



A & M Logistics

STANDARD TRADING CONDITIONS

1. DEFINITIONS

- 1.1 For the purposes of these terms and conditions, unless inconsistent with the context the following words shall have the following meaning:
- 1.1.1 **"The Cargo"**: means any goods of any nature whatsoever
 - 1.1.2 **"Contract of Carriage"**: means any contract for the carriage of goods including without limitation, any bill of lading, through bill of lading, sea waybill, contract of affreightment, charter party, consignment note or other similar document relating to the carriage of goods either wholly or partly by sea
 - 1.1.3 **"The Nominated Port"**: means the port at which the Tally Operations are, or will be carried out
 - 1.1.4 **"The Principal"**: means the party at whose request or on whose behalf or in respect of whom the Tally undertakes the Tally Operations
 - 1.1.5 **"The Quotation"**: means the Quotation or latter from the Tally to the Principal setting out, inter alia the Tally Operations, the Nominated Port and/or the rates or remuneration
 - 1.1.6 **"The Tally"**: means A & M Logistics cc, Registration no. 1997/007171/23
 - 1.1.7 **"The Tally Operations"**: means the tally and other operations and services performed or to be performed by the Tally for or on behalf of the Principal end any advice given in respect thereof
- 1.2 The head notes to the clauses of these conditions are inserted for reference purposes only and shall in no way govern or affect the interpretation of these conditions.
- 1.3 Unless inconsistent with the context, an expression which denotes:
- 1.3.1 Any gender includes the other genders:
 - 1.3.2 A natural person includes an artificial person end vice versa:
 - 1.3.3 The singular includes the plural and vice versa.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were substantive provision of this agreement.
- 1.5 Where any term is defined within the context of any particular clause in this agreement. the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause.

2. APPLICABILITY AND STATUS OF PRINCIPAL

- 2.1 All and any Tally Operations carried out by the Tally will be subject to these terms and conditions of contract to the exclusion of any other terms and conditions (including without limitation any other general or standard trading terms and conditions of the Principal and/or the Tally), unless specifically agreed in writing in a contract.
- 2.2 Every person contracting with the Tally to provide Tally Operations shall be deemed to do so in every respect not only on its own behalf (as Principal) but also as agent on behalf of every person owning or otherwise interested at any time in any cargo that is the subject of the Tally Operations in question.
- 2.3 Every Principal warrants that it has the authority to contract with the Tally, either as owner of the cargo or the carrier of the cargo in question, or as the authorised agent of the persons referred to in clause 2.2.
- 2.4 If the Principal is an agent acting on behalf of a third party, the Tally may, at its sole discretion, claim performance and/or payment, from both the Principal and the third party, or any one of them.



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3. NOTIFICATION TO THE TALLY

- 3.1 In the case of each ship in respect of which the Tally is required to perform Tally Operations, the principal or its agent must give not less than 72 (SEVENTY-TWO) hours notice to the Tally of:
- 3.1.1 The ship's estimated date of arrival of the ship; and
 - 3.1.2 A full description of the Cargo to be loaded or discharged: and
 - 3.1.3 If the Cargo is to be loaded, then:
 - 3.1.3.1 The estimated date of arrival of the Cargo at the Nominated Port: and
 - 3.1.3.2 The location of the Cargo at the time when the Tally Operations will first be required:
 - 3.1.4 The Tally Operations which the Tally will be required to carry out.
- 3.2 In addition to clause 3.1, the Principal or its agent must provide the Tally with all such information, including without limitation, the time and date of commencement of the Tally Operations, stowage plans, engagement lists and/or landing lists together with any special requirements, if applicable, and furthermore to include the Tally's representatives in all such meetings as may be required in order to enable the Tally's to properly plan and carry out the Tally Operations. The provisions of such information and inclusion at such meetings shall be in accordance with the generally accepted practices of the Nominated Port in question

4. DUTIES OF THE TALLY

- 4.1 The Tally shall, in accordance with the Principals' reasonable instructions:
- 4.1.1 Provide all labour and supervision necessary for the performance of the Tally Operations at the load and/or discharge rates agreed from time to time with the Principal.
 - 4.1.2 Provide such equipment as may be necessary (subject to clause 9.3) for the performance of the Tally Operations:
 - 4.1.3 Perform the Tally Operations during the shift times applicable from time to time at the Nominated Port in question.
- 4.2 The Principal acknowledges that:
- 4.2.1 The supervision and performance of the Tally Operations as contemplated in clause 4.1 will always be subject to the direction and approval of the ship's Master and Cargo Officer and accordingly the Tally's ability to fulfil its obligations is subject to such direction:
 - 4.2.2 The choice of equipment used by the Tally as contemplated in clause 4.1.2 is entirely within the discretion of the Tally:
- 4.3 The Tally must:
- 4.3.1 Use its reasonable efforts to ensure that in carrying out the Tally Operations it complies with all statutory, regulatory or other lawful safety and other requirements:
 - 4.3.2 Identify its own labour and/or personnel to the Principal or its agent in order to assist the Principal in implementing the Principal's security arrangements and controls over the labour and/or personnel from time to time.

5. AUTHORITY TO SUB-CONTRACT

- 5.1 The Principal acknowledges that the Tally may sub-contract all or a part of the Tally Operations to another person and the Principal gives its authority to the Tally to do so, provided that the Tally shall always remain responsible for the performance of its obligations in terms of this agreement.
- 5.2 The exemption and limits of liability and indemnities available to the Tally in terms of these standard terms and conditions shall extend and apply to the Tally's servants, agents, sub-contractors and any person for whom the Tally may be vicariously liable. To this end the Tally contracts on such party's behalf and for their benefit. To the extent that acceptance by such parties may be necessary; such benefit may be accepted by such parties at any time.



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6. CLAIMS /LIMITATION OF LIABILITY

- 6.1 The Tally shall not be liable for:
- 6.1.1 Any consequential loss, special damages, demurrage or loss of profits, howsoever arising; nor
 - 6.1.2 Any other loss or damage of any nature whatsoever (including without limitation in relation to the death or injury to any person). Unless the Principal proves that the loss or damage arose from the gross negligence of the Tally, its servants, agents, subcontractors or any person for whom the Tally is vicariously liable.
- 6.2 In the event that the Tally is liable, then the Tally's liability for any loss or damage, howsoever arising, whether in contract or in delict, arising directly or indirectly from the Tally Operations shall not exceed the lesser of:
- 6.2.1 The fair market value of the goods lost or damaged at the time and place of their loss or damage (if applicable); or
 - 6.2.2 an amount of R100 000 (HUNDRED THOUSAND RAND) (the Occurrence Limit') In respect of any occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of such an occurrence,
- 6.3 Notwithstanding clause 6.2, the Tally's liability for any loss or damage, howsoever arising, whether in contractor in delict, arising directly or indirectly from the Tally Operations performed for and on behalf of the Principal shall not exceed an amount of R500 000 (FIVE HUNDRED THOUSAND RAND) ('the Annual Limit) In respect of all occurrences giving rise to liability In any calendar year (being 1 January to 31 December), regardless of the nature, number and amount of claims arising.
- 6.4 The Principal must give the Tally immediate notice of any occurrence giving rise to any loss, damage, injury or death and the Tally shall be discharged from all liability unless legal proceedings are commenced against it within 1 (one) year of the date of the occurrence.
- 6.5 The Principal Indemnifies and holds the Tally harmless against any claim or liability (and any expense arising there from) insofar at such claim or liability exceeds the Tally's liability under these Contractual terms.

7. BENEFITS UNDER CONTRACTS OF CARRIAGE

- 7.1 Where the Principal is a carrier under a contract of carriage applicable to the cargo In respect of which the Tally provides Tally operations, the Principal is hereby expressly authorised and required by the Tally (and shall have a clause in its Contract of Carriage to etch effect) to:
- 7.1.1 act on the Tally's behalf to obtain for the Tally, its servants, agents, sub - contractors and such parties for whom the Tally may be vicariously liable, whatever benefits, exclusions end limitations of liability accrue 10 the Principal in terms of any Contract of Carriage;
 - 7.1.2 Accept the benefits referred to in clause 7.1.1 on behalf of the Tally and the other parties referred to therein.
- 7.2 The Principal indemnifies and holds the Tally harmless against any claim or liability to the extent that such claim or liability exceeds the lesser of:
- 7.2.1 The amount referred to in clauses; or
 - 7.2.2 the liability that the Tally would have incurred if the Tally had been able to rely on the provisions In the Contract of Carriage excluding and/or limiting the Principal's liability and which would have applied had the scope of such exclusions and/or limitations applied to or Included the Tally's services.
- 7.3 If the Principal is not a party to the Contract of Carriage applicable to the Cargo in respect of which the Tally provides Tally Operations, the Principal shall procure that the carrier in terms of such Contract of Carriage or the issuer of any bill of lading in terms thereof shall fulfil the Principal's obligation in clause 7.1 and such persons are expressly authorised by the Tally to act for, accept and contract for, such benefits on the Tally's behalf end that of the other parties referred to In paragraph 7.1.
- 7.4 The Tally hereby ratifies any contract that the Principal or carrier or issuer of a bill of lading may have concluded In terms of clause 7.1 or 7.3 on behalf of the Tally and the other parties referred to in clause 7.1 and accepts any benefit which may have been stipulated for the Tally and such other parties.



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8. OBLIGATIONS OF THE PRINCIPAL

- 8.1 The Principal must:
- 8.1.1 ensure that the Cargo bears at proper marks and labels to facilitate easy identification and so as to enable the Tally to perform the Tally Operations;
 - 8.1.2 before Tally operations commence or can commence, ensure that any Cargo to be loaded, or discharged, is suitably positioned and ready in every respect so as to enable the Tally to perform the Tally Operations;
 - 8.1.3 for and during the performance or rendering of the Tally Operations, ensure that all of the Ship's equipment is maintained in safe and proper working order and in compliance with all the relevant Maritime Organisation and Ships Classification provisions, as well as any South African statutory provisions; and
 - 8.1.4 where the Cargo has been packed, prepared, palletized or containerized by someone other than the Tally, ensure that the Cargo is fit for the safe and proper execution of the Tally operation.

9. REMUNERATION

The Tally shall be remunerated by the Principal or its agents (on behalf of the Principal) in accordance with the rates of remuneration set out in the Quotation.

10. ACCOUNTING PROCEDURES AND PAYMENT

- 10.1 The Tally shall invoice the Principal after completion of the Tally Operations in question and the Principal, unless otherwise agreed in writing, shall pay such invoices within 7 (SEVEN) days of the date of such invoice,
- 10.2 The Principal must notify the Tally of any dispute relating to any invoice within 7 (SEVEN) days after the date of invoice setting out clearly the areas and issues of dispute. The parties undertake to use their best endeavours to resolve any such disputes within 30 (THIRTY) working days after the date of the invoice in question.
- 10.3 Any amount not paid on due date shall, at the discretion of the Tally, bear interest from the date until it is paid, at a rate not exceeding two percentage points above the published prime overdraft rate from time to time of the Tally's principal bankers,
- 10.4 A letter purporting to be signed by a general, branch or other manager of the Bank, setting out the published prime overdraft from time to time shall be proof of the rate until the contrary is proved.

11. FORCE MAJEURE

The Tally shall not be responsible or liable to the Principal or any other party for any delays, losses, damages, costs or failure to perform any of the Tally Operations by reason, directly or indirectly, of acts of God, governmental orders, political disturbances, war, hostile actions, perils, dangers and accidents of the sea or other navigable waters or other events beyond the reasonable control of the Tally.

12. BREACH

- 12.1 The Tally may immediately cease performing Tally Operations
- 12.1.1 The Principal is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under receivership or under any of the equivalent of any of the foregoing;
 - 12.1.2 The Principal makes any arrangement or composition with its creditors generally or ceases or threatens to cease to carry on business;
 - 12.1.3 The Principal commits a breach of any of the terms hereof;
 - 12.1.4 The Principal fails to pay any amount owing to the Tally on due date,
- 12.2 Any termination pursuant to the provisions clause 12.1 shall be without prejudice to any claim the Tally may have in respect of any prior breach of the terms of this agreement by the Principal.



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13. ARBITRATION

- 13.1 Any dispute between the parties in regard to:
- 13.1.1 The interpretation of;
 - 13.1.2 The effect of;
 - 13.1.3 The parties' respective rights and obligations under;
 - 13.1.4 breach of; or
 - 13.1.5 any matter arising out of;
- these Standard Terms and Conditions shall be decided by arbitration in the manner set out in this clause 13.
- 13.2 The said arbitration shall be held subject to the provisions of this clause:
- 13.2.1 at Durban;
 - 13.2.2 Informally;
 - 13.2.3 Otherwise in accordance with the provisions of the Arbitration Act No, 42 of 1965 as amended and the rules of the Arbitration Foundation of South Africa; it being the intention that if possible it shall be held and concluded within 25 business days after it has been demanded.
- 13.3 The arbitrator shall be if the question in issue is:
- 13.3.1 Primarily an accounting matter an independent chartered accountant of not less than 10 (TEN) years standing agreed upon between the parties;
 - 13.3.2 Primarily a legal matter, a practicing advocate or attorney of not less than 10 (TEN) years standing agreed upon between the parties;
 - 13.3.3 Any other matter an independent person agreed upon between the parties.
- 13.4 If the parties cannot agree upon a particular arbitrator in terms of 13.3 above within 7 (SEVEN) business days after the arbitration has been demanded, the nomination in terms of 13.3.1, 13.2 and 13.3.3, as the case may be, shall be made by the President of the KwaZulu-Natal Law Society within 7 (SEVEN) days after the parties have so failed to agree.
- 13.5 The parties irrevocably agree that the decision in these arbitration proceedings:
- 13.5.1 Shall be binding on them;
 - 13.5.2 Shall be carried into effect;
 - 13.5.3 May be made an order of any Court of competent jurisdiction

14. CONFIDENTIALITY

Both the Tally and the Principal will keep confidential and not disclose to any other party any information arising in connection with the Tally Operations or their business dealings at any time during or after the term of this agreement, unless it has the other parties' written consent to do so.

15. NOTICES ADDRESS AND DOMICILIUM

- 15.1 The Principal chooses at the address at which all notices and legal process may be sent (i.e. its domicilium citandi et executandi) as the address set out in the Quotation, if any, failing which any place of business of the Principal that is within any jurisdiction of a South African court, as elected by the Tally.
- 15.2 All notices, demands, communications or payments intended for the Principal may be made or given at the Principal's domicilium for the time being.
- 15.3 A notice sent by the Tally to the Principal's domicilium shall be deemed to be received
- 15.3.1 On the same day, if delivered by hand;
 - 15.3.2 On the tenth day after posting. If sent by prepaid registered mail.
- 15.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by the Principal shall be an adequate written notice or communication to it notwithstanding that it was not sent or delivered at its chosen domicilium citandi et executandi.



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16. GENERAL

- 16.1 This agreement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.
- 16.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 16.3 No addition to, variation or consensual cancellation of this agreement shall be of any force or affect unless in writing and signed by or on behalf of all the parties.
- 16.4 No indulgence which the Tally may grant to the Principal shall constitute a waiver of any of the rights of the Tally, who shall not thereby be precluded from exercising any rights against the Principal which might have arisen in the past or which might arise in the future,
- 16.5 The parties undertake at all times to do all such things, to perform all such acts and take all such steps and to procure the doing of au such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement,
- 16.6 The Principal may not be entitled to cede, assign or otherwise transfer all or any of its rights, interest or obligations under and in terms of these Standard Terms and Conditions except with the prior written consent of the Tally, The Tally may cede, assign or otherwise transfer sit of its rights, interest or obligations under and in terms of these Standard Terms and Conditions without the prior written consent of the Principal.
- 16.7 This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.