

## STANDARD TERMS AND CONDITIONS FOR THE TRANSPORT OF GOODS

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless a contrary intention clearly appears from the context, words relating to any one gender to include the other, the singular includes the plural and vice versa, and natural persons include juristic persons and trusts and vice versa.
- 1.2 Headings of clauses are inserted for the purpose of convenience only and must be ignored in the interpretation of this Agreement.
- 1.3 If any definition or any clause in any annexure or Schedule to this Agreement contains a substantive provision conferring any right or imposing any obligation on any party, effect must be given to it as if it were a substantive provision in the body of this Agreement.
- 1.4 The words “including” and “in particular” are to be construed as being by way of example or emphasis only and are not to be construed, nor will they take effect, as limiting the generality of any preceding word/s.
- 1.5 Where any number of days is prescribed, such number of days will exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day will be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.6 All Schedules and annexures to this Agreement are deemed to be incorporated in and form part of this Agreement.
- The following words and expressions will have the following meanings:
- 1.6.1 “**Agreement**” means this Agreement, containing the standard terms and conditions, read with the Schedule(s) hereto;
- 1.6.2 “**Credit Limit**” means the amount for Transport per month that EMLINK is prepared to allow the Customer to reach. Such amount is in EMLINK's sole and absolute discretion and may be withdrawn or increased by EMLINK at any time without notice to the Customer and without prejudice to EMLINK's rights to claim any and all amounts owing whether or not such amounts exceed the Credit Limit or not;
- 1.6.3 “**Consignee**” means the person to whom, or in the event of no name being given by the Customer, the address at which the Goods are to be delivered. In the absence of the person named by the Customer as the Consignee, then any person representing himself to be duly authorised to accept delivery on behalf of the Consignee;
- 1.6.4 “**Customer**” means the Customer whose particulars are set out on the first page;
- 1.6.5 “**EMLINK**” means EMLINK (PTY) LTD t/a EMLINK, registration number 2019/566373/07, with main place of business situated at Sky Park, 1 Bonaero Drive, Bonaero Park and includes any other contractor, sub-contractor or agent acting on behalf of or in conjunction with EMLINK;
- 1.6.6 “**Excluded Goods**” means those goods as set out in **clause 7**;
- 1.6.7 “**Goods**” means any Goods handled, Transported or dealt with by EMLINK on behalf of the Customer;
- 1.6.8 “**POD**” means “proof of delivery” which consists of a Waybill Note signed by the Consignee;
- 1.6.9 “**Quotation**” means a transport proposal provided by EMLINK to the Customer, at the Customer's request for the *ad-hoc* Transport of Goods or for the Transport of Goods requiring special arrangements, or for the Transport of Excluded Goods from time to time and which may fall outside the scope of this Agreement or the Schedules hereto;
- 1.6.10 “**Rates Agreement**” means the pricing and costs for the Transport of the Goods as stipulated in the relevant Schedule and as may be amended from time to time and which will be subject to an annual

escalation as set out in the relevant Schedule. Unless specified in writing therein the Rates Agreement excludes:

- 1.6.10.1 customs dues, clearing charges, charges in respect of airfreight, sea freight, railage, dock dues, landing fees, consular documents, permits or any other charges incidental to the Transport of the Goods; and/or
- 1.6.10.2 the cost of dismantling and/or erection of the Goods and/or the supply or fitting of any extraordinary packaging which may be necessary to secure the safe Transport and storage of the Goods or any particular fragile articles;
- 1.6.11 **"Schedule"** means the Schedule or Schedules attached to this Agreement from time to time which will contain, amongst others, the following:
  - Suretyship agreement(s)
  - Rates agreement(s)
  - Any additional services or amendments or variations to the Agreement from time to time;
- 1.6.12 **"Transport"** includes, but is not limited to, the sorting, handling, packaging, loading, off-loading, conveyancing, delivery, storage and warehousing of Goods and covers the period from when the Goods are collected by or delivered to EMLINK until they are delivered to or off-loaded at their final destination;
- 1.6.13 **"Waybill Note"** means the official waybill document for the Goods being Transported.

## **2 CONTRACTUAL RELATIONSHIP**

- 2.1 EMLINK undertakes to Transport the Goods on behalf of the Customer on the terms and conditions contained in this Agreement and the Schedules hereto as may be amended from time to time.
- 2.2 This Agreement and the terms and conditions contained herein and, in any Schedule hereto, as signed by the parties and as may be amended from time to time will govern the existing and future contractual relationship between the parties.
- 2.3 This Agreement replaces and supersedes any previous agreement or agreements entered into between the parties.

## **3 DURATION**

- 3.1 This Agreement will commence on the date of signature by the last party signing this Agreement and will endure until terminated in accordance with the terms and conditions as set out herein.
- 3.2 Either party may terminate this Agreement by providing the other party with 30 days written notice to that effect.

## **4 QUOTATIONS**

- 4.1 In the event that the Customer requires the ad-hoc Transport of any Goods falling outside the scope of this Agreement and the Schedules, including the Rates Agreement, or where any special arrangements are required for the Transport of any Goods or where any Excluded Goods are required to be Transported then the Customer must first request a Quote from EMLINK.
- 4.2 All Quotes will remain open for acceptance by the Customer, in writing, for a period of 5 days from date thereof, unless, prior to such acceptance, EMLINK cancels, withdraws or amends the Quotation.
- 4.3 Such Quote will only be binding on EMLINK once signed by the Customer in acceptance thereof and returned to the person at EMLINK who submitted the Quote.
- 4.4 Should the volume, size or description of the Goods to be Transported differ from those supplied by the Customer to EMLINK for purposes of the Quote, then EMLINK is entitled, prior to or after the loading of the Goods, to amend the rates Quoted and/or charge such additional rates as may be determined by EMLINK in its sole discretion.
- 4.5 Unless specified in writing therein, Quotations exclude the items and costs referred to in **clauses 1.7.8.1 and 1.7.8.2** above.

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Email Address: [info@emlink.co.za](mailto:info@emlink.co.za)

*Company Details*  
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## **5 CUSTOMER WARRANTIES, OBLIGATIONS, PERMITS, CERTIFICATES AND AUTHORISATIONS**

- 5.1 The Customer warrants that the Goods handed to EMLINK for the purpose of Transportation thereof, or for any other purpose, is either its own unencumbered property, or that it has the full and absolute authority of all persons owning and/or interested in the Goods, to enter into this Agreement and the Customer hereby indemnifies EMLINK against all claims, costs, charges, losses, penalties or any liability of whatsoever nature, which may be incurred by EMLINK in consequence of any claim to or in respect of such Goods by a third party.
- 5.2 EMLINK does not warrant that it is in possession of the necessary certificates, permits or authorisation for any given Goods or route, or that it will be able to obtain same.
- 5.3 It is the Customer's responsibility to ensure that all applicable legislation and regulations pertaining to the possession and Transportation of the Goods (including the payment of any taxes in respect thereof) have been complied with.
- 5.4 It is also the Customer's responsibility to obtain and supply to EMLINK all permits, certificates and/or authorisations as may be required for the possession and Transportation of the Goods.
- 5.5 The Customer must ensure that the Goods are ready for collection timeously on the due date and that EMLINK has proper access to the premises for the loading of such Goods.
- 5.6 The Goods must be properly packaged so as to ensure they are not damaged during Transportation.
- 5.7 The Customer is obliged to properly and accurately provide EMLINK with the name and physical address where the Goods must be delivered.
- 5.8 If EMLINK is unable to deliver the Goods due to an incorrect address or the refusal of the acceptance of the delivery of the Goods or for any other reason whatsoever and the Goods then need to be stored or returned to the Customer, then the Customer will be liable for all charges related to the storage and/or return of the Goods.
- 5.9 If EMLINK is unable to deliver the Goods or delivery is refused as set out in **clause 5.8**, EMLINK will not be obliged to obtain the Customer's consent or instructions before transporting the Goods to any storage facility or returning same to the Customer.
- 5.10 The Customer hereby indemnifies EMLINK against any and all claims from any third party, damages, losses (including standing time due to Goods not being ready for collection), charges (including fines), liabilities and/or costs (including legal costs) that may be suffered or incurred by EMLINK as a result of the failure of the Customer to comply with its obligations as set out above.

## **6 TRANSPORTATION OF GOODS AND LIMITATION OF LIABILITY**

- 6.1 While every endeavour is made to Transport and deliver the Goods at the dates and times as requested or scheduled, unless otherwise specifically agreed to in writing, the parties hereby record and agree that time is not of the essence for the Transportation or delivery of any Goods.
- 6.2 Every undertaking by EMLINK to Transport Goods is subject thereto that EMLINK has or will be able to source, at the appropriate time, a suitable vehicle or vehicles for the Transportation of the Goods.
- 6.3 Should EMLINK, for any reason whatsoever, be unable to obtain or source the necessary vehicle or vehicles, then EMLINK is entitled to postpone or cancel the scheduled Transportation of the Goods, as the case may be.
- 6.4 In the event of cancellation EMLINK will only be obliged to refund any monies already paid by the Customer for the scheduled Transportation of the Goods, if applicable.
- 6.5 EMLINK is entitled, in its sole discretion, to determine the routes to be followed for the Transport of the Goods.
- 6.6 EMLINK is not and will not be liable to the Customer or any other person or entity for any damages, losses, liabilities, costs or expenses incurred or occasioned, as a result of any delay or any cancellation of any undertaking to Transport and deliver any Goods occasioned as a result of any delay in air, rail, road or sea transit, mechanical or electrical breakdown, accident, non-availability of vehicles, failures or breakages, inclement weather, labour troubles or any other cause whatsoever.
- 6.7 Should any vehicles be forced to deviate from their normal route, as a result of any cause beyond EMLINK's control, such deviation will entitle EMLINK to make an additional charge to the Customer to cover the expense arising from the extra mileage and time involved.

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## **7 EXCLUDED GOODS**

- 7.1 The following Goods are Excluded Goods which will not be Transported by EMLINK unless otherwise agreed to in writing between the parties prior to such Transport: tobacco products, alcohol products, money, bullion, credit cards, pre-paid cards, jewellery, watches, gemstones and precious stones, furs, treasury notes, securities, stamps, patterns or manuscripts, plans and designs, livestock and plants, guns, explosives, ammunition, hazardous or dangerous Goods and materials, negotiable instruments, wrought or unwrought metals, antiques and antiquities, works of art, securities, drugs, refrigerated/perishable goods, household and personal effects, any valuable documents, glass or glass products, second-hand goods that have not been declared as such to EMLINK (who reserves the right to inspect second-hand goods before acceptance and to delay the Transport by one day to effect such inspection).
- 7.2 Where such Excluded Goods are Transported, whether or not by agreement between the parties and with or without EMLINK's knowledge or consent, EMLINK will accept no liability whatsoever in respect of damage to, or loss or theft of such Excluded Goods, which will also be excluded for purposes of any insurance claim or claim for compensation, even where the Customer has elected to make use of EMLINK's Freight Guard Service Guarantee, unless otherwise agreed to in writing between the parties prior to such Transport.
- 7.3 No illegal or banned substances or Goods will be Transported by EMLINK whatsoever.

## **8 GOODS TO BE TRANSPORTED AT CUSTOMER'S RISK AND EXCLUSION OF LIABILITY**

- 8.1 EMLINK does not carry the liability of a carrier at common law and the Transportation of all Goods is undertaken at the sole and exclusive risk of the Customer.
- 8.2 EMLINK, its employees, contractors, sub-contractors, agents and/or representatives will not, under any circumstances, be liable for any loss or any damage, of any nature whatsoever and howsoever arising, whether by way of innocent, negligent or grossly negligent act or omission by EMLINK or any of its employees, contractors, sub-contractors, agents, representatives or any other party for which it may be vicariously liable, contractually or otherwise, in respect of any Goods Transported by EMLINK, its employees, contractors, sub-contractors, agents and/or representatives.
- 8.3 In addition, and without in any way derogating from the generality of the provisions of and exclusion of liability contained in the above clause, EMLINK will not assume any responsibility or any liability for:
- 8.3.1 any indirect, consequential or special damages, howsoever caused, whether arising from any innocent, negligent or grossly negligent act or omission of EMLINK or any of its employees, contractors, sub-contractors, agents, representatives or any other party for which it may be vicariously liable, contractually or otherwise;
- 8.3.2 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, loading, off-loading, non-delivery, late delivery or mis-delivery of any Goods;
- 8.3.3 any loss, damage or expense arising from or in any way connected with the weight, measurement, contents, quality, defect or description of any Goods;
- 8.3.4 any loss, damage or expense sustained where the vehicle Transporting the Goods is involved in an accident, hi-jacking or attempted hi-jacking;
- 8.3.5 any loss, damage or expense sustained as a result of fire, flooding, theft or other cause at any facility where the Goods are stored or on any vehicle on which the Goods are being conveyed;
- 8.3.6 any loss, damage or expense sustained as a result of riots, civil commotions, strikes, lockouts, or stoppage of work from whatever cause, whether partial or general.

## **9 FREIGHT GUARD SERVICE GUARANTEE**

- 9.1 The parties record that EMLINK does not carry insurance on any Goods Transported in terms of this Agreement.
- 9.2 It is the responsibility of the Customer to arrange and pay for its own insurance on the Goods should the Customer so desire.

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- 9.3 The Customer may elect, prior to Transportation of the Goods, to accept, against payment of an additional fee per Waybill Note, EMLINK's Freight Guard Service Guarantee which provides a warranty to the Customer against loss or damages to the Goods while being Transported. This warranty is subject to the terms and conditions, limitations and exclusions as set out in the Freight Guard Service Guarantee agreement, a copy of which will be supplied to the Customer at the Customer's written request.

## **10 TERMS AND CONDITIONS OF ACCEPTANCE, TRANSPORT AND DELIVERY OF GOODS**

- 10.1 EMLINK reserves the right to refuse to accept any Goods or any part thereof for the Transport thereof.
- 10.2 All Goods to be Transported by EMLINK must be accompanied by a Waybill Note, properly filled in by the Customer.
- 10.3 Where EMLINK or its employees, contractors, sub-contractors, agents or representatives sign a Waybill Note as an acknowledgment of receipt of the Goods referred to therein, such Waybill Note does not constitute proof of the quality or condition of Goods received, the nature or content thereof, or the weight or value of such Goods.
- 10.4 A Waybill Note signed, whether electronically or otherwise, by the Consignee or the recipient of the Goods or any employee, agent or representative of the recipient or Consignee will be sufficient proof that the Goods have been delivered.
- 10.5 While every reasonable effort will be made to have such other documentation as may be required by the Customer signed by the recipient or Consignee, the failure to have such other documentation signed does not entitle the Customer to withhold any payment due to EMLINK where EMLINK has provided the Customer with a signed Waybill Note.
- 10.6 Where EMLINK or its employees, contractors, sub-contractors, agents or representatives sign a document, issued by or on behalf of the Customer, which contains any terms and conditions contrary to the terms and the conditions of this Agreement, such signature does not constitute an acceptance of such terms and conditions, and the terms and conditions herein contained will prevail.
- 10.7 Where the Customer requires the Transportation of an abnormal load, the Customer:
- 10.7.1 must provide EMLINK with the necessary authorisation from the relevant authorities to Transport the abnormal load;
- 10.7.2 hereby indemnifies EMLINK and accepts liability for payment of all claims of any nature whatsoever arising from any damage to or the removal of electrical poles and other overhead wiring, bridges, road surfaces, or any other obstacles, which may become damaged in the course of such Transport, or which are required to be removed, repaired or replaced, for the purpose of the conveyance of the abnormal load;
- 10.7.3 is liable for any other additional costs incurred and resulting from the Transport of such abnormal load.
- 10.8 Where the Customer requires the Transportation of dangerous or hazardous Goods, the Customer:
- 10.8.1 must provide EMLINK with the necessary authorisation from the relevant authorities to Transport such dangerous or hazardous Goods;
- 10.8.2 must comply with all regulations and legislation pertaining to such Goods and ensure that such Goods bear the appropriate warning labels;
- 10.8.3 hereby indemnifies EMLINK and accepts liability for payment of all claims of any nature whatsoever arising from the Transport of such dangerous or hazardous Goods;
- 10.8.4 is liable for any other additional costs incurred and resulting from the Transport of such dangerous or hazardous Goods.

## **11 THE LOADING AND OFF-LOADING OF GOODS**

- 11.1 The Customer is liable for the loading and off-loading of all Goods onto and from the vehicles operated by or on behalf of EMLINK and any agent or Consignee performing this duty on behalf of the Customer will for this purpose be deemed to be an agent or employee of the Customer.
- 11.2 EMLINK will not be liable for any damage caused to the Goods during the loading or off-loading process and the Customer hereby indemnifies EMLINK against all costs, expenses, claims, damages or injuries to any person or property arising out of or during the course of any loading or off-loading of EMLINK's vehicle.

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- 11.3 In the event that EMLINK or its employees, contractors, sub-contractors agents or representatives are required or requested to assist with the loading and/or off-loading of Goods onto or from the vehicles then such assistance will be provided without prejudice to the aforementioned conditions and without incurring any liability on EMLINK's part in the event that the Goods are damaged during the loading or off-loading process. Such assistance will be therefore be provided at the sole risk of the Customer, who indemnifies EMLINK on the same basis as set out in **clause 11.2** above.

## **12 WAREHOUSING, STORAGE AND DEMURRAGE COSTS**

- 12.1 The Customer may enter into an agreement with EMLINK for the warehousing of Goods at such rates and on such terms and conditions as may be agreed to between the parties.
- 12.2 In the absence of such an agreement, the Customer confirms and agrees that in the event that the Goods being Transported are stored by EMLINK for any reason whatsoever (including but not limited to as a result of the refusal of the Consignee to accept delivery when tendered), that EMLINK is entitled to charge the Customer a storage fee for the Goods at its normal rates per square meter as charged to its other customers from time to time.
- 12.3 The Customer will be liable for all demurrage charges incurred at any border post or other area.
- 12.4 EMLINK (including its employees, contractors, sub-contractors, agents and representatives) do not accept any liability in respect of damage to or loss of any Goods, for any reason whatsoever, while same are being stored.

## **13 SUB-CONTRACTORS**

- 13.1 EMLINK reserves the right and is entitled, at all times, to employ contractors, sub-contractors or agents in the performance of the fulfilment of its obligations in terms of this Agreement.

## **14 TERMS OF PAYMENT**

- 14.1 All invoices are to be paid in full within 30 (thirty) days from the date of the invoice.
- 14.2 The Customer agrees that all payments are to be made without deduction or set-off of any nature whatsoever.
- 14.3 The Customer is liable for payment of the full amount of the invoice and all other amounts owed and it is not competent for the Customer to refuse or dispute payment or the amount owed on the basis that any amount owing exceeds the Credit Limit at any time.
- 14.4 No payment may be delayed or withheld by the Customer due to such Customer instituting a claim for loss of or damage to the Goods or for any other reason whatsoever.

## **15 NATIONAL CREDIT ACT**

- 15.1 EMLINK is not a credit provider as defined in the National Credit Act 34 of 2005.
- 15.2 As such EMLINK does not levy fees, charges or interest on overdue accounts.
- 15.3 The Customer's attention is, however, brought to the provisions of the Prescribed Rate of Interest Act No 55 of 1975, which prescribes the maximum rate of interest that may be claimed by a creditor in respect of an overdue debt.
- 15.4 Interest (as a form of damages) will therefore be charged at the maximum prescribed rate, as gazetted from time to time, on all invoices and/or statements not paid within the agreed credit terms.

## **16 BREACH**

- 16.1 In the event that the Customer fails and/or refuses to pay any amounts that may be owing to EMLINK, arising from any cause whatsoever, on or before the due date for such payment then:
- 16.1.1 EMLINK will be entitled, without notice to the Customer, to refuse to Transport, or further Transport any Goods which may be in the possession of EMLINK at the time when such payment becomes overdue or which may come into the possession of EMLINK at a later date.
- 16.1.2 EMLINK will further be entitled to retain all Goods in its possession or that come into its possession as security for the payment of all amounts owing, until such time as all outstanding amounts (including interest, if applicable) have been paid in full.
- 16.1.3 For so long as such Goods remain in the possession of EMLINK, EMLINK will be entitled to charge the Customer storage costs as set out in **clause 12.2** above.
- 16.1.4 If the Customer continues to fail and/or refuses to pay all amounts that may be owing to EMLINK for a further period of 30 days or more from the due date, then EMLINK will be entitled to open and examine any part or the whole of such Goods, and to sell the whole or any part of such Goods, whether by public auction or private treaty in order to recover any and all amounts that are due and owing to EMLINK, including any expenses relating to such sale.
- 16.1.5 Any surplus realised from the sale of such Goods will be paid to the Customer.
- 16.1.6 Where only a part of the Goods have been sold, EMLINK will be entitled and will continue to charge storage on the remaining Goods, and will further be entitled from time to time to sell the remainder or a part of such Goods and apply to the proceeds of such sale on the same basis as set out in **clauses 16.1.4 and 16.1.5** above.
- 16.2 In the event that either party breaches any of the other terms and conditions as contained in this Agreement, or fails to comply with any of its obligations in terms of this Agreement and fails to remedy same within 7 (seven) days of the date of receipt of written notice from the innocent party, sent by registered post or electronic mail to the defaulting party, at such party's chosen *domicilium citandi et executandi* (chosen address for service of legal documents and notices), or electronic mail address as indicated in this Agreement, requiring the defaulting party to rectify such breach, then the innocent party will be entitled, in addition to any other remedy available to it at law, to cancel this Agreement and claim any damages that the innocent party may sustain.
- 16.3 In the *alternative* to **clause 16.2** above, the innocent party may elect to claim specific performance from the defaulting party and, in either event, claim any damages that the innocent party may sustain as a result of such breach.
- 16.4 Any legal costs incurred by either party in enforcing its rights in terms of this Agreement will be paid by the defaulting party on a scale as between attorney and client, including collection costs, whether or not summons or other legal process was issued.

## **17 DISPUTE RESOLUTION**

- 17.1 In this clause unless the context clearly indicates a contrary meaning:
- 17.1.1 "**Arbitrator**" means an advocate or attorney of not less than 15 years standing, appointed by agreement between the parties, and failing such agreement, appointed by the Chairperson of the Brooklyn Advocates Chambers of the Pretoria Bar Association;
- 17.1.2 "**Claimant**" means the party at whose request the Dispute is referred to arbitration;

- 17.1.3 “**Dispute**” means the Dispute between the Claimant and the Respondent as formulated in the statements of claim, defence, and counter claim if applicable;
- 17.1.4 “**Disputing Parties**” mean the Claimant and the Respondent;
- 17.1.5 “**Respondent**” means the party other than the Claimant.
- 17.2 Any of the parties is entitled to refer any dispute which arises between them with regard to any terms or conditions in this Agreement, or obligations of a party, or the enforcement of any available remedy for adjudication in terms of a private commercial arbitration as agreed and recorded in these clauses, which referral will, for purposes thereof, be regarded as an agreement between the contracting parties to adjudicate the dispute by way of the agreed arbitration process. The arbitration will be held in Pretoria.
- 17.3 Save as agreed and recorded in **clauses 17.4 and 17.5**, the nature of the proceedings, the process to be followed, the dates and the venue will be determined by the Arbitrator, for which purpose the Arbitrator will have all the powers and authorities of a judge of the High Court of South Africa, in terms of the Superior Courts Act 2013, and the Uniform Rules of the High Court, including the power or authority to make penalising cost orders, and to insist that a pre-arbitration meeting be held to prescribe the arbitration process.
- 17.4 It is specifically agreed that the provisions or time limits in sections 23, and 25(1) of the Arbitration Act 1965, will not apply, and that the award of the Arbitrator may be conveyed and communicated to the Disputing Parties by electronic mail.
- 17.5 The award of legal costs of the arbitration proceedings, both in respect of interim and final costs orders, will be in  
the sole discretion of the Arbitrator, which costs will by agreement between the parties be assessed or determined by a private legal costs consultant nominated by the Arbitrator and will be borne by the party against whom a costs order is made by the Arbitrator.
- 17.6 The arbitration process will be treated as confidential and be respected as such by all parties concerned, their witnesses and legal shareholders.
- 17.7 The award of the Arbitrator will be final and binding on the Disputing Parties; provided that any one of the Disputing Parties will be entitled to make the award an order of court by way of an ex parte urgent application in terms of Rule 6 of the Uniform Rules of the High Court.
- 17.8 Nothing contained in this entire **clause 17** will preclude the Claimant from electing, instead, to proceed with legal proceedings against the Respondent, in any court with competent jurisdiction.
- 17.9 This clause is severable from the rest of this Agreement and will remain valid and binding on the parties notwithstanding any termination of this Agreement.

## **18 SURETIES AND CO-PRINCIPAL DEBTORS**

- 18.1 If the Customer is a legal entity such as a close corporation, company or trust then the members, directors or trustees (as the case may be) are obliged to sign the suretyship agreement attached hereto as Schedule A as sureties and co-principal debtors for the obligations of the Customer.
- 18.2 The use of any terms in the suretyship agreement which are defined in this Agreement will have the same meaning and definition when used in the suretyship agreement.

## **19 DOMICILIUM CITANDI ET EXECUTANDI**

- 19.1 The parties choose and nominate their physical addresses, as set out in this Agreement, as the physical addresses where they will accept service of any and all legal documents such as a summons, application or a notice in terms of this Agreement.



- 19.2 The parties also choose their e-mail addresses as set out in this Agreement and agree that any notice in terms hereof can be sent to them by e-mail.
- 19.3 If the physical addresses or other contact particulars of any of the parties should change at any time, then such party is obliged to inform the other party of such change in writing. If any party fails and/or refuses to do so, then that party acknowledges and accepts that the sending of any notice and the serving of any legal document will have been validly sent or served notwithstanding the fact that such address or contact particulars are no longer correct.

## **20 GENERAL**

- 20.1 Termination of this Agreement for any cause will not release a party from any liability which, at the time of termination had already accrued to the other party, or which thereafter may accrue in respect of any act or omission prior to such termination.
- 20.2 Except for the warranties contained in this Agreement, none of the parties will be bound by any other representation, warranty, promise or the like pertaining to the subject matter hereof, which is not recorded herein.
- 20.3 No indulgence which any party ("grantor") may grant to any other party ("grantee") will constitute a waiver of any of the rights of the grantor which will not thereby be precluded from exercising any rights against the grantee which might have arisen in the past or might arise in the future.
- 20.4 A certificate signed by a director of EMLINK or its attorney, whose appointment and authority need not be proved, which certifies any amount owed by the Customer at any time, will, unless patently incorrect, be *prima facie* (on the face of it) evidence of the amount owed by the Customer to EMLINK and EMLINK can use such certificate in order to obtain judgment against the Customer.
- 20.5 Notwithstanding anything to the contrary contained herein, this Agreement will endure for the benefit of and be binding on the successors in title and permitted assigns of the parties. Accordingly, the rights and obligations of any party arising out of or pursuant to this Agreement or its termination or cancellation will devolve upon and bind its, successors in title and permitted assigns.
- 20.6 Each of the provisions of this Agreement will be considered as separate terms and conditions and, in the event that this Agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation, or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions will be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions hereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.
- 20.7 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 20.8 Any reference to an enactment is a reference to that enactment as at the date of signature of this Agreement and as may be amended from time to time.
- 20.9 The parties agree that any summons or other court proceedings that may arise out of this Agreement may be instituted in the Magistrate's Court having jurisdiction, notwithstanding that the amount as claimed may be higher than the ordinary jurisdiction of the Magistrate's Court.
- 20.10 Save as set out in this Agreement neither party will be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations in terms of this Agreement to any third party without the prior written consent of the other party.
1. The parties agree that this Agreement encompasses the whole agreement between them and



no variation and/or alteration, including of this clause, and/or any release of any obligation and/or any relaxation or postponement of any obligation will in any way effect any of the terms and conditions contained in this Agreement or be of any force and effect and/or binding in any way, unless done in writing and signed by the parties or their duly authorised representatives.

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