of whatsoever nature or for whatsoever cause, and free from any and all exchange, bank or other charges.
- 3.3. RIEKS TOWING may at any time and in its discretion, appropriate or re-appropriate any monies received from the APPLICANT towards any indebtedness of the APPLICANT to the RIEKS TOWING, and the APPLICANT expressly waives its right to name the debt or account to which any payment made by it will apply.
- 3.4. The APPLICANT will not be entitled to defer payment of any monies payable to RIEKS TOWING on the grounds that the APPLICANT'S alleges that it has a claim against RIEKS TOWING or that there is a dispute between them.
- 3.5. RIEKS TOWING will be entitled to charge, in which event the APPLICANT will be liable to pay, interest on all overdue amounts at the prescribed rate of 2 (two) percent per month, in arrears from due date of payment thereof, both days inclusive, but subject to the maximum rate permissible for time to time in terms of the National Credit Act, 34 of 2005, as amended.

## 4. THE APPLICANT'S WARRANTIES AND UNDERTAKING

- 4.1. If the APPLICANT is a Company, then RIEKS TOWING will still have the right to request copies of the APPLICANT'S financial statements or management accounts from time to time to satisfy itself that the APPLICANT is trading and creditworthy.
- 4.2. The APPLICANT will give RIEKS TOWING not less than 14 (fourteen) days prior written notice of any intended change in its shareholding, members, directors, owners or partners, and or any intended sale of its business or the major portion of its assets; failure to do so will constitute a material breach of this agreement.
- 4.3. The APPLICANT will provide and or procure the signature and or conclusion and or execution, to and or in favour of RIEKS TOWING, of such securities as RIEKS TOWING may in its sole and absolute discretion from time to time consider necessary to secure the APPLICANT'S obligations to RIEKS TOWING hereunder.

## 5. DOMICILIUM

The APPLICANT and the signatory hereto choose its *domicilium citandi et executandi* for all purposes arising out of this application at the physical address stipulated in as the Registered Office of the Applicant on page 1 on this application. The APPLICANT undertakes to notify RIEKS TOWING in writing within 7 (seven) days of any change of address.

## 6. CERTIFICATE OF INDEBTEDNESS

A certificate signed by Executive Management or any Director of RIEKS TOWING – whose position and signature will not be necessary to prove – reflecting the amount owing by the APPLICANT to RIEKS TOWING, in respect of any credit facilities granted to the APPLICANT relating to the APPLICANT'S dealings with RIEKS TOWING, and of the fact that such amount is due, owing and unpaid will be considered as adequate proof – on its mere production – of the outstanding amount for the purpose of any action (whether by provisional sentence or otherwise), proof of debt on insolvency or for any purpose whatsoever where the amount of such claims are required to be established, and it will rest with the APPLICANT to prove that such amount is not owing and or due and unpaid.

## 7. CONSENT TO SHARING INFORMATION

The APPLICANT and any person who may sign an acceptance surety document specifically warrants that RIEKS TOWING has consent to: -

- 7.1. Carry out a credit enquiry from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors / trade references of the APPLICANT'S in terms of this agreement.
- 7.2. RIEKS TOWING may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of the APPLICANT on how the APPLICANT has performed in meeting its obligations in terms of this agreement. Such information shared for purposes of making risk management decisions and preventing fraud.
- 7.3. If the APPLICANT fails to meet its commitments to RIEKS TOWING, RIEKS TOWING may record the APPLICANT'S non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of the APPLICANT.

## 8. ACCOUNT DISPUTES AND COMPLAINTS

RIEKS TOWING undertakes to furnish a statement to the APPLICANT reflecting the transactions between the APPLICANT and RIEKS TOWING, as well as the outstanding obligations of the APPLICANT, with month end. Unless the APPLICANT objects in writing within 7 (seven) days of the date of statement, the APPLICANT will have deemed to have accepted the statement as correct. RIEKS TOWING chooses delivery of the statement by way of existing services, but non-delivery of any statement will not entitle the APPLICANT to withhold any payment.

## 9. JURISDICTION & LEGAL ACTION

Notwithstanding the amount which may at any time be owing by the APPLICANT to RIEKS TOWING, the parties do hereby consent, in terms of Section 45 of the Magistrates Court Act, 32 of 1944 as amended, to the Jurisdiction of the Magistrate's Court for the determination of any action or proceeding which may be brought by RIEKS TOWING against the APPLICANT arising out of any transaction between the parties, it being recorded that RIEKS TOWING will be entitled, but not obliged, to bring any action or proceeding in the said court.

## 10. PRICE

- 10.1. RIEKS TOWING will be entitled, at any time and from time to time in its discretion, to change its prices for services rendered.
- 10.2. RIEKS TOWING will determine its prices from time to time, alternatively prices will be as per the RIEKS TOWING general pricelist or customer specific pricelist, alternatively as quoted.

## 11. ORDERS

- 11.1. RIEKS TOWING will be entitled, but not obliged, to accept verbal orders and or services requested without an order number, provided that in such event RIEKS TOWING will not be responsible for any errors in or arising from such orders.
- 11.2. An order, whether written or verbal, will constitute an irrevocable offer by the APPLICANT to RIEKS TOWING to pay for services rendered or, which offer will be capable of acceptance by RIEKS TOWING by verbal or written acceptance or confirmation of the order, or by the rendering of services requested (or any part thereof).

## 12. DELIVERY & RISK

- 12.1. The goods will be delivered by RIEKS TOWING to the APPLICANT, and delivery of the goods will be deemed to have been made by RIEKS TOWING to the APPLICANT;
  - 12.1.1. Where RIEKS TOWING transports the goods, when the goods are offloaded at the APPLICANT'S premises or at such other address as may have been nominated by the APPLICANT.
- 12.2. Signature of a Company delivery note or invoice by an employee of the APPLICANT or of the APPLICANT'S nominated agent or recipient, as the case may be, will be *prima facie* proof of delivery to the APPLICANT of the goods reflected in such delivery note or invoice.
- 12.3. The APPLICANT will ensure that adequate facilities and delivery points are available to RIEKS TOWING to enable it to carry out its obligation to the APPLICANT.
- 12.4. RIEKS TOWING will take all reasonable steps to carry out the work on the date and at the time stipulated, it will do so within a reasonable period thereafter. While RIEKS TOWING will take all reasonable steps to carry out the on the date and the time stipulated, RIEKS TOWING will not be liable for any loss or expense caused by any circumstances or circumstances beyond RIEKS TOWING control or for consequential loss from any cause whatsoever. Should RIEKS TOWING'S vehicle be forced to deviate from their normal route due to damaged roads, bridges, pontoons, ferries and/or from any cause beyond RIEKS TOWING'S control, such deviations will entitle RIEKS TOWING to make an additional charge to cover the expense arising from the extra mileage and time involved.
- 12.5. It is incumbent upon the APPLICANT to effect its own insurance in respect of any loss or damaged vehicles or the goods which this agreement relates. The APPLICANT should give notice to their insurance when goods are being removed and arrange with the insurance company to hold the goods covered whilst the goods are

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- in transit. RIEKS TOWING will endeavour to effect such insurance on behalf of the APPLICANT provided it receives written instructions from the APPLICANT the premium is paid by the APPLICANT prior to the removal of goods.
- 12.6. The APPLICANT will not submit any dangerous, damaging, corrosive or explosive article or substance. RIEKS TOWING will be entitled to recover from the APPLICANT any loss or damage which it may suffer through the presence of any article or substance amongst the APPLICANT'S goods. If any such article or substance is discovered RIEKS TOWING may, at its discretion remove, destroy or otherwise dispose of same and will not be responsible or accountable to the APPLICANT for the value thereof.
- 12.7. Any kind of work done, property transported and/ or handled is entirely at the risk of the APPLICANT, RIEKS TOWING will not be liable for any loss or damages whatsoever, (including consequential loss or damage due to delay in delivery or otherwise) which may be suffered by the APPLICANT in respect of goods transported by RIEKS TOWING on the APPLICANT'S behalf arising out of any cause whatsoever.
- 12.8. In addition to and without restricting the operation of provisions of this agreement in any way, RIEKS TOWING, its servants and/ or agents will not in any circumstance be liable damage to mechanical, electrical or other plant of any description, or for the renovation or replacement of any article which is inherently defective or in such a condition that it cannot be removed without risk or damage.
- 12.9. RIEKS TOWING is liable (if any) for damage to premises and/ or their contents, private roads, drain, covers, walls, fences, bridges, culverts for any transport load. Any claim in regard to the damage aforementioned must be made in writing within 3 (three) days of the alleged damage, failing which there will be no claim against the RIEKS TOWING.
- 12.10. RIEKS TOWING will not be responsible for any loss or damage arising from the loading or offloading of the vehicle or from the overloading or unsafe loading of the vehicle. Loading and offloading will be performed by the APPLICANT or the APPLICANT'S Consignee or their respective agents.
- 12.11. All transportation of goods are expressly subject to the granting to RIEKS TOWING of the necessary permit or sanction, where required by any competent authority. In the event of a refusal by the competent authority, RIEKS TOWING will not be liable or responsible to the APPLICANT or any other person whatsoever for any loss however sustained. All tenders and contracts are deemed to be subject to all existing Laws, Ordinances, By-laws and Regulations.
- 12.12. Tender for abnormal indivisible loads are made subject to the following special conditions:
- 12.12.1. Permission is obtained from the Provisional Administration and the Local Authorities concerned. The APPLICANT will give RIEKS TOWING sufficient notice to enable RIEKS TOWING to obtain the abnormal permit or exemption.
- 12.12.2. The Road and Bridges authorities approve a suitable and direct route and do not subsequently vary such route.
- 12.12.3. Access to loading and offloading site will be prepared prior to the arrival of the loads, to enable safe passage to loading and offloading points.
- 12.13. These conditions will apply to any further work carried out by RIEKS TOWING for the APPLICANT.
- 12.14. Notwithstanding the provisions of clause 3.4, RIEKS TOWING will be entitled to give assistance in loading or offloading the goods onto or from the vehicle where such assistance is customary and practicable, but assistance so given will be without any liability on RIEKS TOWING'S part and will be at the sole risk of the APPLICANT who will indemnify RIEKS TOWING accordingly, unless there was negligence on RIEKS TOWING'S part, which in that event, RIEKS TOWING will be held liable.
- 12.15. RIEKS TOWING is hereby authorised to subcontract in respect of any service to be performed by it hereunder as the APPLICANT'S agent and without consulting the APPLICANT and is also authorised, in its discretion, to pay any charge payable to any subcontractor for such service and all such payments shall be repaid to RIEKS TOWING by the APPLICANT on demand. Tenders based on dimensions and weights furnished by

the APPLICANT will be subject to alteration in the event of actual dimensions and weights proving in excess of those stated. Where necessary RIEKS TOWING will be entitled, in its sole and absolute discretion, to delay the collection of the load until abnormal permits have been obtained or amended accordingly.

12.16. Goods left upon RIEKS TOWING'S vehicle at the request of the APPLICANT or the Consignee are held at the APPLICANT'S sole risk.

12.17. All risk in and to the goods will pass to the APPLICANT on delivery of the goods by RIEKS TOWING to the APPLICANT.

## 13. WARRANTIES AND INDEMNITY

13.1. The APPLICANT indemnifies RIEKS TOWING against all claims and demands made by any third party against RIEKS TOWING and against all liability by RIEKS TOWING to any third party in respect of any loss damage or injury however caused, to any third party arising out of the transportation of goods, unless negligence exists on RIEKS TOWING'S part, which in that event, RIEKS TOWING remains liable.

## 14. BREACH

If the APPLICANT should:

14.1. Breach any provision of this agreement; or

14.2. Make any incorrect or untrue statement or representation to RIEKS TOWING in connection with this agreement and or the APPLICANT'S application for credit facilities; or

14.3. Be sequestrated or liquidated, whether provisional or final or whether voluntary or compulsory; or

14.4. In the case of a natural person, commit an act of insolvency as contemplated in section 8 of the Insolvency Act, 24 of 1936, as amended; or

14.5. In the case of a company or close corporation, commit an act which would constitute an act of insolvency as contemplated in section 8 of the Insolvency Act, if committed by a natural person, or commit an act as defined in terms of section 344 of the Companies Act, 61 of 1973, as amended; or

14.6. Be placed under judicial management, whether provisional or final or whether compulsory or voluntary, or pass a resolution for its winding up or for the appointment of a judicial manager; or

14.7. Suffer any judgement to be entered against it and fail to take steps to rescind such judgement within 14 (fourteen) days of the judgment coming to its knowledge, or fail to satisfy any such judgement within 14 (fourteen) days to the date of refusal of rescission thereof, then and upon the happening of any of these events RIEKS TOWING will be entitled in its election and without prejudice to any of its other rights at law or hereunder, to forthwith enforce specific performance or to cancel this agreement, and in either event to claim damages.

## 15. JOINT AND SEVERAL LIABILITY IF SURETY IS REQUIRED

15.1. The Surety(ies) will be jointly and severally liable together with the APPLICANT to pay any amount due in terms of this Agreement, the one paying the other to be absolved. The Surety(ies) will be treated as co-principal debtor(s) together with the APPLICANT.

15.2. If the APPLICANT fails to discharge any of its obligations to RIEKS TOWING, the APPLICANT will be entitled, notwithstanding any contrary arrangement with the APPLICANT, to demand from the Surety(ies) immediate performance of all the obligations then owing by the APPLICANT to RIEKS TOWING whether or not the due date for the performance of the obligation has arrived. The full amount due will immediately become payable by the Surety(ies) and co-principal debtor(s).

15.3. In the event the APPLICANT being provisionally or finally sequestrated or liquidated, or placed under business rescue, RIEKS TOWING will be entitled to immediately proceed with legal action for the full outstanding amount against the Surety(ies) and co-principal debtor(s).

15.4. Each clause of these conditions of sale are severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause(s) will not affect the balance of these conditions of sale, which will remain in full force and effect.