

## **Pacorini Metals Group of Companies (including Access Freight Group) Standard Terms and Conditions**

These Standard Terms and Conditions (hereinafter referred to as "Conditions"), electronically published at <http://www.pacorinimetals.com> and [www.access.co.za](http://www.access.co.za), as amended, set out the general standard terms on which any company or subsidiary belonging to the Pacorini Metals Group of companies or Access Freight Group performs any Services. In addition to these Conditions, certain sectoral terms and conditions, as detailed in Appendix 1, subject to Section 4 of these Conditions, apply with respect to Services rendered by Pacorini Metals Vlissingen, Pacorini Metals Rotterdam, Pacorini Metals Terminals B.V., Pacorini Metals Italia S.r.l., and any subsidiary belonging to Access Freight Group.

In these Conditions, the following words and expressions shall have the following meanings, save where the context otherwise requires:

**"Agreement"** means any agreement, whereby the Company and/or an authorized agent of the Company offers and the Customer accepts the provision of the Services, or where the Company has started performance of an order, and shall include without limitation any written contract agreed and/or correspondence by post, fax and/or email between the Company and/or an authorized agent of the Company and the Customer, and these Conditions;

**"Company"** means the Pacorini Metals entity that has concluded the Agreement;

**"Customer"** means the party to whom the Company's offer is addressed and/or the party entering into the Agreement with the Company, and/or the party to whom the Company shall provide the Services pursuant to the Agreement;

**"Goods"** mean 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 control of the Company or its agents, servants or nominees on the instructions of the Customer, and includes any container, transportable tank, flat pallet, flat rack, package or any other form of conveyance, covering, packaging, container or equipment used in connection with or in relation to such goods;

**"Group"** means the Company and the related companies of the Company collectively;

**"in writing"** shall mean any written correspondence sent by post, fax, or email between the Company and/or its authorized agents and the Customer;

**"Loss"** includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorized delivery, non-compliance with instructions or obligations, or incorrect advice or information;

**"Order"** means the Customer's request for Services using its own format;

**"Price"** means the rates which shall be chargeable by the Company to the Customer for the provision of the Services as set forth in the Agreement; and

**"Services"** shall mean any and all services provided or to be provided by the Company to the Customer pursuant to the Agreement.

### **Section 1 - The Company's Obligations and Rights**

1.1 Unless otherwise agreed in writing, the Company in procuring the carriage, storage, packing or handling of the Goods shall be acting in the capacity of a freight forwarding agent and not as principle (including but not limited to services such as chartering of trucks, barges, trains and/or vessels, even where such services are performed pursuant to a transport Order), receiving agent, customs agent, limited or direct

fiscal representative, warehouse keeper, shipbroker, stevedore and/or provider of other warehousing or logistic services. The Company deals with the Goods only on the basis that is neither a common carrier nor a public carrier.

1.2 The Company may in its reasonable discretion decide on the means, route and procedures to be followed in the handling, storage, transportation and/or forwarding of the Goods, and where applicable, in accordance with the London Metal Exchange ("LME") requirements, the issuance and cancellation of warrants and delivery out procedures with respect to the goods which are subject to warrants stored in the Company's LME approved warehouses.

1.3 The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party. Unless otherwise agreed in writing, the Company, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfillment of the Customer's instructions and the Customer agrees that where the Company has employed a third party to perform all or any of its functions which it has agreed to perform for the Customer the Company shall have no responsibility or liability to its Customer for any act or omission of such third party and any claims must be submitted directly to the third party.

1.4 The Company shall not be obliged to weigh or measure the Goods if no instructions have been given by the Customer to do so. The Company may, however, in its own discretion weigh and/or measure the Goods in order to determine whether the weight and/or measurement of the Goods comply with the specifications of the Goods as advised by the Customer.

1.5 The Company shall be entitled to modify delivery deadlines under the Agreement if such deadlines are not compatible with the Company's or carrier's compliance with road and/or applicable transport safety norms.

1.6 In the event the Customer requires work to be performed outside of normal working hours, the Company shall be at liberty but not obliged to perform such work and any extra charges incurred shall be borne by the Customer.

1.7 Unless otherwise agreed in writing, the Company may store the Goods at any warehouse within the agreed location.

1.8 All Services provided by or on behalf of or at the request of the Company in connection with the Goods are effected at the sole risk of the Customer and/or the owner of the Goods.

1.9 Subject to Condition 1.10, unless otherwise agreed in writing, the Customer shall be obliged to obtain insurance cover in respect of the goods, and the Company shall not be obliged to take out any insurance on the Goods for any risks whatsoever. It is the Customer's obligation to insure the Goods to their full insurable value with any right for the insurer to bring a subrogated claim against the Company being excluded.

1.10 In the event the Customer requests the assistance of the Company to take out insurance on the Goods and where sanctioned under local law and regulations, the Company, as an intermediary, may take out insurances on the Goods against such risks as may be identified by the Customer and obtain insurances covering the specified risks at the standard conditions issued by the insurance company of its choice, and all costs shall be borne by the Customer. The Company shall not be held liable for any loss arising from the failure of the insurer to pay in full or in part or because a claim in respect of damage is being disputed as a result of circumstances for which the Company cannot be held liable or the manner in which the Company effected the contract for insurance.

1.11 The Company is under no obligation to ascertain or bring to the Customer's attention the existence of any impediments to shipping the Goods that may be enforced by law or by any authorities, including but not limited to importation, exportation, or transit restrictions.

1.12 The Company shall have the right at any time to require the removal of the Goods received for storage prior to the expiration of the storage period without adhering to any period of notice, if in the reasonable discretion of the Company there is an urgent reason to do so. An urgent reason, shall inter alia be deemed to exist if the Customer fails to comply with one or more provisions of the Agreement and/or the

Conditions, and/or if it appears that owing to the presence of the Goods loss and/or damage to other goods, to the storage place or to equipment, or harm to a person is to be feared, or if the Goods are perishable or liable to inherent changes which in the Company's opinion would result in a decrease in value of the Goods. The Customer shall remain liable for payment of the warehouse rent plus any increases up to and including the date when the Goods were removed.

1.13 The Company shall be obliged to admit the Customer and/or any person authorized by the Customer to the place where the Goods are stored, subject to all formalities prescribed by the relevant authorities being complied with. The following conditions shall be applicable to persons granted admittance by the Company:

- (a) All persons visiting the place of storage including personnel of vessels and vehicles reporting to the warehouse enter the premises at their own risk and must observe the Company's regulations;
- (b) Admittance shall be granted only during normal working hours and with supervision;
- (c) The cost of supervision during the visit shall be borne by the Customer;
- (d) The Customer shall be liable for any damage caused directly or indirectly by the visitors or Customer representatives.

1.14 Where applicable and sanctioned by national legislation, the Company shall be entitled to issue in respect of the whole or part of any contract for the movement of the Goods a combined transport bill of lading provided that where a bill of lading is issued these Conditions shall continue to apply insofar as there is conflict with the terms of the applicable bill of lading. By the issue of a bill of lading the Company shall be entitled to raise an additional charge as determined by the Company, to cover its additional obligations arising under the bill of lading.

## **Section 2 - The Customer's Obligations and Rights**

2.1 In the event the Customer requires the Company to take any special precautions in respect to the Goods, such precautions must be advised by the Customer in writing providing sufficient detail for the proper execution of the instructions by the Company. Unless otherwise agreed in writing, the Company is not obliged to take any specific precautionary measures for warehouse surveillance.

2.2 The Goods shall be presented to the Company (and/or any other party handling the Goods) securely and properly packed in compliance with any applicable statutory regulations, recognised standards and best practice and shall be packed in manner whereby they will remain in condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of such events) to any person, premises, equipment or to any other items in any way.

2.3 Except to the extent previously notified in writing and accepted by the Company, the Customer shall not deliver to the Company any Goods of an explosive, flammable, corrosive, noxious or dangerous nature or any Goods which are likely to cause damage (including goods that may harbor vermin or other pests) to the warehouse or to other goods stored in the warehouse, or which are classified as dangerous or hazardous goods by any laws or regulations. Where delivery of such goods is accepted by the Company, the packages containing such goods shall be clearly marked to show the hazardous nature of their contents and labeling shall be in compliance with all applicable rules and regulations. The Customer shall indemnify the Company from and against any and all fines, penalties, expenses, loss or damages suffered or incurred by the Company by reason of the nature of the Goods or as a result of the Customer's failure to comply with this Clause 2.3.

2.4 The Customer must ensure that all the necessary and proper details and documents to be provided to the Company for the execution of the Services are in the Company's possession within the time frame indicated by the Company so as to ensure compliance with all applicable rules and regulations. Where applicable, information to be provided includes but is not limited to proof of REACH registration, a valid Safety Data Sheet (where applicable), proper labels, the nature of the Goods, the number, quantity, quality and content of parcels, their gross weight, size and any other information instrumental to the execution of the Services. The Customer acknowledges that the company shall not be regarded as the importer as envisaged by

REACH and agrees to indemnify and hold harmless the Company for all third party claims concerning the Goods and (1) The (EC) Regulation No. 1907 / 2006 of December 18th 2006, concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH); and/or (2) The (EC) Regulation No. 1272 / 2008 of December 16th 2008, concerning the classification, labelling and packaging of substances and mixtures.

2.5 Subject to the below Clause 2.6, any signed inventory document supplied by the Company to the Customer in respect of the Goods shall once signed by the Customer be conclusive proof of the quantity of the Goods that have been received by the Company and where not signed by the Customer be conclusive proof of what Goods have been received by the Company unless the Customer advised the Company within twenty four (24) hours of receipt of the inventory document.

2.6 The description and/or specification of the Goods and the particulars concerning the packages or other shipping unit as stated on the face of the warehousemen's receipt, delivery Order and/or facsimile release for similar purposes are those of the Customer. With the exception of physical differences as to the number or weight of packages or other shipping unit that have been noted by the Company and indicated on the documents, the Company does not, by the issuance of any such document, agree that such description is correct, or admit the existence, good order and condition of the Goods, or of the contents of any package or other shipping unit.

2.7 Where the Services include customs clearance services, the Company or its appointed representatives shall be authorized to issue the customs declaration on the basis of the information provided by the Customer. In such an event, the Customer accepts to exclude any liability of the Company or its appointed representative in respect to the issuance of the customs declaration and agrees to indemnify and hold harmless the Company and/or its appointed representatives in respect to any claims that may be raised by the customs' authorities and/or other related authorities/offices.

2.8 Unless otherwise agreed in writing, it is the Customer's exclusive responsibility to obtain all licenses, documents and other consents needed for the import and export or storage of the Goods.

2.9 The Customer expressly warrants (unless the contrary is made known to the Company in writing) that they are either the owners or the authorized agents of the owners of the Goods. The Customer further warrants that they are authorized to accept and are accepting the Conditions not only for themselves but also as agents on behalf of all other persons or third parties who may thereafter acquire title or interest to the Goods.

2.10 With the exception of LME Goods, the Customer is obliged to immediately notify the Company in writing of transfer or passing of ownership of the Goods or transfer or passing the right to take delivery of the Goods, as the case may be.

2.11 Any transfer under the above Clause 2.10 shall not affect the Customer's previously assumed contractual obligations to the Company and any transfer of any obligations may only take place by way of assignment of the contract between the Customer and the third party with the express written consent of the Company.

2.12 If the Customer transfers or passes ownership of the Goods or transfers or passes the right to take delivery of the Goods, such action does not release the Customer of its previously assumed obligations to the Company until the Company has confirmed in writing to the Customer that the Company has accepted such transfer and/or release of the Goods.

2.13 Unless otherwise agreed in writing, the Customer shall provide the Company, in advance, with the funds needed to execute the Services and to fulfill all related obligations which the Company has undertaken and/or shall undertake in its own name and on behalf of the Customer to perform the Services.

2.14 If the Customer has instructed the Company that Goods for storage in a certain quantity and/or at a certain time will be delivered to the Company, or that Goods to be re-delivered in a certain quantity and/or at a certain time will be collected, and if in such a case the Customer fails to deliver or to collect the goods regularly and on time, then the Customer shall be obliged to reimburse all costs and expenses incurred by the Company as a result of any personnel and equipment ordered and/or arranged for the execution of the relative

Order by the Company not having been used in full or at all.

2.15 In the event the Goods are subject to any inspections, processing, sampling or handling, prior agreements to this effect must be made with the Company and any procedures carried out shall be carried out by personnel appointed by the Company or personnel mutually agreed between the Company and the Customer, and all costs shall be for the Customer's account.

### **Section 3 – Applicability and Interpretation**

3.1 Unless otherwise agreed in writing, these Conditions apply to all offers made by the Company and/or its authorized agents, all business relations between the Company and/or its authorized agents, and any Agreement concluded.

3.2 The Company shall not be bound by any conflicting standard terms and conditions (howsoever called) used by the Customer and such terms and conditions shall not be applicable to the Agreement unless the terms and conditions have been accepted in writing by the Company. These Conditions may only be varied in writing by an authorized representative of the Company. If a Customer's acceptance document, purchase Order or other documentation, received by the Company before or after notification of these Conditions, contains terms at variance with these Conditions, then every such terms shall be of no effect.

3.3 Failure of the Company to invoke or enforce compliance with any provisions of the Conditions shall not constitute a waiver by the Company of its right to insist upon strict compliance with all other provisions of the Conditions or invoke the respective provision in other circumstances.

3.4 If any of the terms of these Conditions is repugnant to or in conflict with applicable law, then and in such event the conflicting term shall be deemed to be deleted, amended and/or altered to conform therewith, and such deletion, amendment and/or alteration shall not in any way affect the remaining provisions of these Conditions.

3.5 These Conditions have been drawn up in English and in other languages. In the event of any differences in content or tenor, the English text is final.

### **Section 4 – Applicability of Sectoral Terms and Conditions and Jurisdiction Specific Legislation**

Unless otherwise agreed in writing and where relevant, the sectoral terms and conditions as set forth in Appendix 1, the most recent version thereof, shall apply in addition to these Conditions. With the exception of the provisions of Section 10 (Liability) and Section 13 (Disputes) as set forth in these Conditions, if and insofar as the provisions of these Conditions conflict with the applicable sectoral terms and conditions, the Conditions shall prevail. Copies of any specific sectoral terms and conditions referenced in Appendix 1 are available upon request.

### **Section 5 – Offers, Acceptance of Orders, and Modifications to an Agreement**

5.1 All offers made by the Company and Order(s) submitted to the Company are non-binding until an Agreement has been concluded. An Agreement shall be deemed concluded the earlier of a written confirmation being sent by the Company to the Customer confirming the Agreement, the Customer accepting the Company's offer in writing, or the Company starting performance of the Services pursuant to the Customer's Order.

5.2 Unless agreed otherwise in writing, all offers made by the Company and/or its authorized agents are based on the work being carried out by the Company under normal conditions and during normal working hours.

5.3 Oral promises or representations made by employees, servants, or agents of the Company are not binding on the Company unless and until confirmed in writing by the Company.

5.4 The Company shall be entitled to not accept an Order at any time and without cause.



5.5 Any modification or additions to the terms of the Agreement must be made and agreed to in writing by both the Company and the Customer.

#### **Section 6 - Prices, Rates, and Tariffs**

6.1 Unless otherwise agreed in writing, all prices are stated in the currency as stated in the offer and thereafter invoiced and exclude packing, customs fees, (e.g. C.O.D fees), V.A.T., and any other taxes and other surcharges of whatever description levied by public authorities in connection with the Goods, their importation or exportation, transshipment, or storage. Any additional costs that may arise in the course of the Company's performance of the Services are for the Customer's account.

6.2 Should the Company be instructed by the Customer in writing to collect freight, duties, charges, or other expenses from the consignee of the Goods or from any other person, the Customer shall remain responsible for the payment thereof in the event the consignee or such person does not pay same in cash immediately when due or payable.

6.3 Unless otherwise agreed in writing, the agreed rates for storage shall be based on the customary method of stacking the Goods. If at the Customer's request, or owing to the conditions of the Goods, the customary method is departed from, an increase in the rates shall be affected in proportion to the additional floor space occupied as compared with that for normal stacking.

6.4 In the event one or more of the cost components included in the rates is subject to an increase after the date the Agreement is concluded (e.g. supplier's prices, employee wages, social and/or other charges, freights and/or import duties, and/or insurance premiums and other costs, and/or price of equipment or fuel) the Company has the right to increase the agreed rates by a corresponding amount.

6.5 Unless agreed otherwise in writing, the Company is entitled to yearly adjustments in rates and tariffs, pursuant to any increase of costs.

6.6 In the event the Company carries out additional work or performs any variation to the Agreement as requested by the Customer, the costs associated with the variations will be for the Customer's account.

6.7 In the event that the loading and/or unloading time under any bill of lading and/or charter-party or laycan in respect of the Goods is insufficient due to an act of the Customer, all costs resulting therefrom, including without limitation any demurrage charges, shall be borne by the Customer, notwithstanding that the Company was the party that accepted the vessel or entered into the bill of lading and/or charter party from which the aforesaid costs arise.

#### **Section 7 – Payment**

7.1 Unless otherwise agreed in writing, the Customer shall pay to the Company in cash immediately upon presentation of account all sums due to the Company without deduction or set off, free of exchange and any other charges, and payments shall be not withheld or deferred on account of any claim or counterclaim which the customer may allege. By the issuance of an invoice, the Company shall be entitled to raise an additional administration charge as determined by the Company, to cover the cost of issuance.

7.2 If the Company has granted the Customer a credit facility and the Customer falls into arrears then the credit facility shall immediately revert to a cash basis (payable immediately on presentation of account), without written notice to the Customer. The Company reserves the right to discontinue any account and summarily to cancel any agreement in respect of which payments have fallen into arrears, and in the event of these right being exercised, all amounts howsoever owing by the Customer to the Company shall immediately become due and payable on demand.

7.3 All moneys received by the company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed debt owing by the Customer to the Company, notwithstanding that the Customer might when making payment, seek to appropriate the payments made to any particular debt or portion of the a debt.

7.4 In the event the Customer fails to pay any invoiced amount, which is due and payable under the Agreement, the Customer shall be deemed to be in default of its payment obligations, and the Company shall be entitled to interest on the overdue amount at a rate of 2.5% per month, calculated from the date on which payment was due to the date of full settlement. Any payments shall be deducted first from the due interest and then from the principle sum due.

#### **Section 8 - Termination**

8.1 The Company is entitled to terminate the Agreement immediately by written notice to the Customer if the Customer is in material breach of its obligations under the Agreement. A material breach shall include, but not be limited to, situations where:

- (a) the Customer fails to meet his liabilities when they fall due;
- (b) the Customer seeks a composition with his creditors,
- (c) all or part of the Customer's property is subject to receivership, or
- (d) a petition for liquidation, winding-up or administration is filed in respect of the Customer.

8.2 In the event that the Company gives notice of termination according to the terms of Clause 8.1, all outstanding payments shall be accelerated and deemed due and payable immediately.

#### **Section 9 - Right of Retention, Lien, and Pledges on the Goods**

9.1 The Company has a lien and/or a right of retention in respect of the Goods and any documents and funds of the Customer that are in the possession of the Company under the Agreement. The Goods, and any documents or funds of the Customer that are in possession of the Company under the Agreement may serve as a pledge for the Company against all claims that it may have or may acquire against the Customer or any other party with rights to the Goods or funds. The Company shall not in any circumstances be liable for any loss or damages resulting from the exercise of a pledge, right of retention, or lien.

9.2 In the event of non-payment of the claim(s) for which such rights under the above Clauses 9.1 are exercised, the Company shall be entitled to sell the pledged Goods, documents and funds in the manner prescribed by law.

#### **Section 10 – Liability**

10.1 Where an Agreement is subject to sectoral terms and conditions under Section 4 (Applicability of Sectoral Terms and Conditions and Jurisdiction Specific Legislation), and where liability is specifically addressed in the sectoral terms and conditions, the Company's liability shall be determined by the applicable sectoral terms and conditions. However, in cases where the sectoral terms and conditions do not specifically determine such liability, the following provisions shall apply.

10.2 To the extent that any Loss is directly caused by gross negligence of the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as subcontractors or agents), subject to Clause 10.3 and 10.4, the Company will accept liability for any such Loss assessed on the applicable legal principles but not exceeding the limit fixed by Clause 10.5. Any quantification of value includes duties and taxes.

10.3 In no case shall the Company be liable, whether in contract or tort, for any lost profit, income or savings, wasted expenditure, or indirect or consequential loss, whether or not the Company knows or has previously been advised of the possibility of such loss or damage.

10.4 No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within one (1) year of the event giving rise to the claim.

10.5 In regards to the Company's limitation of liability for any Loss, the sectoral terms as set forth in Appendix 1 shall apply if applicable. In the event no sectoral terms as set forth in Appendix 1 apply, in those

cases where the Company is liable to the Customer under Clause 10.2, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed whichever is the least of the following respective amounts:

10.5.1 the actual direct damages incurred; or

10.5.2 the actual value of the Goods (as evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purposes connected with their transportation); or

10.5.3 the values of the Goods as declared for insurance purposes; or

10.5.4 EUR 100,000 (or equivalent amount in the local currency of the country in which the Company that is party to the Agreement is domiciled) per event, or series of events arising from one and the same cause.

10.6 Without prejudice to any of the Company's rights and securities under these Conditions, the Customer shall be obliged to indemnify and hold harmless the Company against any and all loss, damage, liabilities, duties, taxes, penalties, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Goods or Services, and/or the Company carrying out the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of the Company, and/or which is related to any breach of the Customer's obligations under the Agreement and these Conditions.

10.7 The Customer shall have no claim whatsoever against any director, servant or employee of the Company (whether or not such director, servant or employee acted within the course and scope of his or her employment with the Company).

10.8 In the event of legal proceedings being instituted between the Company and the Customer, and where a judgment is entered in favor of the Company, the Customer agrees to reimburse the Company for any legal costs incurred in connection with the proceedings including collection charges and tracing agents' fees.

10.9 In the event of legal proceedings being instituted by the Company on behalf of the Customer against third parties, and where a judgment is either entered in favor of or against the Company, the Customer agrees to reimburse the Company for any legal costs incurred in connection with the proceedings including collection charges and tracing agents' fees.

## **Section 11 - Force Majeure**

11.1 The Company shall not be liable for any loss, damage to or destruction of the Goods, or for any delay in the performance or non-performance of any of the terms of the Agreement due in whole or in part to any cause not within the control of the Company, including without limitation, to the following:

(a) war, threat of war, official action, quarantine, civil disturbance, sabotage, strike, lock-out, interference with communications, lack of transport, labor and/or storage accommodation;

(b) storm, fog, lightning, flood, high and low tide, frost, freezing, ice, heat;

(c) subsidence and/or collapse of the ground and/or any storage facility;

(d) water leakage or seepage, dampness, odor, stench, worms and rodents, damage through rats, mice, insects and other creatures;

(e) the natural properties of the Goods, inherent changes in quality, spontaneous deterioration, self-generated heat, combustion, explosion, drying, mold, yeasts, leaks, rot and mildew, rust and sweating; and

(f) the non-availability of a berthing or parking place upon arrival of a vessel or truck;

(g) wheel puncture, unordinary traffic and/or congestion, or gasoline shortages due to strikes; and

(h) all other causes which the Company could not reasonably prevent.

11.2 All additional costs which may be incurred as a result of a force majeure event, including but not limited to carriage and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance premium, charges in respect of delivery from warehouses, bonded or otherwise, shall be borne by the Customer and shall form part of the debt due and owing to the Company by the Customer on which interest shall be chargeable.

11.3 The Customer's payment obligations arising before the commencement of the force majeure event



remain in force despite the force majeure event.

#### **Section 12 - Governing Law and Dispute Resolution**

The Agreement shall be governed by and construed in accordance with the laws of the country in which the Company that is party to the Agreement is domiciled.

#### **Section 13 - Dispute Resolution**

13.1 Where an Agreement is subject to sectoral terms and conditions under Section 4 (Applicability of Sectoral Terms and Conditions and Jurisdiction Specific Legislation), and where dispute resolution and/or jurisdiction is specifically addressed in the sectoral terms and conditions, dispute resolution and/or jurisdiction shall be determined by the applicable sectoral terms and conditions. However, in cases where the sectoral terms and conditions do not specifically determine dispute resolution and/or jurisdiction, the following provisions shall apply.

13.2 Notwithstanding Clause 12.1, The Customer agrees that any legal action or proceedings arising out of or in connection with the Agreement may be brought in the Courts of the country in which the Company that is party to the Agreement is domiciled and the Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the Courts of the country in which the Company that is party to the Agreement is domiciled.

13.3 The Company may in its sole discretion refer any claim or dispute to any arbitral body location in the country in which the Company that is party to the Agreement is domiciled for arbitration which arbitration shall bind both the Company and the Customer. For the purpose of arbitration, the parties shall jointly nominate and mutually agree upon an arbitrator. Should the parties fail to agree on the arbitrator to be appointed, the arbitrator shall be nominated by the arbitral body in accordance with the arbitral body's rules. The arbitration shall be subject to and conducted in accordance with the rules for the conduct of arbitration published from time to time by the arbitral body.

**Effective as of 1 June 2014**

**The Agreement shall be subject to any modification of any legislation in force.**

## **Appendix I**

### **I. Sectoral Terms and Conditions Applicable for Pacorini Metals Vlissingen, Pacorini Metals Rotterdam, and Pacorini Metals Terminals B.V.**

The following individual sectoral terms shall apply to Services rendered by Pacorini Metals Vlissingen, Pacorini Metals Rotterdam, and Pacorini Metals Terminals B.V. depending on the nature of the work involved:

- (a) Stevedoring work relating to the storage and handling of bulk goods, and such storage and handling: The Stevedores' Bulk Goods Conditions Rotterdam 1991 (de Voorwaarden Massagoed-stuwadoors Rotterdam 1991), filed with the Registry of the District Court in Rotterdam as no. 505 on 8 May 1991.
- (b) Stevedoring work: The General Conditions of the Association of Rotterdam Stevedores (de Algemene Voorwaarden van de Vereniging van Rotterdamse Stuwadoors), filed with the Registry of the District Court in Rotterdam on 12 August 1976.
- (c) All international carriage of goods by road: The Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded in Geneva on 19 May 1956.
- (d) All carriage of goods by road within the Netherlands: The General Conditions of Carriage 2002 (de Algemene Vervoerscondities 2002; AVC 2002), filed with the Registry of the District Court in Amsterdam and Rotterdam.
- (e) Carriage by rail: The Uniform Rules concerning the Contract for International Carriage of Goods by

Rail (CIM 1980), where necessary supplemented by the General Carriage Rules (Algemeen Reglement Vervoer) and the General Conditions of Railion Benelux N.V. (Algemene Voorwaarden van Railion Benelux N. V.).

(f) Chartering of coastal shipping and shipping for inland waterways: The Chartering Conditions 1991 (de Bevrachtingsvoorwaarden 1991), filed with the Registry of the District Court in Amsterdam and Rotterdam.

(g) Forwarding work: The General Conditions of FENEX (Netherlands Association for Forwarding and Logistics), hereinafter the "Dutch Forwarding Conditions" (de Nederfandse Expeditievoorwaarden), filed with the Registry of the District Court in Amsterdam, Arnhem, Breda, and Rotterdam on 4 January 1999.

(h) Warehousing, storage, handling and delivery of goods within the Netherlands: The Dutch Warehousing Conditions (de Nederfandse Opslagvoorwaarden), filed with the Registry of the Court in Rotterdam on 15 November 1995.

(i) Work as a shipping agent or shipbroker: The General Conditions and Rules for Dutch Shipbrokers and Agents (de Algemene Nederlandse Cargadoorsvoorwaarden), filed with the Registry of the District Court in Amsterdam, Dordrecht, Groningen, Leeuwarden, Middelburg and Rotterdam and with the Chambers of Commerce in Amsterdam, Dordrecht, Groningen, Leeuwarden, Middelburg, Rotterdam and Terneuzen on 1 December 1992.

(j) Towing contracts: for towing, assisting and providing services to floating objects such as barges, floating derricks, cranes, elevators etc.: The General Towing Conditions (de Algemeene Sleepconditien), filed with the Registry of the District Court in Amsterdam, Dordrecht and Rotterdam on 5 March 1946; for towing, assisting and providing services to ships intended to sail regularly to sea: the Netherlands Towing Service Conditions 1951 (de Nederlandse Sleepdienst Conditien 1951), filed with the Registry of the District Court in Amsterdam and Rotterdam on 15 November 1951; for towing, attending on and providing services- other than the provision of help- to all other ships: the Towing Conditions 1965 (de Sleepconditien 1965), filed with the Registry of the District Court in Amsterdam and Rotterdam on 15 December 1965.

If the agreement calls for different types of services to be rendered consecutively, each type of service shall be treated as being independent from the other and shall be subject to the sectoral terms relating to that specific type of service. Where two or more sets of sectoral terms apply to one type of service, the sectoral terms which are mentioned first in the above listing shall prevail unless the parties have agreed otherwise.

## **II. Sectoral Terms Applicable for Pacorini Metals Italia S.r.l.**

The following sectoral terms shall apply to Services rendered by Pacorini Metals Italia S.r.l. involving transport or forwarding:

(a) Road transport: In the case of domestic transport, the Company's liability shall be regulated by the Italian Civil Code. For international transport, said liability shall not exceed the amount set out in article 23, paragraph 3, of the Convention for the carriage of goods by road (CMR), transposed into Italian legislation by Law no. 1621 dated 6 December 1960, including subsequent amendments.

(b) Sea transport: In the case of domestic sea transport, the Company's liability shall be regulated by the Italian Maritime Code. In the case of international sea transport, the Company's liability shall be regulated by the Brussels Convention of 1924.

(c) Railway transport: In the case of domestic railway transport, the Company's liability shall be regulated by the provisions of Presidential Decree no. 197 dated 30 March 1961, including subsequent amendments. In the case of international railway transport, the Company's liability shall be regulated by the Vilnius Convention of 1999.

## **III. Sectoral Terms Applicable for Access Freight Group and Subsidiaries**

The following sectoral terms shall apply to all Services rendered by Access Freight Group and Subsidiaries:

1. Subject to the provisions of paragraphs 2 and 3 below, the Company shall not be liable for any claim of

whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising, including but without limiting the generality of the aforesaid and loss, damages or expense arising from or in any way connected with:

- (a) Any negligent act, omission or statement by Company or its servants, agents, contractor or nominee: and/or
- (b) Any act, omission or statement of the customer or any agent of the customer with whom the Company deals: and/or
- (c) the marking, labelling, numbering, weighing, packing, unpacking, non-delivery or mis-delivery of any Goods and/or
- (d) the weight, measurements, contents, quality, inherent vice, defect or description of any Goods: and/or
- (e) any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or any loss of market or delay in forwarding or transit or any failure to carry out any instructions; and/or
- (f) the loss or non-delivery of any separate package forming part of a consignment or loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
- (g) loss or damage caused to the customer's Goods due to damp, humidity, rust, tainting, discoloration, insects, vermin, or inherent vice of the Goods;
- (h) damage to mechanical, electrical, or other plant or any equipment or for the renovation or replacement of any property arising in the course of the performance of any contractual obligations by the Customer or otherwise;
- (i) Death or personal injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Customer's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate.

2. Notwithstanding anything to the contrary contained in these trading terms and conditions, the Company shall not be liable for any indirect or consequential damages or losses.

3. If, notwithstanding the provisions contained herein and specifically in paragraph 1 above the Company is nonetheless found by a competent court or tribunal to be liable to the Customer, the Customer agrees that the liability of the Company to it shall in no circumstances, howsoever arising, exceed whichever is the least of the following respective amounts:

- (a) The value of the goods concerned evidenced by the relevant documentation or declared by the customer for customs purposes or for any purpose connected with their transportation.
- (b) The value of the goods concerned as declared for insurance purposes.
- (c) Double the amount of the fees raised by the Company for its services in connection with the goods concerned, but excluding any amounts payable to sub-contractors, agents and/or third parties.

4. If it is desired that the liability of the Company in those cases where it is liable to the Customer should not be governed by the limits referred to in paragraph 3 above then written notice thereof must be received by the Company before any Goods or documents are entrusted to or delivered to or into the control of the Company (or its agents or sub-contractor), together with a statement of the value of the goods. Upon receipt of such notice the Company may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice (or to any other amount agreed in writing with the customer), in which case it will be entitled to effect special insurance to cover such maximum liability and the party giving the notice shall be deemed, by doing so, to have agreed and undertaken to pay to the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree the limits referred to in paragraph 3 shall apply.

5. Subject to the below paragraph 6, the Company shall, notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the magistrate's court, be entitled in its sole discretion to institute action against the Customer in respect of any claim or dispute whatsoever arising from or in connection with these Conditions or the Agreement with the Customer or Services provided or to be provided

to it or any amount due from it out of the Durban magistrates court (or the magistrate's court having jurisdiction over the person of the customer) or the Durban and Coast Local Division of the High Court of South Africa (sitting as a court of admiralty or otherwise), and the Customer hereby irrevocably submits to the jurisdiction of the court out of which proceedings are thus instituted. In the event that the Company invokes the jurisdiction of the magistrate's court, the customer waives the right to challenge the jurisdiction of the magistrate's court on the ground that the claim being prosecuted may be a maritime claim in terms of act 105 of 1983, as amended.

6. The Company may in its sole discretion refer any claim or dispute as described in the above paragraph 5 to arbitration which arbitration shall bind both the Company and the Customer. For the purpose of arbitration, the parties shall jointly nominate and agree upon an arbitrator who shall be an advocate of the High Court of South Africa of no less than ten years standing. Should the parties fail to agree on the arbitrator to be appointed, he shall be nominated by the president from time to time of the maritime law association of South Africa whose decision in this regard shall be final and binding on the parties. The arbitration shall be subject to and conducted in accordance with the rules for the conduct of arbitration published from time to time by the Association of Arbitrators (Southern Africa) and then in force. Subject to any rights of appeal contained in the rules or the Arbitration Act no. 42 of 1965, all arbitration awards shall be final and binding upon the parties and capable of being made an order of any competent court of law.

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I/We acknowledge that I/we have received, read and fully understand the contents of the Standard Terms and Conditions and the Credit Application and agree to be bound by these terms and conditions in all dealings with the Company. I/We hereby states that I/we are the duly authorised to sign these terms and conditions.

Signatory Name:

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Designation:

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Date:

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Signatory Name:

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Designation:

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Date:

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