

# VEHICLE DELIVERY SERVICES



## STANDARD TERMS & CONDITIONS OF CARRIAGE OF GOODS BY ROAD

### 1. Definitions

In these conditions the following words and/or terms bear the meaning ascribed herein:

- 1.1 "Carrier" means Vehicle Delivery Services a division of OneLogix (Pty) Ltd and includes the carrier's servants and agents and any person or persons carrying any goods forming the subject matter of this contract under and in terms of a subcontract with the carrier.
- 1.2 "Consignor" means the owner of the goods or the person having lawful title to the goods or possession thereof and the duly authorised agent of the consignor.
- 1.3 "Consignment" means the goods forming the subject matter of this agreement, being motor vehicles transported individually under such vehicle's own power, towed or whether carried.
- 1.4 "Consignee" means the person to whom or in the event of no name being given by the consignor, the address at which the goods are to be delivered. In the absence of the person named by the consignor as the consignee, then any person representing himself to be duly authorised to accept delivery on behalf of the consignee and having the appearance of being a person authorised by the consignor or the consignee to accept delivery on behalf of the consignee.

### 2. No Variation of Conditions

It is hereby agreed that any consignment carried is accepted subject to the conditions contained in this agreement and no variation of this agreement will be of any force or effect unless reduced to writing and signed by the parties. The terms hereof shall have preference over any other agreement, or terms of carriage, which may be the subject matter of any prior, or subsequent document entered into between the carrier and the consignor.

### 3. Exclusion of Common Law Liability

It is specifically recorded and agreed that the carrier shall not be a carrier at Common Law, and that the terms of carriage is only undertaken in accordance with the terms and conditions set out herein. The carrier shall not be liable for the loss of, or damage to any goods save in the event that such loss, or damage is occasioned as a result of an intentional act, or gross negligence of the carrier's employees, of which the burden of proof shall vest upon the consignor.

### 4. Quotations and Additional Costs

Transportation, clearing, storage and towing rates issued by the carrier to the consignor is generally governed under current scale of wages, railway or shipping rates and subject to annual review in line with operational and administration cost increases. Unless specified to the contrary in writing, quotation/s exclude customs duties, taxes, final clearing charges, towing and fines.

### 5. Increase of Quotations

- 5.1 In the event of the carrier being obliged to incur additional costs in the execution of its obligation in that it has to purchase and / or hire additional services, equipment or materials, including licenses or permits, to enable the carrier to deliver a consignment, with or without prior notification to the consignor, the carrier will be entitled to recover the additional charge to cover any expenses resulting there from not already included in the quotation.
- 5.2 The carrier will furthermore be entitled to increase the remuneration specified in the quotation in the event of the consignor altering the quantity of the consignment to be carried in proportion to such increase / or decrease.
- 5.3 In the event of the carrier being obliged to deviate from the route selected by him, or to carry the consignment over another route, as a result of adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, the carrier will be entitled to charge an additional remuneration in proportion to the resulting of extra distance travelled including but not limited to tolls and insurances as required by the relevant lawful authorities.
- 5.4 The consignor or consignee will be liable for storage charges and/or fines incurred by the carrier or its agent in respect of the safekeeping of the consignment at any border post or other area nominated by the carrier which amount will be payable upon collection / delivery of the consignment against the carrier's invoice.

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OneLogix is a licensed financial services provider in terms of the Financial Advisory and Intermediary Services Act

## **6 Payment of Carrier's Remuneration**

Unless otherwise specially agreed upon between the parties, the carrier's remuneration will be payable in accordance with terms as set out by the carrier's financial controller at the time of the movement.

## **7 Carrier's Lien**

7.1 The carrier shall have a lien over all consignments carried and in the event of non-payment of any portion of monies due by the consignor to the carrier determined by the financial controller. The carrier's lien shall come into existence as soon as the carrier takes possession and control of the consignor's goods and the lien will endure until all amounts owing to the carrier have been paid in full, whether or not the costs relate to actual goods in the carrier's possession at the time. It is specifically agreed that all goods in the carrier's possession shall serve as security for payment of all and any amounts that may be owing by the consignor to the carrier. The carrier's lien shall further endure until such a time that all amounts have been paid and the lien shall not lapse as a result of delivery of any goods to a consignee. The carrier shall be entitled to retrieve the goods from a consignee in the event of the consignor defaulting on any payment obligations.

7.2 If the consignor does not effect payment of any amounts owing to the carrier, the carrier shall in addition to its lien, specified in clause 7.1 above, be entitled to charge storage in respect of all goods in the carrier's possession, forming part of the carrier's lien, which storage charges shall be market related and be calculated on a day to day basis.

## **8 Release of Obligations**

In the event that the carrier is unaware of the delivery address of the consignee or the address on the application is incorrect, the carrier will be released from all liability whatsoever in respect of the consignment. The carrier shall be entitled to deliver the goods at the address of the consignee specified on the particular delivery documentation, alternatively the carrier shall be entitled to deliver the goods and leave same at the closest Police Station, or authorities if the vehicle is to be delivered outside the border of the Republic of South Africa.

## **9 Condition of Consignment at Time of Delivery to Carrier:**

The condition of the vehicle shall be deemed to be that as stated on the condition report at time of delivery and the document shall be prima facie of the content and the condition of the vehicle at the time of delivery. Should the consignor fail to report any defects or damages on the condition report, it shall be deemed that the vehicle was delivered in an undamaged condition and the consignor shall bear the burden of proving the contrary.

## **10 Liability for Damage to or Loss of Goods:**

The carrier shall have no liability in respect of damage to, or loss of the goods being carried and all goods are carried at the consignor's sole and exclusive risk. Provided that the consignor has complied with all its obligations, the carrier will insure the consignment on the consignor's behalf against damage to, or loss of any goods, subject to the further terms and conditions:

10.1 The consignor shall pay to the carrier an insurance premium as determined by the carrier from time to time in respect of any individual consignment carried by the carrier, alternatively in respect of any bulk consignment.

10.2 Liability of the carrier in respect of any claim arising out of loss or damage to a delivered consignment; however such loss or damage may arise, may not exceed the consignors invoiced value.

10.3 The carrier excludes liability in circumstances where any damage to or loss of any consignment is occasioned as a result of a patent or latent defect in the vehicle.

10.4 Any remuneration awarded by the carrier or its insurer or agent in terms of the VDS claims procedure arising as a result of damage or loss to any consignment shall be payable in the currency and country where the insurance policy in respect of the risk pertaining to the goods have been taken out.

10.5 In circumstances where the consignor and /or consignee fails to pay any insurance premium, or elects not to insure the consignment or part thereof, the sole risk in respect of the carriage of any such consignment shall be borne by the consignor/or consignee and the carrier is excluded of any liability arising there from.

10.6 The carrier shall insure the goods at the consignor's invoiced value. In the event of a claim arising out of loss or damage to a consignment the consignor and /or consignee shall be obliged to accept the remuneration offered by the insurer and /or its agent in full and final settlement of damages or loss suffered without further liability by the carrier.

10.7 All claims will strictly be handled as per the VDS claims procedure of which a copy is available on request.

10.8 A levy of R500.00 will be charged for any non runner vehicle handled by VDS and VDS reserve the right to employ, if necessary the services of an outside Towing contractor at the clients cost to further the delivery of the non-runner vehicle.

10.9 Should a vehicle be delivered to any Border on instruction of the client, and if VDS insurance was taken out the VDS insurance will lapse immediately on the signoff of the vehicle by the client, consignee or his Agent.

10.10 The carrier will not be liable for any loss and /or damage incurred by an insured consignment after 72 hours of being off loaded at any border post for customs clearing and / or inspection purposes. The carrier insurance cover will resume in accordance with the terms of the policy once the consignment is returned to the carrier's custody for the duration of its final destination and cover will lapse immediately upon handover against a signed POD to the consignee or his agent.

10.11 Should the consignor opt not to take out insurance in respect of the specific goods, such goods shall be carried at the consignor's exclusive risk and the carrier shall not be liable for any damages and/or losses sustained by the consignor whilst the goods are in the custody of the carrier, whether it is being stored, driven under its own power, or being transported on a carrier vehicle.

10.12 Should a vehicle be driven under its own power by an employee, or agent of the carrier, such employee shall be deemed to be the consignor's employee and agent, furthering the consignor's interests in the transport of the specific goods.

10.13 The carrier shall not be liable for payment of any damages to any third party for any reason whatsoever and the consignor indemnifies the carrier against any claims of whatever nature in this regard.

#### **11 Disclaimer Conditions:**

11.1 The carrier shall be advised of any damages within a period of 24 hours from date of delivery and such damages shall be recorded on the condition report of the specific consignment.

11.2 In the event of the carrier disclaiming liability in respect of any claim, any action or suit for review must be instituted within 3 months of said disclaimer.

11.3 Should the consignor not institute action within a three-month period, the consignor shall not be entitled to proceed for recovery of any amounts against the carrier in respect of the specific load and shall have no claim in respect of any alleged damages under any circumstances whatsoever.

11.4 The carrier will not accept liability for any personal effects and loose articles placed in the vehicle for transportation.

11.5 The carrier will not accept liability for mechanical failures and electrical defects that a consignment may encounter whilst driven under own power and onto and /or off the carrier. The onus rest with the consignor to ensure sufficient fluid levels in respect of consignments whether consigned to own power or carried movement prior to handover to the carrier and the carrier is exempt from liability of any claim or loss or damage arising there from.

#### **12 Route**

The consignment may be carried by any route at the sole discretion of the carrier. It is recorded that the carrier use standardized routes and that all quotations are prepared in accordance with these standard routes. Should the carrier however deviate from the route as a result of circumstances beyond its control, in its sole discretion, the carrier shall be entitled to additional remuneration and expenses incurred as a result of the deviation.

#### **13 Limitation of Carrier's Liability Resulting from Incorrect Address of Consignee or Failure of Latter to take Delivery**

The onus is upon the consignor to supply full delivery details to the carrier in terms of its administration requirements. The carrier will not be responsible for any loss or damage in respect of incorrect delivery of the consignment due to incomplete or incorrect delivery details being supplied to the carrier and, in the absence of gross negligence, the carrier will not be liable for any loss or damage incurred as a result of the consignee, or his duly authorized agent, not being present to receive the consignment.

#### **14 Limitation of Carrier's Liability in Relation to Time of Delivery**

The carrier will deliver the consignment in terms of the times and dates of delivery as specified on the delivery documentation provided that the carrier will not be liable for any delay or detention of the consignment carried or for any loss, damage or deterioration arising there from if the carrier's inability to delivery as a result of circumstances beyond the carrier's control.

#### **15 Storage Charges on Failure by Consignor or Consignee to take Delivery**

The carrier will be entitled to charge the consignor storage charges at a reasonable rate (it will be presumed that the carriers charges are reasonable until the contrary is proved by the consignor) in respect of any period during which the carrier is obliged to store the goods carried by reason of the failure of the consignor or the consignee to take delivery thereof when tendered by the carrier or in the event of the carrier being unable to deliver the said consignment due to the fault of the consignor.

#### **16 Special Limitation of the Carrier's Liability**

Notwithstanding the terms of this agreement, the carrier will not be liable for:

16.1 The loss of a particular market;

16.2 Indirect or consequential damages;

16.3 Loss of value of vehicle after repairs and

16.4 Loss or damage arising from riots, civil commotion, strikes, lockouts or stoppage of work from whatever cause, whether partial or general.

16.5 Glass Insurance Cover including windscreens is excluded from the VDS Transit Insurance. No glass claims will be entertained by VDS or their Insurers.

16.6 VDS and their Insurers reserves the right to decline on Insurance Cover for Exotic vehicles to the sole discretion of VDS and their Insurers. No private vehicles will be Insured by VDS or their Insurers and VDS and their Insurers reserves the right to Limit the Insured Value of vehicles.

#### **17 Subcontractors**

Where any consignment is consigned to any place beyond the limit of the carrier's usual delivery radius, the carrier will (at all times & for whatever reason) have the power and the authority at its discretion, to employ any other carrier on the consignor's behalf and at the consignor's expense in order to ensure the carriage of the said consignment to the address of the consignee, whether such carriage be effected by road or by whatever means. In the event of such power being exercised, the carrier will be entitled to agree to, and to accept on the consignor's behalf, any conditions of carriage imposed by any other carrier and the consignor will be deemed to have had knowledge of, and to have accepted, any such conditions of carriage, provided that the carrier's liability as defined herein will in no way be extended by any such conditions of carriage.

#### **18 Domicilium Citandi Et Executandi**

The consignor hereby appoints his address as given on the credit application of the carrier as his *domicilium citandi et executandi*, which will be binding on the carrier unless he receives written notification thereof under the signature of the consignor.

**19 Presumption as to Notices**

Any notice required to be given by the carrier to the consignor will be deemed to have been validly given if posted to the *domicilium citandi et executandi* of the consignor and will be deemed to have been received by the consignor within 5 (five) days of the date of posting.

**20 South African Laws**

In the event of any dispute arising out of this agreement or the terms hereof, or the interpretation of the agreement, the laws of the Republic of South Africa shall apply.

**21 Jurisdiction**

The parties consent to the jurisdiction of the Magistrates Court in respect of any legal action which either of the parties may institute against the other, provided that such consent shall not be construed as excluding the right of either party to pursue legal action in the Supreme Court of South Africa. Should either party institute action against the other, the successful party shall be entitled to recover all costs incurred on the scale of fees as between attorney and client.