

**CONDITIONS OF CARRIAGE OF  
LBH XPRESS (PTY) LTD**

**1. DEFINITIONS**

1.1 "Affiliated Companies" means any entity associated with or subsidiary of the Company including but not limited to LBH MOZAMBIQUE LDA, Reg. No. 100084406 and / or TALL SHIPS (PTY) LTD trading as LBH SOUTH AFRICA, Reg. No. 1988/05660-07, LBH XPRESS LDA, Reg. No. 100345021.

1.2 "Company" means LBH XPRESS (Pty) Ltd, Reg. No. 2012/204833/07.

1.3 "Customer" means the Shipper, consignee, merchant, owner, receiver, person with right, title or interest in and to the Goods and/or any agent of any of the foregoing.

1.4 "Goods" means any Goods handled, transported, stored or otherwise dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or sub-contractors on the instructions of the Customer, and include packaging or any other form of covering or transport device used in connection with or in relation to such Goods.

1.5 "Pallet" means any form of container or other transport device provided by the Company to the Customer in order to facilitate the rendering of the Services vis-à-vis the Goods.

1.6 "Goods from or to any destination whatsoever on behalf of the Customer, or other service which the Company agreed to provide.

1.7 "Shipper" shall have the same meaning as Customer.

**2. OWNER'S RISK AND INDEMNITY**

2.1 All Services, handling, packing, loading, unloading, warehousing, storage and / or transporting of Goods by or on behalf of or at the request of the Company is effected at the sole risk of the Customer, and the Customer indemnifies the Company against any claim whatsoever arising, from rendering the Services, the handling, packing, loading, unloading, warehousing, storage and / or transporting of Goods.

2.2 The Company deals with Goods only on the basis that it is neither a common carrier nor a public carrier. The transportation of all Goods and / or rendering of Services is undertaken at the sole risk and expense of the Customer and subject to these conditions.

2.3 Time shall not be of the essence in collection or delivery of any Goods. Although the Company shall use its best endeavours to collect and deliver Goods within the times indicated by the Company, the latter does not warrant such times and accordingly shall in no

circumstances be liable to the Customer or any third party for the late delivery of Goods. To this end the Customer fully indemnifies and holds the Company harmless against all and any claims for late delivery, whether by the Customer or any third party.

2.4 To the extent that any storage is enforced by virtue of the inspections, stoppages or delays occasioned by Customs or any other lawful authorities whatsoever, such storage, inspection or delay shall always be at the sole risk and expense of the Customer and the latter shall indemnify the Company against any expenses incurred in relation thereto.

**3. CUSTOMER'S INSTRUCTIONS**

The Customer's instructions to the Company shall be precise, clear and comprehensive and, in particular, but without limitation, shall cover any valuation or determination issued or required by Customs in respect of any Goods to be dealt with by or on behalf of or at the request of the Company.

**4. OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS**

Unless specific written instructions are timely given to and accepted by the Company, the Company shall not be obliged to –

4.1.1 Make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any Goods or as to any special interest in delivery.

4.1.2 Arrange for any particular Goods to be carried, stored or handled separately from other Goods.

**5. COMPANY'S GENERAL DISCRETION**

Notwithstanding anything to the contrary herein contained, if at any time the Company should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.

6. If events or circumstances come to the attention of the Company, its agents, servants, or nominees which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timely received by the Company in writing, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Goods concerned at the risk and expense of the Customer.

The Company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or Services it has agreed to perform.

**6. SUBCONTRACTING**

Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant Services, or by the Company employing, or entrusting the Goods or Services to third parties or Affiliated Companies (together referred to as "third parties") on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Services, or such part thereof as they may be employed to carry out.

6.2 The Customer agrees to be bound by the Standard Terms and Conditions of any of the appointed Affiliated Companies and acknowledges that the relevant Standard Terms and Conditions are available on request or on the website of LBH Africa (<http://lhbouthafrica.com/terms-conditions/>).

6.3 Where the Company contracts with third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to the Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges. Notwithstanding the foregoing, the Company undertakes to cede any right of action which it may have against such third parties to the Customer upon demand, the Customer hereby indemnifying the Company against any loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.

**7. PROHIBITED GOODS**

The Company shall not accept or deal with unlawful Goods that are prohibited by the laws of any country through which the Goods may transit. The Company will further not accept or deal with perishable Goods, counterfeit Goods, bullion, coins, banknotes, securities or other currency, precious stones, jewellery, valuables, antiques, pictures, real or imitation fire arms, weapons, explosives or ammunition and their parts, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under lawful special arrangements previously made in writing, the Company may in its sole discretion destroy such Goods without compensation to the Customer and shall incur no liability whatsoever in respect of such Goods or the destruction thereof, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such Goods or their destruction.

**8. HAZARDOUS OR DANGEROUS GOODS**

The Customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any Goods whatsoever which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, Goods or property, including Goods likely to harbour or attract vermin or other pests and all such Goods that fall within the definition of "hazardous and dangerous Goods" in terms of South African Transport Services Regulations (published in terms of section 73 of Act 65 of 1981) and the International Maritime Dangerous Goods Code, as amended from time to time.

**9. ABANDONED GOODS**

9.1 The Company may accept that the Customer has abandoned the Goods if delivery of any Goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place, the Customer fails to ensure that it timely furnishes the Company with the necessary clearance documents, and / or fails to pay all amounts due in respect of the Goods or take collection of the Goods.

9.2 The Company may store any abandoned Goods or any part thereof, at the Customer's sole risk and expense.

9.3 The Customer consents to the Company selling, or abandoning to Customs (and in that event, recovering from the Customer all related costs), all or any of the abandoned Goods and recovering all amounts which the Customer owes to the Company for the Services.

**10. LIEN**

10.1 All Goods and documents relating to Goods, including any import permits as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien either for monies due in respect of such Goods or for other monies due to the Company from the Customer.

10.2 If the Goods or Services have been entrusted by the Company to a third party, possession of the Goods by such third party shall be deemed to be possession by the Company of such Goods for purposes of enforcing any lien.

**11. EXAMINATION OF GOODS**

11.1 The Company is not obliged to count, inspect or examine any Goods in respect of which it renders Services to the Customer.

11.2 Should the Company undertake to count, inspect or examine any Goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the Company or otherwise.

- prima facie evidence of the Customer's indebtedness to the Company or of the rendering of such services, disbursement of such monies or delivery of such goods.
- 12. WARRANTIES**
- 12.1 The Customer warrants that:  
12.1.1 It is either the Owner of the Goods or the authorised agent of the Owner of any Goods in respect of which the Customer instructs the Company.  
12.1.2 It is authorised to agree to these trading terms and conditions on behalf of any person or company that it represents and bind them to the terms thereof.  
12.1.3 All information provided to the Company or any other party in respect of the Goods will be provided timeously and is accurate and comprehensive and no necessary or pertinent information has been withheld, and the Customer indemnifies the Company against all claims, penalties, fines, damages (direct and indirect), expenses and legal costs on an attorney and own client scale arising as a result of any breach of this warranty.  
12.1.4 That the Goods concerned are suitable for the type and mode of carriage contemplated in or on the transport device concerned.  
12.1.5 The Goods are accompanied by all necessary completed documents, save to the extent that the Company has undertaken to prepare or procure this, failing which the Company shall be entitled to withhold shipping or delivery until these documents have been provided.  
12.1.6 All goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard *inter alia* to the implementation by or on behalf of the Company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;  
12.1.7 The Goods are not dangerous or prohibited as respectively defined in paragraph 7 and 8 hereof.
- 13. LIMITATION OF LIABILITY**
- 13.1 If, in spite of the exclusion of liability in these conditions, the Company is found to be liable to the Customer, its liability shall not exceed whichever is the least of the following respective amounts:  
13.1.1 The value of the Goods evidenced by the relevant documentation or declared by the Customer for Customs purposes or for any purpose connected with their transportation, including the value of the Goods declared for insurance purposes;  
13.1.2 Double the amount of fees raised by the Company for its Services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties;  
13.1.3 The limit of liability contained in the Standard Trading Conditions (or equivalent document) of
- If any provision of these terms and conditions is unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be affected and shall remain of full force and effect.
- 14. APPLICABLE LAW AND JURISDICTION**
- 14.1 This Agreement will in all respects be governed by and construed in accordance with the laws of the Republic of South Africa.  
14.2 The KwaZulu-Natal Local Division High Court, Durban shall have non - exclusive jurisdiction in respect of any dispute arising from or in connection with this Agreement, provided that if the Customer brings any action against or has any dispute with the Company, same shall be subject to the exclusive jurisdiction of the aforementioned High Court unless it falls within the jurisdiction of the Magistrates Court, in which case the relevant Magistrates Court shall have jurisdiction over the matter.
- 15. TIME BAR**
- 15.1 No claim of any nature whatsoever and howsoever arising in respect of the Services and / or any loss or damage to Goods, non-delivery, misdelivery, delay or otherwise may be brought against the Company, any of its servants or agents unless if they have received written notice of the claim from the Customer within 30 days of the date Goods were delivered or ought to have been delivered.  
15.2 It is recorded that the Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of Goods or any Services provided to the Customer or which the Company has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on the Company within nine months after the delivery of the Goods or after the date on which the Goods should have been delivered and immediate notice is given in writing to the Company of such a suit having been brought.
- 16. NON-VARIATION**
- No variation of these trading terms and conditions, including this clause, shall be binding on the Company unless embodied in a written document signed by a duly authorised director of the Company.
- 17. NON-WAIVER**
- No extension of time or waiver or relaxation of any of these trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.
- 18. SEVERABILITY**
19. **FEES AND CHARGES**
- 19.1 The Customer shall pay to the Company in cash immediately upon presentation of invoice all sums whatsoever due to the Company (including, without limiting the foregoing, those in respect of disbursements and the Services) at the rate prescribed in the Company's Tariff, as amended from time to time (a copy of which is available on request) without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.  
19.2 The Customer will return the Pallet received from the Company upon agreed date in the condition in which it was received, failing which the Customer will be liable for the following at the rate prescribed in the Company's Tariff: demurrage and/or damages and / or detention in respect of the delayed return, the replacement value of the Pallet and / or loss and / or damage of the Pallet.  
19.3 Invoices rendered by the Company shall be paid in the currency stated on the invoice or otherwise in an agreed currency at the exchange rates provided by the Company.  
19.4 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs whatsoever on an attorney/own client basis, including collection charges and tracing agent's fee incurred by the Company in recovering any such amount from the Customer.  
19.5 Should any amount not be paid by the Customer on due date referred to in 19.1 then the whole amount in respect of all services rendered by the Company to the Customer and monies disbursed by the Company on behalf of the Customer (whether or not related to the transaction in relation to which the Customer has defaulted), shall become immediately due, owing and payable and the Customer shall be liable to pay interest, calculated daily and compounded monthly, in respect of all such amounts at a rate of 5 percentage points above the prime overdraft lending rate from time to time quoted by the Company's Bankers from due date until date of payment.  
19.6 A certificate signed by any Auditor of the Company stating the indebtedness of the Customer to the Company or certifying that specific services were rendered and/or monies disbursed and/or goods delivered, shall be
20. **QUOTATIONS**
- 20.1 The Company shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or agreement in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against the Company for any Loss that the Customer might incur as a result of the Company cancelling or resiling from the quotation or executory agreement.  
20.2 Without in any way limiting the provisions of clause 20.1 all quotations and agreements are subject to revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment, rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.
- 21. FORCE MAJEURE**
- The Company shall furthermore not be liable for any claims whatsoever arising from any force majeure event which, for purposes hereof is defined as the arising of any occurrence or event whatsoever which is beyond the reasonable control of the Company, including but in no way limited to the following:  
21.1.1 Vis major or any Act of God whatsoever, including without limitation all natural catastrophes such as fire, flood, storms, strong winds, lightning, droughts, meteorites, epidemic, plague or quarantine;  
21.1.2 Riots, civil commotions, strikes (whether lawful or not), lockouts, stoppages, go slows or restraint of labour from whatsoever cause;  
21.1.3 War (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, public

demonstration, terrorist act (or act by any Person acting from political motives), sabotage, or act of vandalism;

21.1.4 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;

21.1.5 Unforeseen breakdown of essential machinery or equipment;

21.1.6 Power failures or surges or electricity interruptions of any nature whatsoever;

21.1.7 Mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not.

21.2 If and to the extent that the Company is prevented from executing Services by any event described in clause 21.1, the Company shall be relieved of its obligations to provide the Services for the duration of the force majeure event, but shall use its best endeavours to continue to perform its obligations in so far as reasonably practicable, and the Customer shall be in no way relieved from performing such of its obligations as it is still able and which arose prior to the force majeure event, including its obligation to make payment. To the extent that the Company is able to perform some of its obligations following and during the continuation of the force majeure event, the Customer shall perform those of its obligations in relation thereto as it is able.

21.3 The Company shall as soon as reasonably practicable notify the Customer of the happening of any force majeure event and the anticipated effect on the Services, and shall again notify the Customer upon the cessation of the force majeure event.