

## TERMS AND CONDITIONS (COMMERCIAL)

### 1. Introduction

- 1.1. 'We', 'us' or 'our' means H&M Removals CC, registration number 1992/008375/23, trading as H&M Removals, our physical address as per our website (<https://www.hmremovals.co.za/>) ("Premises").
- 1.2. 'You' or 'your' means the **commercial customer** and/or person(s) authorised to act on the commercial customers behalf.
- 1.3. **You warrant that the party You act on behalf of ("Customer") is a juristic person whose asset value or annual turnover, at the time of the transaction equals or exceeds the threshold value of R2 million and therefore that these commercial terms and conditions are applicable to you.**
- 1.4. These are the terms and conditions relevant to commercial removal and/or logistic services and/or storage facilities ("Services") of items ("Goods") we offer and provide. These terms and conditions ("Terms of Services") refer to the following additional terms which also apply to your use of our Services:
- 1.5. All information incorporated by using hyperlinks and / or other methods of reference form part of these Terms of Services.
- 1.6. **Why you should read them:** These Terms of Services tell you who we are, how we will provide Services to you, how either us or yourselves may amend or end the contract for the supply of Services, what to do if there is a problem with your order and other important information.
- 1.7. **The Terms of Services contain provisions that appear in similar text and style to this clause and which:**
  - 1.7.1. **may limit our risk or liability or the risk or liability of a third party; and/or**
  - 1.7.2. **may create risk or liability for you (as a consumer); and/or**
  - 1.7.3. **may compel you to indemnify us or a third party; and/or**
  - 1.7.4. **serve as an acknowledgement, by you, of a fact.**
- 1.8. **Your attention is drawn to these provisions in bold because they are important and should be carefully noted.**
- 1.9. Moving and storing items is risky. Please pay special attention to clause 17 in terms of our liability.
- 1.10. **NOTE: Insurance is a separate contract between you and the insurance company and those conditions of insurance are separate from these conditions (see par.23 below).**

### 2. Definitions

- 2.1. "**Goods**" means the items listed on the inventory, alternatively loaded onto any H&M Removals transport, which form the subject matter of this Contract, whether contained in one or more parcels or packages, and whether consigned singly or separately and in parcels or in bulk, taken into possession by H&M Removals for carriage on behalf of the Customer.
- 2.2. "**Service Order Form**" means the form communicated by H&M Removals to you stating the performance dates for the removal of Goods and the final charges payable for the services.

### 3. Our quotation

- 3.1. Our quotation depends on availability of staff and equipment being available on the day as may be requested by you. Availability will only be confirmed within 7 (seven) days after you have accepted our quotation, which confirmation shall be in writing .
- 3.2. Our quotation does not include insurance, customs duties, cargo dues and any other legal or government fees we must pay in connection with this contract.
- 3.3. Our quotation is valid for 28 (twenty-eight) days from the date of issue.
- 3.4. Unless already included in Our quotation, reasonable additional charges will apply in the following circumstances, which You agree to pay:
  - 3.4.1. If the work does not commence within the abovementioned 28 days;
  - 3.4.2. Where We have given You a price including redelivery from store within Our quotation and the re-delivery from store has not taken place within 4 (four) months from the date of the issue of the quotation;
  - 3.4.3. Our costs change because of currency fluctuations, changes in taxation, freight, fuel or toll charges beyond our control.
  - 3.4.4. The work is carried out on a Saturday, Sunday, or Public Holiday or outside normal hours (08.00-18.00hrs) at your request.
  - 3.4.5. We have to collect or deliver Goods at Your request above the ground floor and first upper floor.
  - 3.4.6. If You or Your agents request collection or access to Your Goods whilst they are in store;
  - 3.4.7. We supply any additional services, including moving or storing extra goods (these conditions apply to such work).
  - 3.4.8. The entrance or exit to the premises, stairs, lifts or doorways are inadequate for free movement of the goods without mechanical equipment or structural alteration, or the approach, road or drive is unsuitable for our vehicles and/or containers to load and/or unload within 20 metres of the doorway.
  - 3.4.9. We have to pay parking or other fees or charges (including fines where you have not arranged agreed suspension of parking restrictions) in order to carry out services on Your behalf. For the purpose of this Agreement parking fines for illegal parking, caused by Our negligence, are not fees or charges and You are not responsible for paying them.
  - 3.4.10. There are delays or events outside Our reasonable control which increase or extend the resources or time allowed to complete the agreed work.
  - 3.4.11. We agree in writing to increase Our limit of liability set out in clause 17 prior to the work commencing;
- 3.5. Unless otherwise agreed to in writing between You and Us, the following work are not included in the quotation
  - 3.5.1. Dismantle or assemble furniture of any kind
  - 3.5.2. Disconnect, re-connect, dismantle or re-assemble appliances, fixtures, fittings or equipment.
  - 3.5.3. Take up or lay fitted floor coverings.
  - 3.5.4. Move items from a loft, unless properly lit and floored and safe access is provided.
  - 3.5.5. Move or store any items excluded under clause 8.
  - 3.5.6. Dismantle or assemble garden furniture and equipment including, but not limited to: sheds, greenhouses, garden shelters, outdoor play equipment, and satellite dishes, or move paving slabs, planters and the like.

Our staff are not authorised or qualified to carry out such work. We recommend that a properly qualified person is separately employed by You to carry out these services.

### 4. How is the contract formed between us:

- 4.1. By clicking on "**Accept Quote**" or submitting an email with instructions to proceed with the Services as per the quotation, you acknowledge that:-
  - 4.1.1. You are authorised to submit said acceptance of the quote and instruction to proceed;
  - 4.1.2. You have read and agreed to the Terms of Services;
  - 4.1.3. You will be bound by these Terms of Services when utilizing the Services made available by us;
  - 4.1.4. (where applicable) You have consent/authorization from the owner or anyone having a legal interest in the goods to enter into a Contract;
  - 4.1.5. You have given the owner or anyone having a legal interest in the Goods a copy of these Terms of Services and they have agreed to be bound by them; and
  - 4.1.6. **You agree that if you are not authorised to act on behalf of the owner of the Goods, that you will be personally liable for all charges under a Contract and that all references to 'customer' will be amended to the 'you'.**
- 4.2. **Services description and/or pricing (including quotations from us to you) presented to you:** is our invitation to you to do business;

- 4.3. **The Offer:** your acceptance of the quotation and submission of same to us ("**Order**"), constitutes an offer by you to acquire Services from us.
- 4.4. **Acceptance of Your Order:** Our acceptance of your Order will take place at Our Premises on receipt of Your Order and when We send you an email, or other similar confirmation of Our acceptance, at which point a contract ("**Contract**") will come into existence between You and Us ("**Effective Date**") in terms of the Services as per the quote / proposal. It is important to take note that the version of the Terms of Services applicable on the day of receipt of Your offer and Our acceptance of the offer, shall apply to the particular Services selected as per the offer.
- 4.5. Insofar as any term and condition of a proposal or quote conflicts with the Terms of Services the latter shall prevail, unless specifically stated otherwise with reference to the specific provision under the Terms of Services.

## 5. Supply of Services

- 5.1. We will supply the Services to you in accordance with the description or specification of the Services provided in writing by us to the Customer from time to time ("**Specification**") in all material respects.
- 5.2. We will use all reasonable endeavours to meet any performance dates specified in the Service Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.3. We reserve the right to amend the Specification if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and we will notify you in any such event.
- 5.4. We are entitled to select the appropriate method of transport and handling to be used in the carriage, but in so doing, will have regard to the service level requested and/or expected by the Customer.
- 5.5. We shall, in our sole and absolute discretion, determine the means, route and procedure to be followed in the handling and transportation of the Goods.
- 5.6. If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
  - 5.6.1. without limiting or affecting any other right or remedy available to it, we will have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 5.6.2. we will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this par. 5.6; and
  - 5.6.3. the Customer shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.
- 5.7. In the event of the Customer refusing to accept delivery of Goods, then the Goods shall be held by Us at the sole risk of the Customer and, if necessary, a re-delivery charge will be levied upon the Customer, and the Customer shall be responsible for storage and/or holding costs.

## 6. Your responsibilities

You agree to:

- 6.1. Arrange adequate insurance cover for the Goods submitted for removal transit and/or storage, against all insurable risks as Our liability is limited under clause 17.
  - 6.2. Provide Us with complete and accurate information regarding the Your Goods, including but not limited to the weight, volume and quantity of the Goods and any specialist handling/ storage which may be required;
  - 6.3. Provide Us with complete and accurate information in regards to any changes or alterations to your premises (collect and/or forwarding address "Customer Premises") which may affect the removal or delivery of Goods;
  - 6.4. Provide Us with complete and accurate information regarding the Customer Premises including but not limited to, parking arrangements or restrictions for the weight, size, and parking of commercial vehicles, whether the access road or drive is shared with third parties (who may require access to their own properties whilst the Services are being provided), difficulties with regard to road access to the delivery address, the presence of obstacles such as, but not limited to, low tree branches, steps, uneven ground, electricity or telephone cables, narrow or restricted access into the Customer Premises, and whether floor protection is required for wooden or laminate floors;
  - 6.5. Obtain consent from third parties who own or have rights to shared drive ways, rights of way, access roads or footpaths, for Us to use the drive way, right of way, access road or footpath in order to carry out the Services;
  - 6.6. Point out to the Operational (Ops) Team any hazards which may pose a risk to the Ops Team's health and safety while they are on the Customer Premises;
  - 6.7. Be present or represented at all times throughout the collection and delivery of the goods and arrange for security for your items when they are collected and delivered and check the Customer Premises so that nothing to be removed is left behind in error or removed in error;
  - 6.8. Arrange protection for the Goods left in unoccupied or unattended Customer Premises or where other people, including but not limited to, tenants or workmen are or will be present;
  - 6.9. Ensure that inventories, receipts, job sheets, or other documents are signed by You or Your authorised representative (see par. 7 below);
  - 6.10. Be fully responsible at all times during the Services for the safekeeping and security of Your money and valuables (including items which have sentimental value to you). We recommend that such items are not kept on the Customer Premises during the Services to ensure that they are not packed or removed in error;
  - 6.11. Empty and defrost refrigerators and freezers. We are not responsible for their contents or for any loss or damage to the contents caused by defrosting or changes in temperature; and
  - 6.12. Properly prepare any equipment before it is removed, including but not limited to computer equipment (including wiring).
- Other than by reason of Our negligence or breach of contract, We will not be liable for any loss or damage, costs or additional charges that may arise from failure to discharge these responsibilities.

## 7. List of Goods or receipt (inventory)

- 7.1. You shall complete our **Waybill document** fully and accurately at the time that the Goods are received by Us and the person signing such document must confirm that he/she is duly authorized to do on behalf of the Customer.
- 7.2. Any list or receipt we provide for Goods we have packed, moved, shipped, handled or stored **will be final**, unless you write to us within 7 (seven) days about any mistake or item that you think we have left out.
- 7.3. You may not make a claim for any item not on the list or receipt we gave you.

## 8. Goods not to be submitted for removal or storage

- 8.1. The following items may not form part of the Goods to be moved and will not be moved by us:
  - 8.1.1. ammunition, antiques, bank notes, bills of exchange, bonds, ceramics, coins, explosives, fire-arms, livestock, perishables, plants, precious stones, securities, unpacked cargo.
  - 8.1.2. abnormal item, for example, an item that is too large or too heavy to be moved by a team of removal men without special machinery, and any; and/or

- 8.1.3. item that cannot be moved because any stairway, passage or door is not strong or wide enough.
- 8.2. Further, the following items may not form part of the Goods to be moved and in the event such items form part of the Goods we may throw away discard or destroy these items without telling you:
  - 8.2.1. any potentially dangerous, damaging, corrosive noxious, hazardous, inflammable or explosive item or any Goods which in its opinion are likely to cause damage;
  - 8.2.2. any item that might attract vermin or other pests or cause an infestation, and/or
  - 8.2.3. any perishable items and/or those requiring a controlled environment.
  - 8.2.4. any animals, birds, fish, reptiles or plants.
- 8.3. If, in our opinion, any Goods that are dangerous, whether they have been declared as dangerous or not, becomes a danger to any person or property, We shall be entitled immediately and without notice to the Customer to take such steps as it, in its sole discretion, deems prudent to avert danger, and in this regard We shall:
  - 8.3.1. not be liable under any circumstances for any loss or damage (whether direct or consequential) sustained by the Customer as a result of such steps; and
  - 8.3.2. be entitled to recover from the Customer its remuneration for the carriage of those Goods, together with any costs incurred by it in taking the steps necessary.
- 8.4. We are not responsible for any loss or damage you suffer in connection with any of the items excluded in this clause.

## 9. Ownership of the Goods

- 9.1. You hereby warrant that:
  - 9.1.1. you own everything that you have asked us to remove, or
  - 9.1.2. you have permission from the owner to remove any item that is not yours;
  - 9.1.3. you are the only person who has authority to give us instructions or have confirmed in writing the representative who is responsible for giving instructions to us under a Contract;
  - 9.1.4. the Goods are free from any legal charge; and
  - 9.1.5. The Goods are free from claims from third parties.
- 9.2. **You indemnify (promise to protect) and will pay us in respect of any damages, cost or claim if any warranty is not true. If You wish to transfer responsibility of this Contract to a third party You will advise Us in writing giving Us their full name and address. We will issue a new Contract to them. Our Contract with You will remain in force until We have received a signed Contract from the third party.**

## 10. Cancellation or Delay

- 10.1. You have a right to cancel any of our Services (Removals) or delay the delivery of the Services. Any delay or cancellation in terms of Services (removals) are subject to our [Cancellation and Delay Policy](#).

## 11. Payment of our charges

- 11.1. For consideration for the Services you agree to pay the charges as confirmed under the accepted quotation (as may be amended by both parties) ("**Charges**").
- 11.2. The charges payable for the Services shall be calculated in accordance with the [Service Order Form] OR [Quotation].
- 11.3. Unless otherwise stated under these Terms of Services, You must pay charges for the following Services as follows:
  - 11.3.1. **direct removals:** before removal starts;
  - 11.3.2. **storage (if applicable – see para 15 below):** The storage charge for the first 4 (four) weeks of storage shall be due and payable on or before the first day of storage. Subsequent payments for storage shall be on or before the first business of each month;
  - 11.3.3. **delivery:** before we deliver;
  - 11.3.4. **international moves:** before we start packing or removal; or
  - 11.3.5. **any other services:** before or at the same time we perform the service.
- 11.4. We will invoice you on completion of the Services.
- 11.5. Unless otherwise agreed to in writing, you must pay each invoice submitted by us:
  - 11.5.1. within 30 (thirty) days of the date of the invoice;
  - 11.5.2. in full and in cleared funds to a bank account nominated in writing by us by way of electronic fund transfer ("EFT"), and
  - 11.5.3. time for payment shall be of the essence of the Contract.
- 11.6. All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by us to you, you will, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 11.7. Where the Customer is granted an account, the full amount reflected on the quote or statement shall be paid by the Customer without any deductions or set off on or before the last day of the month following upon the date of the statement in which Goods are delivered and/or Services are rendered (i.e. 30 (thirty) days net).
- 11.8. In the event of the Customer failing to pay an account on the due date, then the full amount of the statement will thereafter become due and payable without further notice to the Customer.
- 11.9. **If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under par. 19, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will be charged at a rate of 5% (Five) Per Cent above First National Bank's prime rate of interest.**
- 11.10. Where we have to instruct our attorneys to recover any amount you owe us, you will have to all our legal costs (on the attorney and own client scale), including commission, tracing fees and any other expenses.
- 11.11. It will be deemed that you have accepted the correctness of any quote or statement, in all respects, unless We are notified in writing of any queries or discrepancies within 5 (five) days of issuing such quote or statement. If you raise a query, which is not resolved within the 30 (thirty) day period, you will remain liable to pay all undisputed items on the quote or statement within the said 30 (thirty) day period.
- 11.12. You may not delay payment or set off (deduct) any amount you owe us if you think you have any claim against us, or if there is any dispute between you and us.

## 12. Our right to hold items as security for payment ("retention right")

- 12.1. **We have a general lien (retention right) over any item in our possession or under our control to cover all amounts You owe to Us under any Contract. This means that under certain circumstances, we may retain such items until you pay us the debt due or sell your items in our possession and under our control to recover your debts with us.**
- 12.2. **If we keep any item while we wait for payment, you will further be responsible for storage charges and other costs, which charges and costs will form part of the amount due.**
- 12.3. We may send a written notice to your forwarding address (in terms of clause 24 below):
  - 12.3.1. demanding that you remove your items and pay us all the money you owe us, and
  - 12.3.2. giving notice that we will sell your items if you do not remove them and pay us.
- 12.4. If you do not pay us all the money you owe us within 28 (Twenty-Eight) days of us giving you notice, we may sell or dispose of

any item without further notice.

- 12.5. We will charge you for the cost of selling or disposing of any of your items.
- 12.6. We will pay you anything left over after deducting the money you owe us, without interest. You will continue to be liable for the balance that may remain due and payable as per your account after the sale of your items.

### 13. Claims against us by third parties (people other than you and us)

- 13.1. You must pay any charge, expense, damages or penalty that any third party claims against us in connection with any of your items or the Services we provide to you, unless we were negligent or we agreed in writing to pay relevant amount.
- 13.2. Claims by third parties included (but not limited to), parking charges that we may have to pay to do the work or expenses and damages that we may incur as a result of a third party claim that the goods do not belong to you and has taken action to claim it from us. On receipt of said claim we will notify you promptly.

### 14. Our right to sub-contract the work

- 14.1. We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2. If we sub-contract any work, the Contract will continue to apply to you and us.
- 14.3. You agree to the written terms and conditions on any bill of lading, consignment note or similar document issued by any other carrier or organization chosen by us to be involved in the removal, and those terms and conditions form part of this contract and in this regard you authorize us to accept such terms and conditions on your behalf.
- 14.4. You may ask us for a copy of the terms and conditions of any of our sub-contractors involved in our contract with you, and we will use reasonable efforts to send these to you where available.
- 14.5. if no written terms and conditions for a particular sub-contractor are available, our own liability will still be limited as set out in clause 17 below.

### 15. Storage specific terms and conditions

- 15.1. We shall not be liable for demurrage or storage charges of any nature whatsoever, and howsoever arising. Should any such charges be paid by Us, such charges shall be refunded to Us by the Customer on demand.
- 15.2. The Customer hereby appoints Us irrevocably and in rem suam as its agent and in its name, place and stead, to contract for storage of the Goods upon such terms and conditions as We, in our sole discretion, elects, and without any liability whatsoever attaching to Us to attend to such storage.

### 16. Warranties

- 16.1. HM Removals warrants that in relation to the Services provided in terms of a Contract -
  - 16.1.1. the Services will be provided using reasonable care and skill.
  - 16.1.2. H&M Removals will provide the Services in accordance with all applicable laws and regulations.
  - 16.1.3. H&M Removals will use generally accepted industry best practice to deliver the Services.
- 16.2. The Parties respectively warrant that the signing, execution, delivery and performance of this Contract has been duly authorised by the directors of the each Party;
- 16.3. The Customer warrants that it has not been induced to enter into this Contract by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 16.
- 16.4. The Customer warrants that -
  - 16.4.1. it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Contract; and
  - 16.4.2. in the event that Our Personnel are required to access the premises of the Customer or the premises of a third party (as directed by the Customer) that the premises will be safe and accessible for our Personnel to execute the Services;
  - 16.4.3. all the descriptions, values, and other particulars furnished to HM Removals in respect of the Goods are accurate;
  - 16.4.4. the Goods are fit to be carried in the ordinary way and are not dangerous; and
  - 16.4.5. the carriage of the Goods will not violate or infringe any statute, regulation or law;
- 16.5. Except as expressly stated in this Contract, all conditions and warranties whether express or implied, statutory or otherwise (including but not limited to any conditions or warranty for, fitness for particular purpose, satisfactory quality, usefulness or timeliness) are excluded to the extent permitted by law.
- 16.6. The Customer hereby indemnifies and holds HM Removals (and its Personnel) harmless against all losses damages, expenses, fines, claims and injury, howsoever caused, arising out of the execution of the Services at the Premises, carriage of the dangerous goods, whether declared as such or arising directly or indirectly from any breach of the warranties under this clause 16.

### 17. Limitation of Liability

- 17.1. This clause 17 sets out the entire financial liability of the parties in connection with a Contract.
- 17.2. **Indirect, special or consequential damages excluded.** To the extent permitted by applicable law, neither party shall be liable for any indirect, incidental, special, punitive or consequential damages, losses and costs (including but not limited to loss of profits; loss of sales or business) whether arising from the Contract, delict or any other theory of liability, even if a party (including its affiliates, suppliers and subcontractors) has been advised of the possibility of such damages, or they are foreseeable.
- 17.3. **Direct damages limited.** To the extent permitted by applicable law each Party's maximum liability for direct damages for anything giving rise to any legal action shall be equal to [50% (fifty per cent)] of the fees already paid by the Customer to H&M Removals.
- 17.4. **Excluded Damages:** the following damages are excluded:
  - 17.4.1. Customer goods packed or unpacked by you or others; the cost of replacing Goods lost or damaged as new; Pre-existing damage to the Goods; fragile or brittle item; key left in furniture; lack of maintenance to the Goods prior to packing; loss or damage caused by changes in atmospheric conditions including but not limited to rusting, tarnishing, fading, corrosion, shrinkage, expansion, warping, movement, splitting, gradual deterioration or mustiness; worsening quality or condition of any food, plant or perishable item; Damages to Goods as a result of fire, burglary or flood while items are in storage; Goods left inside a cupboard or other furniture; mechanism in any clockwork, electronic or motor – driven item (unless there is any visible sign of impact damage on the outside of the item); sensitive equipment, or any item that is not suitable for being transported; Goods seized by police, customs, or other legal, local or government enforcement agencies; Loss or damage caused by insects, vermin, birds, or any infestations; Electrical or mechanical failure or derangement, unless directly attributable to obvious external physical damage that has occurred as a result of Our negligence or breach of contract; loss of agreements or contracts; item delivered to or received from an auctioneer, auction room, communal (shared) storage area, or other similar business or area; loss of anticipated savings; loss of use or corruption of software, data or information including relating to the remove or deletion of any code, configuration, or any other deliverable produced by us relating to any unpaid invoices; loss of or damage to goodwill; and indirect or consequential loss.
  - 17.4.2. All Services provided in terms of a Contract, including the loading, off-loading, packing, storing, and/or safekeeping of the Goods, are performed at the risk of the Customer.
  - 17.4.3. We only move frozen items at your own risk and are not liable for any death, injury, or sickness following the removal or storage of any food, drink or other perishable item.

- 17.4.4. Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 (two) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

**Claim Management (subject to limitations above):**

**17.5. Delays in transit**

- 17.5.1. If there is a delay that is a direct result of our negligent actions and/or omissions, which is within our reasonable control, then Our liability for said breach or delays will be limited to your reasonable expenses up to a maximum of R2000.00.
- 17.5.2. **IMPORTANT:** If the delay is not our fault, we will put the item or complete consignment (all items together as a load or loads) into storage and you will be responsible for any extra service charges, such as storage and/or delivery charges.

**17.6. Damage to premises and time limit**

- 17.6.1. If we (Ops team) damage your premises as a result of our negligent actions Our liability for damage to premises will be limited to R3000.00.
- 17.6.2. You must write this on our worksheet at the time and submit a written notice (see par. 24 below to us within 7 (seven) days from the day of damages.
- 17.6.3. We may arrange to repair any damage ourselves, and you must give us the chance to do this.

**17.7. Damage to Goods or lost Goods (during delivery or storage)**

- 17.7.1. If any Goods are damaged or lost as a result of our negligent actions and/or omissions our liability will be limited to a maximum of R500 per carton or R350.00 for each cubic meter of the lost or damaged item's volume (even if it is part of a pair or set).
- 17.7.2. We may pay for the repair or replacement of an item.

**17.8. You must:**

- 17.8.1. notify us about a claim in writing at the same time as you or your agent comes to collect any item, or
- 17.8.2. send us your claim in writing, which we must receive within 7 (seven) days of the actual or estimated delivery date.
- 17.9. the time limits are essential in both cases (collection or delivery).

**17.10. The limitations in this clause 17) shall not apply to:-**

- 17.10.1. any liability arising from willful conduct.
- 17.10.2. death or personal injury caused by negligence;
- 17.10.3. fraud or fraudulent misrepresentation.

**17.11. Nothing in this clause 17, shall limit the Customer's payment obligations under a Contract.**

- 17.12. **Notice: Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 (two) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.**

**17.13. You agree:**

- 17.13.1. that we may make such enquires as We consider necessary to satisfy Ourselves of the validity of the claim and to establish whether We are liable for the claim;
- 17.13.2. that we may take a reasonable amount of time to undertake Our enquires into the circumstances of the claim and where necessary to conduct searches for Items reported as missing;
- 17.13.3. to co-operate with Us in Our enquiries, as is reasonable in the circumstances, and to provide any additional information We may reasonably require;
- 17.13.4. to provide any relevant information about the Goods such as, but not limited to, proof of value, proof of ownership, estimates for repair costs, receipts, photographs including photographs' taken at our direction, video footage, and serial numbers, in order to substantiate Your claim;
- 17.13.5. to retain packaging or other evidence if requested;
- 17.13.6. to allow Us or Our agents to collect Items for inspection or assessment by a restorer or third party;
- 17.13.7. Damaged Items should not be disposed of until We have had a reasonable opportunity to inspect if We consider inspection necessary.

**18. Privacy and Confidentiality**

- 18.1. Where we process any personal information our [Privacy Policy](#) will apply.
- 18.2. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted under par. 18.3 below.
- 18.3. Each party may disclose the other party's confidential information: (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.4. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**19. Intellectual property**

All patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the customer) shall be owned us.

**20. Termination**

- 20.1. Without affecting any other right or remedy available to You, You may: Removal Services: cancel/terminate the Services as per our Cancellation policy.
- 20.2. Without affecting any other right or remedy available to us, We may terminated the Services Contract by giving you one month's written notice.
- 20.3. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 20.3.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 (five) days of that party being notified in writing to do so;
- 20.3.2. the other party takes any step or action in connection with its entering administration, business rescue, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 20.3.3. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to

- adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 20.4. Without affecting any other right or remedy available to it, the Supplier may **terminate the Contract** with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment;
- 20.5. Without affecting any other right or remedy available to it, the Supplier may **suspend the supply of Services** under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment.

## 21. Force majeure.

- 21.1. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemics; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action (or inaction) taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, government imposing any form of lockdown or restrictions of movement of people or opening of business premises or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; and (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and (i) interruption or failure of utility service.
- 21.2. Provided it has complied with par. 21.5 below, if a party is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be reasonably extended accordingly.
- 21.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 21.4. An event shall not be a Force Majeure Event if, and to the extent that, it arises, directly or indirectly, from the act or omission of the party claiming Force Majeure Event or from such party's lack of funds.
- 21.5. The Affected Party shall:
- 21.5.1. as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- 21.5.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.5.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 months the party not affected by the Force Majeure Event may terminate a Contract by giving 4 weeks' written notice to the Affected Party

## 22. Complaints and disputes

- 22.1. **Complaint / Issue:** We kindly request that you contact us first should you have any complaints or any other service related issues. It is important to us that you are satisfied with our Services. You may use the contact information as per our Contact Us-page. Please ask for a reference number if you speak to any of our representatives/consultants. We will of course reply to your complaint as soon as practically possible.
- 22.2. **Informal dispute resolution:** If the complaint or issue cannot be resolved and there is a dispute, then we shall first attempt to resolve the dispute informally by referring the dispute to our senior management. Senior management shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 7 (seven) days of the dispute having been referred from the complaint department.
- 22.3. **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause 22 shall not be construed to prevent a Party from instituting formal proceedings in the agreed court (see clause 28.8 below) earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.
- 22.4. **Institution of Formal Proceedings:** Subject to the provisions of clauses 22.1 and 22.2, the aggrieved party may elect to refer the dispute which may arise to the applicable court as per par. 28.8 below.
- 22.5. **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 22.6. **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties;

## 23. Insurance

- 23.1. We strongly advise you to insure your consignment against as many risks of packing, moving, shipping and storage as possible.
- 23.2. We advise that you insure items for their full replacement value at your destination.
- 23.3. **H & M Removals is not a financial services provider (FSP) in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002 (FAIS Act), but we can arrange cover for you through (an independent) insurance company, but only if you give us a properly completed insurance proposal (application) form and written instructions to do so on your behalf before we start the Services.**
- 23.4. You will not have any insurance cover until we, alternatively the independent insurance company, have received the completed insurance proposal form from you and you have timeously paid the premium to us or the independent insurance company and given us proof of said payment.
- 23.5. **Any insurance arranged by Us is a separate contract between You and the insurance company. We are not a party to this contract.**
- 23.6. You are free to take out insurance with any insurance company of your choice.

## 24. Notices

- 24.1. We select the Premises and email: notices@hmremovals.co.za, as our address for the service of all formal notices and legal processes in connection with these Terms of Services ("legal address"). We may change this address from time to time by updating these Terms of Services.
- 24.2. You must give us a forwarding address in writing and notify us in writing immediately if it changes.
- 24.3. You hereby select the delivery address / forwarding address and the email address provided on the inventory as your legal address, but you may change it to any other address by giving us not less than 7 (seven) days' notice in writing.
- 24.4. Notices must be sent either by hand, prepaid registered post or email and must be in English. All notices sent –
- 24.4.1. by hand will be deemed to be received on the date of delivery;
- 24.4.2. by prepaid registered post, will be deemed to have been received 10 (ten) days after the date of mailing; and
- 24.4.3. by email to the addressee shall be deemed to be received, unless the contrary is proven and in the absence of any administrator or mail server error messages, the next business day.

## 25. Miscellaneous

- 25.1. The Customer will be liable for Our costs on an attorney and client scale should We institute legal proceedings against the Customer arising out of the provisions of these terms and conditions.
- 25.2. We shall be entitled to apply any amount received from the Customer to the liquidation, in whole or part, of any obligation whether arising out of these terms and conditions or otherwise owed by the Customer to Us, irrespective of whether the final amount of the obligation has been determined.
- 25.3. No relaxation, extension of time or indulgence granted by Us to the Customer shall be deemed to affect, prejudice or abrogate or be a waiver of any of Our rights in terms hereof, nor shall any such relaxation, giving of time, indulgence or judgment taken be deemed to be a novation of any of the terms and conditions hereof.
- 25.4. A certificate signed by any manager for the time being of H&M Removals, whose appointment it shall not be necessary to prove, as to the amount of the indebtedness to Us by the Customer or the surety at any time, the fact that such amount is due and payable, the rate of interest payable (if any) on such indebtedness and the date from which such interest is reckoned shall be prima facie proof of such facts stated therein and shall constitute a liquid document for the purpose of obtaining provisional sentence or judgment against the Customer thereon.

## 26. Credit or Debit Card Authority (where applicable)

- 26.1. In the event that the Customer agrees to payment of any amounts due to Us by way of a credit and/or debit card, the Customer's signature below shall constitute authority for the issuer of the card/s to debit the Customer with the total amount due in respect of Services rendered and/or deposits required, inclusive of all costs, charges and damages of whatsoever nature arising out of a Contract.

## 27. Suretyship

**By you signing the quotation, alternatively these Terms of Services or Annexure A you agree to be bound by the provisions of the Suretyship as per Annexure A.**

## 28. General

- 28.1. **Whole Agreement:** These Terms of Services contain the whole agreement between you and H & M Removals and no other warranty or undertaking is valid, unless contained in this document between the parties.
- 28.2. **Cession :** You agree not to cede, transfer or assign or in any way part with the benefit of this Contract which shall be reserved to you.
- 28.3. **Variation:**
  - 28.3.1. **The Contract (excl. Privacy Policy):** No variation of these Terms of Services (including a quotation) shall be effective unless confirmed in writing under a separate addendum (H&M Removals Addendum) and signed (including submission of a party's expression of intent by a by electronic means) by an authorised representative of the parties. The H&M Removals Addendum shall only apply to the specific Contract.
  - 28.3.2. **Privacy Policy:** We keep our Privacy Policy under regular review and may amend it from time to time. Archived versions (if available) can be obtained by contacting us. Any changes made to our Privacy Policy in future will be posted on our website or made available during your engagement with us. The new version will apply the moment it is published on our website or incorporated by reference in any of our other policies or other communications or published on any of our Services. Where any of your rights may be affected by any amendment we will notify you where reasonably possible.
- 28.4. **Waiver:** No failure or delay by a party to exercise any right or remedy provided under a Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 28.5. **Severance:** If any provision (or part of a provision) of a Contract is found to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 28.6. **Laws:** The Customer shall comply with all laws, including all statutes, ordinances, by-laws, proclamations, regulations and other enactments, which are required to be complied with by the Customer or Us for the purposes of the contract and the Customer hereby indemnifies Us against any loss, damage, costs or other liabilities incurred by Us as a result of the Customer failing to comply with any such laws.
- 28.7. **The Applicable law:** South African law applies to this Contract unless otherwise agreed to in writing by an authorised representative of H&M removals.
- 28.8. **Jurisdiction:** You hereby consent and submit to the jurisdiction of the South African courts regarding all proceedings, transactions, applications or the like instituted by either party against the other, arising from any of these Terms of Services. In the event of any dispute arising between you and us, you hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa which is closest to our Premises from where the Services are provided, notwithstanding that the quantum in the action or proceedings may otherwise be fall below the monetary jurisdiction of that court.

## **ANNEXURE A: SURETYSHIP**

In the event you (as client) are a juristic person, the person/s whose signature/s appear/s on the Service Order Form, representing the client, hereby specifically bind himself/herself/themselves as surety/-ies and co-principal debtor(s) in solidum with the client unto and in favour of H&M Removals for the due and punctual payment of all money due and owing by the client to H&M Removals in terms of a Contract. Such signatory/-ies by his/her/their signature/s hereby agrees and acknowledge/s that he/she/they is/are bound by all the terms and conditions contained in these Terms of Services (including this Suretyship) and expressly renounces the benefits of any legal exceptions, which could or might be pleaded to any claim.

The Surety/ies obligations in terms of the deed of suretyship shall only terminate once all amounts owing by the client to H&M Removals have been discharged.

**SIGNED:**

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**PRINT NAME:**

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**IDENTIFICATION NO.:**

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**POSITION:**

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**DATE:**

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