



## **FEDEX EXPRESS NAMIBIA (PROPRIETARY) LIMITED**

**Registration Number: 2013/0060**

### **CONDITIONS OF CONTRACT**

1. On this waybill ("AWB"), "the Company", "we", "our", and "us" and such similar terms and expressions which may refer to FedEx Express Namibia (Proprietary) Limited and its subsidiaries. "He", "you" and "your" refer to the Sender, its employees, principals and agents. This contract of carriage is between you and FedEx Express Namibia (Proprietary) Limited, registration number 2013/0060 solely. All claims and other enquiries are the responsibility of and must be directed to FedEx Express Namibia (Proprietary) Limited.
- 2.1 Unless the context otherwise requires: "consignment" means a parcel or batch of parcels to be collected, transported and delivered by the Company on a single occasion on the Sender's written instructions and in respect of which a single waybill is completed and / or issued". A "parcel" means a package of goods or documents to be collected, transported and delivered by the Company on the Sender's instructions and shall include the Company's packaging supplied by the Company specifically for use for its services, and (provided that such container, package, pouch or covering in which the goods to be consigned are contained) shall include the goods themselves. The "Sender" shall include the owner of the parcel, the account holder, the consignee and any person who has any interest in such parcel or in its receipt (whether contingent or otherwise).
- 2.2 In these terms and conditions:
  - 2.2.1 An expression which denotes:
    - 2.2.1.1 any gender includes the other genders;
    - 2.2.1.2 a natural person includes a juristic person and vice versa; and
    - 2.2.1.3 the singular includes the plural and vice versa.
- 2.3 Any reference to:
  - 2.3.1 "days" means calendar days, unless qualified by the word "business", in which instance a "business day" shall be any day (other than a Saturday, Sunday or public holiday in Namibia);
  - 2.3.2 "Business hours" means the hours between 08h00 and 17h30 on any business day;
  - 2.3.3 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business , the next succeeding business day.
3. All services of the Company, whether gratuitous or not, are subject to these conditions.
4. All instructions must be given in writing in advance and all instructions which have the result of deviating from the terms and conditions contained herein, must be provided in writing by the sender and accepted by the Company.
5. Pending forwarding and delivery, the Company shall be entitled to warehouse or otherwise deal with the parcel or consignment at any place at the Sender's sole risk and expense.
6. While the Company will endeavour to adhere to delivery times, it accepts no responsibility for its failure to do so for any reason unless such failure is caused by the gross negligence on the part of the Company.
7. Any parcel not accepted within 7 days of tender may be disposed of by the Company in settlement of its charges and disbursements after written notice to the Sender. In the case of perishable goods, the Company need not await the expiration of the 7 day period, and shall give 48 hours written notice to the Sender before selling, auctioning or disposing of the parcel.
8. Unless credit terms are agreed to by the Company, the Company's charges, disbursements, duties and all applicable taxes are payable by the Sender on acceptance by the Company of the parcel.
9. Nothing herein contained shall be deemed to constitute the Company a bailee or depositary. Under no circumstances shall any strict liability attach to the Company.

10.1 The Sender warrants that:

He has duly supplied on the parcel in question all particulars necessary to comply with requirements of the Company or any carrier. The parcel is not and will not become dangerous, inflammable, flammable, radio-active, perishable or noxious nor will it comprise currency, negotiable instruments, jewellery of any kind, or gemstones, wrought or unwrought minerals or metals, antiques, works of art, securities, drugs, weapons or any valuable documents or articles. The parcel does not contain live animals, live fish, live reptiles, or any other living species of whatsoever nature. The parcel has been properly and sufficiently packed and prepared for carriage. He has the authority to engage the Company either as the owner of the parcel or as the authorised agent and on behalf of every person owning or otherwise interested in the parcel and every person acquiring ownership of or any other interest in such parcel. The carriage of the goods will not violate or infringe any act, regulation or law and the Sender hereby indemnifies and holds the Company harmless against any claims and/or damages which the Sender or the Company may suffer by virtue of the Sender's breach of this warranty. The AWB has been duly completed by the Sender and any completed AWB will be deemed to be completed by the Sender.

10.2 The Sender acknowledges that:

The Company shall be entitled, but not obliged, to inspect the contents of any parcel or consignment, but all parcels shall be handed to the Company in a sealed condition. In inspecting any parcel or consignment, the Company shall be entitled to open a parcel, and to repack in such container and in such manner as the Company in its sole discretion may deem fit. This act on the part of the Company shall not be construed as releasing the Sender from any obligation under this contract, and shall not be construed as an amendment of any term of these conditions of contract.

10.3 The Company may in its sole discretion refuse to transport any consignment which is in breach of these warranties.

11. The Company is authorised to:

Appoint such third parties as the Company may consider necessary for the purposes of procuring the forwarding of a consignment to its destination on such conditions as may be stipulated by such third parties, by which the Sender agrees to be bound: Disburse such amount on behalf of the Sender as may be agreed with any third party by the Company in its sole discretion, and to recover amounts disbursed from time to time from the Sender. The Sender agrees that the Company shall have no responsibility or liability to the Sender for any act or omission of whatsoever nature on the part of any such third party, nor shall the Company be obliged to take any action against such third party.

12. The Company shall have a lien over the consignment for its charges and expenses in connection or as a result or by reason of its obligations or rights hereunder (including, but without limiting the a foregoing, for the storage or sale or disposal of the consignment and the compilation of any documents relating to the parcel and costs incurred on an attorney and client scale as contemplated below).

13. Notwithstanding anything herein contained to the contrary:

Any parcel collected, transported, forwarded and/or delivered by the Company is done so at the sole risk of the Sender. The Company shall not be liable to the Sender for any loss, damage or expense, however caused, arising out of any loss of or damage to any parcel, or any late delivery or failure to deliver the parcel on time or at all, save where such loss, damage or expense is caused by any grossly negligent act or omission on the part of the Company. Notwithstanding anything to the contrary in these conditions of contract, and in particular anything in the above clause, the Company shall not be liable to the Sender, for any loss, damage or expense of whatsoever nature and howsoever caused, even where such loss, damage or expense is caused by or attributable to the grossly negligent act or omission of the Company, unless the Company has received written notice of such loss, damage or expense within 30 days from the date the consignment was received or, in the case of non-delivery, within 14 days from the date on which the consignment was placed at the disposal of the Company.

14. Shipment Liability and Insurance

The liability of the Company to the Sender is limited to the local currency equivalent of R1000.00 (one thousand South African Rand) or the minimum legal liability (whichever is the greater) per consignment in the event of loss or damage to a consignment. The cost associated with such liability is included in the documentation fee as charged by the Company on all consignments moved. Such liability shall be subject to the usual exceptions and conditions of the policies of any underwriters. The Company does not offer or arrange insurance and the Sender is required to make its own arrangements should it wish to insure a consignment.

15. The Sender shall be liable for all costs incurred in the recovery of any monies hereunder, including tracing charges, collection charges and attorney and client costs (which attorneys' fees to be payable on an attorney-client scale), whether incurred prior to or during the institution of legal proceedings, or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment. The Sender chooses its street address set out on the Company's AWB as its domicilium citandi et executandi ("domicilium") for all purposes under this contract, whether for serving any court or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this contract.
16. No quotation will be binding on the Company unless given in writing.
17. The Company shall be entitled to retain the benefits of any discounts obtained and to be paid and to retain all brokerage, commission, allowance and other remuneration of whatsoever nature, and shall not be obliged to pass on to the Sender the benefit of any reduced tariffs.
18. The Sender will be responsible for payment of freight, duties, taxes or other expenses on demand, if they are not paid by the consignee or other person immediately when due.
19. It is the responsibility of the Sender to properly complete the (Air) Waybill.
20. The Sender irrevocably accepts the mass and dimensions of the parcel as determined by the Company and waives any rights he may have had to dispute such details.
21. Any amount payable by the Sender to the Company shall be paid at the Company offices (or at such address as the Company may notify the Sender) in cash, without deductions or set-off, within 30 days of statement in cases where the Company has previously agreed to grant credit and in all other cases, on demand.
22. Notwithstanding anything contained to the contrary herein, the Company shall not be obliged to comply with its obligations hereunder in any respect whatsoever for as long as the Sender is indebted to the Company in any amount whatsoever whether arising out of this contract or otherwise.
23. Shipment by air to an ultimate destination other than the country of origin may be subject to the provisions of the Warsaw Convention and the limits of liability contained therein.

## **TERMS OF PAYMENT**

1. Credit facilities granted by the Company to the Sender shall be in the sole discretion of the Company which may at any time terminate or vary such facilities.
2. In the event of the Sender failing to make payment on due date, all amounts shall immediately become due and payable notwithstanding that the time for payment thereof has not yet arrived. Interest calculated monthly in arrears at the maximum rate permissible from time to time shall accrue and be payable on any amount due and owing to the Company by the Sender.
3. A certificate signed by the credit manager of the Company shall be prima facie proof of any amount owing to the Company, and if any invoice sent by the Company is not queried in writing by the Sender within fifteen (15) days as from the date of the statement, such invoice will be deemed correct.
4. The invalidity or unenforceability of any provision shall not affect any other part of these conditions.
5. This contract shall be governed by construed and interpreted in accordance with the laws of Namibia.