

STORAGE AGREEMENT

entered into between

**M and F RENCKEN TRADING AS VANCARE STORAGE**

(hereinafter referred to as Vancare)

AND

(hereinafter referred to as Customer)

## IMPORTANT NOTICE

In terms of sections 48 and 49 of Act 68 of 2008 (the Consumer Protection Act) the Customer's attention is drawn to the following clauses in this Agreement that contain a limitation of the risk or liability of Vancare; or constitute an assumption of risk or liability by the Customer; or an indemnification of Vancare:

- 1 Clause 3 regulating the Customer's obligations regarding the items to be stored;
- 2 Clause 5.3 in terms of which the Customer agrees to be liable for all costs incurred by Vancare in enforcing the terms of the Agreement;
- 3 Clause 5.5.2 regarding Vancare's lien over the Goods subject to the Services;
- 4 Clause 6 in terms of which the Services are rendered at the sole and exclusive risk of the Customer with Vancare accepting no liability for any loss or damage to the Goods and the provisions of clause 6.4 in terms of which the Customer agrees to be liable for obtaining its own insurance for any losses or damages to the Goods subject to the Services;
- 5 The limitation of the Customer's right to pursue any claim against Employees or Servants of Vancare (clause9);
- 6 The provisions relating to early termination of the Agreement and the agreed cancellation penalty (Clause 11);
- 7 The non-variation clause requiring all amendments of the Agreement to be in writing in terms of clauses 13;

### 1. **INTERPRETATION**

In these terms and conditions

- 1.1. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely -
  - 1.1.1. "Vancare" means Mrs M Rencken and/or Mr F Rencken and for all purposes includes the owner of the property from which Vancare trades;
  - 1.1.2. "Customer" means any person at whose request or on whose behalf Vancare undertakes any Services and includes the owner of the Goods to which any Services concluded under these terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein;
  - 1.1.3. "Goods" means the Goods described in Annexure A hereto. "Services" means the Goods stored, handled, transported or dealt with by or on behalf of Vancare or which come under the control of Vancare or its employees, agents or nominees on the instructions of the Customer, and includes any form of covering, contents and or equipment used in connection with or in relation to such Goods;
  - 1.1.4. "Period" means the period stipulated in Annexure A hereto;
  - 1.1.5. "Rental" means the amount stipulated in Annexure A to be paid by the Customer to Vancare for the provision of the Services.

### 2. **APPLICATION OF TRADING TERMS AND CONDITIONS TO THE SERVICES**

The Customer warrants that it is the sole owner of the Goods subject to the Services or alternatively that the Customer is entitled to be in possession of the Goods subject to the Services and the Customer agrees that any Services provided by Vancare, whether gratuitous or not, are undertaken or provided on these trading terms and conditions and the subject to Vancare's rental/storage lien.

### 3. **PROVISION OF THE SERVICES**

- 3.1 The Customer shall give Vancare notice of the Customer's requirements for the Services during season, which for the purposes of this Agreement shall be the period between 1 December to 15 January, by the end of October at the latest and for all other periods, at one week's notice by email of the nature of the Services required and Vancare will use its best endeavours to comply with such request.
- 3.2 The Customer shall ensure that any Goods handed to Vancare for storage shall:
  - 3.2.1 not be hazardous, illegal, stolen, be environmentally harmful, or that are a risk to the property where the Goods are stored or to any person;

- 3.2.2 shall only store flammable material if disclosed to Vancare and accepted by Vancare;
- 3.2.3 shall ensure that Goods are dry, clean, free from vermin and or any other form of contamination;
- 3.2.4 shall only access the storage facility during Vancare's normal business hours as designated by Vancare from time to time and subject to Vancare's consent.
- 3.3 where the Services entail the transport or delivery of a caravan, Vancare shall only deliver to the address or place designated by the Customer, as instructed by email. Delivery to such place by Vancare constitutes due performance by Vancare of its obligations in terms hereof.

#### **4. DURATION**

This Agreement shall commence on the signature date, irrespective whether the Customer avails itself of the Services from that date or otherwise and the Rental payable shall be payable from the date that the Services are first rendered. The Agreement shall continue for a period of 12 months, unless the Agreement is terminated in accordance with the provisions of this Agreement.

#### **5. PAYMENT**

- 5.1 Upon signing this Agreement, the Customer will pay Vancare, in the case of monthly Rental, the Rental due monthly in advance, on or before the first day of every month, and in respect of annual Rental on or before the 1<sup>st</sup> January of each year in respect of annual Rental to Vancare's stipulated bank account on the invoice or as otherwise advised in writing, free of exchange.
- 5.2 N/A
- 5.3 Should Vancare have to institute any legal action against the Customer to recover any overdue Rental or other payments then all costs incurred by Vancare, including legal costs on an attorney and client scale plus collection commission will be recovered from the Customer.
- 5.4 In the event of VAT or any other form of taxation be imposed by statute or becoming payable by Vancare on the Rental then this tax shall be passed onto the Customer.
- 5.5 the Customer acknowledges that:
  - 5.5.1 the date/ time for payment of Rental are to be strictly complied with;
  - 5.5.2 all Goods subject to the Services are subject to a general lien in favour of Vancare for Rental and other amounts owing to Vancare by the Customer. In the event of the Rental or any other amount owing to Vancare not been paid in full within seven days after written notice by Vancare to the Customer demanding payment thereof, Vancare shall, at its sole discretion, be entitled to any one or more of the following:
    - 5.5.2.1 upon written notice to the Customer terminate this Agreement and without derogating from the rights of Vancare to claim any arrear Rentals and/or other amount payable to it, claim and recover from the Customer such damages as may be suffered in consequence of such breach and/or cancellation;
    - 5.5.2.2 exercise its lien to deny or restrict access by the Customer or any person purporting to represent the Customer to the Goods subject to the Services and to maintain this until payment of all outstanding amounts have been received.
  - 5.5.3 whenever it is necessary in terms of this Agreement to determine the market value of the Goods, such valuation, which shall be at the expense of the Customer, shall be made by an independent and accredited appraiser appointed by Vancare, whose valuation shall be final and binding on the Customer.
  - 5.5.4 any monies recovered under any judgement shall be applied as follows:
    - 5.5.4.1 to pay the costs of and associated with the sale or disposal of the Goods, including costs incurred in connection with any valuation, legal costs, collection fees and any other costs incurred by Vancare in exercising its rights and/or enforcing its remedies in terms of this Agreement or at law;
    - 5.5.4.2 and to reimburse Vancare all Rentals or other amount owing to Vancare by the Customer in any other costs incurred by Vancare in connection with the storing, selling or disposing of the Goods. Any excess will be paid over to the Customer without interest.

**6. OWNER'S RISK**

- 6.1 It is specifically agreed that Vancare does not and will not have any knowledge of the Goods and does not act as a bailee or a warehouseman in respect of any of the Goods subject to the Services. Vancare deals with Goods only on the basis that it is neither a common carrier or a public carrier.
- 6.2 All Services provided by Vancare including but not limited to all handling, packing, loading, unloading, storage, transporting of Goods, deterioration of the Goods, damage to the Goods by flood, fire, theft, accident, water spillage of material from any source, contamination, pest or vermin or any other reason whatsoever including any acts or omissions of the Customer, are effected at the sole risk of the Customer and the Customer indemnifies Vancare accordingly.
- 6.3 No oral statements made by either Vancare or the Customer shall form part of this Agreement. No failure or delay by Vancare in exercising its rights under this Agreement will limit such rights.
- 6.4 The Customer must take out its own insurance cover in respect of any Goods subject to the Services.
- 6.5 The Customer hereby indemnifies Vancare against all claims howsoever arising whether in contract, delict or otherwise from loss and damage to the Goods or personal injury to third parties and or the true owner of the Goods subject to any Services resulting from or incidental to the provision of the Services by Vancare.

**7. APPLICABLE LEGISLATION**

- 7.1 If Vancare is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then Vancare by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.
- 7.2 In addition thereto, in complying with the law, Vancare shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 7.3 If any of the terms of these trading terms and conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.
- 7.4 If the Customer is not complying with any relevant law relating to any goods subject to the Services, Vancare may take any action necessary so as to comply, including the inspection of the Goods and terminating this Agreement. Vancare may also immediately remove the Goods at the Customer's expense and hand over the Goods to the relevant authorities.

**8. VANCARE'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS**

In the absence of specific instructions given timeously in terms of this agreement in writing by the Customer to Vancare -

- 8.1 It shall be in the discretion of Vancare to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
- 8.2 shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the Services it has agreed to perform.

**9. NO CLAIMS AGAINST EMPLOYEES**

The Customer undertakes that no claim shall be made against any member, or employee of Vancare which imposes or attempts to impose upon such servant or employee any liability in connection with the rendering of any Services which are the subject of these trading terms and conditions.

**10. BREACH**

10.1 If Vancare breaches any of the terms of this Agreement and fails to remedy such breach within 14 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by Vancare of the obligations it has defaulted in, failing which the Customer may exercise its rights in terms of clause 11.

10.2 In the event that the Customer breaches any provision hereof, Vancare shall be entitled to immediately suspend its performance of the Services in terms of the Agreement until such time that the Customer remedies its breach. The Customer acknowledges that it will not have any claim of whatsoever nature against Vancare in respect of the suspension of Vancare's performance in terms of this cause.

## **11. TERMINATION**

Save as otherwise provided in this Agreement, either Party may terminate this Agreement by giving the other Party 20 business day's written notice its intention to cancel the Agreement.

In the event of the Customer terminating this Agreement as provided herein, the Parties agree that the Customer shall be liable to pay Vancare three months rental, as a cancellation penalty, as provided in section 14(3)(b)(i) of the Consumer Protection Act.

Upon termination of the Agreement for any reason whatsoever, the Customer must remove all Goods from Vancare's premises. The Customer shall only be entitled to remove its Goods upon payment of all outstanding monies and expenses due to Vancare as at the date of termination.

Should the Customer fail to remove its Goods, Vancare shall be entitled to either to dispose of the Goods in terms of the Vancare's lien or to arrange alternative storage for such Goods at the Customer's cost and the Customer hereby indemnifies Vancare in respect of all costs incurred by Vancare.

## **12. VARIATION OF THE TERMS OF THIS AGREEMENT**

No variation of this Agreement shall be binding on the parties unless embodied in a written document signed by the customer and either Mrs M Rencken or Mr F Rencken on behalf of Vancare. Any purported variation or alteration of this Agreement otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or not, or takes place before or after receipt of this Agreement by the Customer.

## **13. NON WAIVER**

No extension of time or waiver or relaxation of any of the terms of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

## **14. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

## **15. SUBMISSION TO JURISDICTION**

The Parties agree that any legal action or proceedings arising out of or in connection with this Agreement shall be brought in the Magistrates Court having jurisdiction over the Defendant, notwithstanding the fact that the subject matter of such proceedings may exceed the jurisdiction of the Magistrates Court.

## **16. SEVERABILITY**

If any provision of this Agreement is unenforceable, then Vancare shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of this Agreement which shall not be affected and shall remain of full force and effect.

## **17. NOTICES**

Any notice to be given or documents to be delivered to the Customer shall be deemed to have been received by the Customer if sent by fax or email to the respective numbers.

I, the undersigned, hereby declare and warrant:

I am the owner of the Goods subject to the Services and am authorised to enter into this Agreement or I have been duly authorised by the lawful owner to enter into this Agreement;

I have read and understood the contents of this Agreement and in particular the paragraph headed important notice;

The information provided on behalf of the Customer in this Agreement is correct.

Signed at                    on this        day of                    20\_\_

\_\_\_\_\_

The Customer

Signed at                    on this        day of                    20\_\_

\_\_\_\_\_

VANCARE                    (Authorised Representative)

ANNEXURE A

**PLEASE COMPLETE THE FOLLOWING IN BLOCK LETTERS:**

CUSTOMER'S NAME:                    :-----

POSTAL ADDRESS:                    -----  
-----  
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EMAIL ADDRESS:                    :-----

CELL NUMBER:                    :-----

HOME NUMBER:                    :-----

WORK NUMBER:                    :-----

FAX NUMBER:                    :-----

DESCRIPTION OF GOODS STORED :-----  
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VEHICLE REGISTRATION NO'S        :-----  
:-----