

POLARIS FREIGHT SERVICES (PTY) LTD

TRADING TERMS AND CONDITIONS

1. PREVAILING TERMS & CONDITIONS

The Customer acknowledges that the parties' relationship shall be governed solely by the terms and conditions contained herein, shall apply to every Contract and shall prevail over any term and condition contained in any documentation of the Customer or in any other documentation.

2. QUOTATIONS AND CONTRACT

- 2.1 Any quotation given by Polaris is not an offer by Polaris to deliver the service, but constitutes an invitation by Polaris to the Customer to place an Order.
- 2.2 Polaris may accept or reject in whole or in part any Order placed by the Customer.
- 2.3 The prices referred to in a quotation is subject to any variation in the prices charged for the relevant Services either as set out in Polaris's prevailing price list in force and effect on the date when the Contract comes into existence, or as agreed with the Customer. (refer to 15.1)
- 2.4 Each Order accepted by Polaris shall constitute a separate agreement between the parties on the terms and conditions specified therein.

3. PLACING OF ORDERS/BOOKINGS

- 3.1 The Customer is obliged to forward all Orders in writing to Polaris. Notwithstanding the aforesaid, Polaris is entitled to accept in its sole discretion oral Orders, and in such circumstances the information contained in any document reflecting the Customer's order instructions shall serve as prima facie proof of such order and the Customer's instructions relating thereto.
- 3.2 Polaris may, in its discretion, comply with the Customer's reasonable requests to amend a specific Order before delivery of the Services referred to in such Order. Polaris shall be entitled to adjust the purchase price and date of delivery of the Services relating to an amended Order to make provision for such amendment.

4. POLARIS'S DISCRETION

In the absence of specific instructions given timeously in writing by the Customer to Polaris

- 4.1 It shall be in the reasonable discretion of Polaris 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 obligation to the Customer
- 4.2 Polaris shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
- 4.3 Notwithstanding anything to the contrary herein contained, if at any time Polaris should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, Polaris shall be entitled to do so and shall not incur any liability in consequence of doing so; and/or
- 4.4 If events or circumstances come to the attention of Polaris, its agents or nominees which, in the opinion of Polaris, make it in whole or in part, impossible or impracticable for Polaris to comply with the Customer's instructions, Polaris shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by Polaris in writing, Polaris shall, at its sole discretion, be entitled to deal with all or part of the goods concerned as it deems fit and at the risk and expense of the Customer.

5. POLARIS'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

Unless specific written instructions are timeously given to and accepted by Polaris, Polaris shall not be obliged to

- 5.1 Make any declaration for the purpose of any statute, convention or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, Polaris shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body of dangerous goods or other goods which may require special conditions of handling or storage;
- 5.2 Arrange for any particular goods to be carried, stored or handled separately from other goods.

6. CUSTOMER'S UNDERTAKINGS

- 6.1 For all purposes hereunder the Customer shall be deemed to have in relation to its business, and the goods and services to be rendered by Polaris in respect thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matters relating thereto. The Customer undertakes to supply all pertinent information to Polaris.
- 6.2 The Customer warrants that –
 - 6.2.1 it is either the owner or the authorized agent of the owner of any goods in respect of which the Customer instructs Polaris and that each such person is bound by these trading terms and conditions;
 - 6.2.2 in authorizing the Customer to enter into any contract with Polaris and/or in accepting any document issued by Polaris in connection with such contract, the owner, sender or consignee is bound by these terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that Polaris shall have the right to enforce against them jointly and severally any liability of the Customer under these trading terms and conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;
 - 6.2.3 all information and instructions supplied by it to Polaris is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to Polaris for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies Polaris against all claims, losses, penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise, without derogating from the generality of the foregoing, any assessment or reassessment;
 - 6.2.4 all goods will be properly, adequately and appropriately prepared and packed, stowed, labeled and marked, having regard inter alia to the implementation by or on behalf of Polaris or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;
 - 6.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of the goods by land, sea or air (each such device hereinafter individually referred to as 'the transport unit') then save where Polaris has been given and has accepted specific written instructions to load the transport unit –
 - 6.2.5.1 that the transport unit has been properly and competently loaded; and
 - 6.2.5.2 that the goods involved are suitable for carriage in or on the transport unit; and
 - 6.2.5.3 that the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

7. OWNER'S RISK

All handling, packing, loading, unloading, warehousing and transporting of goods by or on behalf of or at the request of Polaris are effected at the sole risk of the Customer and/or owner, and the Customer indemnifies Polaris accordingly.

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8. POLARIS ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

Unless otherwise agreed in writing, Polaris in procuring the carriage, storage, packing or handling of goods shall be entitled to act either as an agent for and on behalf of the Customer or as principal, as it in its absolute discretion deems fit.

- 8.1 The Customer acknowledges that when Polaris, as agent for and on behalf of the Customer, concluded any contract with a third party, such agreement is concluded between the Customer and the third party.
- 8.2 Unless otherwise agreed in writing, Polaris when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfillment of the Customer's instructions, including, without limitation, contracts for the –
 - 8.2.1 carriage of goods by any route or means or person;
 - 8.2.2 storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time;
 - 8.2.3 carriage or storage of goods in break-bulk form in or on transport units as defined in clause 6.2.5 or with or without other goods of whatsoever nature.

9. SUBCONTRACTING

- 9.1 Any business entrusted by the Customer to Polaris may, in the absolute discretion of Polaris, be fulfilled by Polaris itself, by its own employees performing part or all of the relevant service, or by Polaris employing or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 9.2 Where Polaris employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that Polaris shall have no responsibility or liability to its Customer for any act or omission of such third party, even though Polaris may be responsible for the payment of such third party's charges; but Polaris shall, if suitably indemnified against all costs, (including attorney and client costs) which may be incurred or awarded against Polaris, take such action against the third party on the Customer's behalf as the Customer may direct.

10. TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS

Notwithstanding anything to the contrary contained herein the Customer agrees that all goods shall be dealt with by Polaris on the terms and conditions, whether or not inconsistent with these terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to Polaris or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

11. WAREHOUSING

Pending forwarding and/or delivery by or on behalf of Polaris, goods may be warehoused or otherwise held at any place as determined by Polaris in its absolute discretion, at the Customer's expense.

12. INDEMNITY BY THE CUSTOMER

Without prejudice to any of Polaris's rights and securities under these trading terms and conditions, the Customer indemnifies and holds Polaris harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by Polaris arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of Polaris in relation to any goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred –

- 12.1 to any haulier, carrier, warehousemen or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the Customer or by any consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 12.2 to any owner or consignee of such goods who is not the Customer of Polaris where Polaris performs the service of a deconsolidation agent, or any other service; and/or
- 12.3 to any carrier of the goods if Polaris is the consignor or consignee of the goods and/or
- 12.4 in respect of any goods, including radio-active materials, which may or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in anyway whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests.
- 12.5 as a result of the release of any goods by Polaris on instruction from the Customer, without receipt by Polaris of such negotiable and/or other documentation, as pertaining to such goods.

13. LIMITATION OF POLARIS'S LIABILITY

- 13.1 Subject to the provisions of clause 13.2 and clause 14, Polaris shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid –
 - 13.1.1 any negligent act or omission or statement by Polaris or its employees, agents or nominees; and/or
 - 13.1.2 any act or omission of the Customer or agent of the Customer with whom Polaris deals; and/or
 - 13.1.3 any loss, damage or expense arising from or in any way connected with the marketing, labeling, numbering, non-delivery or mis-delivery of any goods; and/or
 - 13.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or
 - 13.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or force majeure beyond the reasonable control of Polaris, including but without limiting the generality of the aforesaid, strikes; lock-outs; stoppages or restraint of labour; flood; acts of God, states or a public enemy; terrorism; war, hostilities, riots, civil disorder, insurrection, embargo, governmental or local authority actions (whether informal or formal government acts) or other similar disruptions or interferences with trade, marine disaster, fire and/or other casualty; and/or
 - 13.1.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to Polaris; and/or
 - 13.1.7 loss of non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
 - 13.1.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as result of Polaris's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; unless
 - 13.1.8.1 such claim arises from a grossly negligent act or omission on the part of Polaris or its employees; and
 - 13.1.8.2 such claims arises at a time when the goods in question are in the actual custody of Polaris and under its actual control; and
 - 13.1.8.3 in the instance provided in clause 13.1.7 above, Polaris receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa and within 14 days after the end of transit where the transit ends at a place outside the RSA.
- 13.2 Notwithstanding anything to the contrary contained in these terms and conditions, Polaris shall not be liable for any indirect and consequential loss arising from any act or omission or statement by Polaris, its agents, employees or nominees, whether negligent or otherwise.
- 13.3 Polaris is not responsible for, and shall not effect, insurance in respect of the provision of any Services or the related goods. However, should insurance cover be required, this needs to be requested in writing to Polaris's insurance brokers, Prestgroup (Pty) Ltd who is an authorized Financial Services Provider under FSP Licence Number 165.

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14. MONETARY LIMITATION OF POLARIS'S LIABILITY

- 14.1 In those cases where Polaris is liable to the Customer in terms of clause 13.1, in no such case whatsoever shall any liability of Polaris, howsoever arising, exceed whichever is the least of the following respective amounts—
- 14.1.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any other purpose connected with their transportation;
- 14.1.2 the value of the goods declared for insurance purposes;
- 14.1.3 double the amount of the fees raised by Polaris for its services in connection with the goods, but excluding any amount payable to subcontractors, agents and third parties.
- 14.2 If it is desired that the liability of Polaris in those cases where it is liable to the Customer in terms of clause 13.1 should not be governed by limits referred to in clause 14.1 written notice thereof must be received by Polaris before any goods or documents are entrusted to or delivered to or into the control of Polaris (or its agents or sub-contractors), together with a statement of the value of the goods. Upon receipt of such notice Polaris may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay Polaris the amount of the premium payable by Polaris for such insurance. If Polaris does not so agree the limits referred to in clause 14.1 shall apply.

15. PURCHASE PRICE AND PAYMENT

- 15.1 Orders are accepted by Polaris on the basis that the prices charged for the relevant Services will be those as set out in Polaris's prevailing price list in force and effect on the date when the Contract comes into existence. Should Polaris have agreed to rates of charge which are less than Polaris's official tariff rate from time to time, then such agreed rates will apply in respect of the goods/transactions to which they relate for the period agreed to between the parties or until such time as revised tariffs are agreed between the parties.
- 15.2 The purchase price for Services to be delivered which are not included in Polaris's prevailing price list, or as separately agreed with the Customer, shall be the prices as contained in Polaris's relevant quotation.
- 15.3 The Customer shall be obliged to pay to Polaris in addition to the said purchase price—
- 15.3.1 the amount of any tax, duty, levy or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force and effect before and after the date the Contract comes into existence;
- 15.3.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of Polaris;
- 15.3.3 any expenses and costs arising as a result of or during the period of any delay caused by the Customer, avoiding Polaris to provide the Services to the Customer on a timely basis.
- 15.4 The purchase price in respect of any Services provided by Polaris to the Customer shall be payable by the Customer to Polaris, at such place or into such bank account as Polaris may direct from time to time, in cash, in South African currency, without deduction or set-off and free of any exchange within the credit terms approved by Polaris. .
- 15.5 Payment must be made in time not to exceed the credit period or credit limit, and be for the whole amount due and payable. If a remittance is not sent then the values will be posted against the oldest debt.
- 15.6 All new accounts will be on COD until credit is approved by Polaris in writing. Polaris will have the right to only release shipping documents to the Receiver/The Customer after payment of all due amounts has been received. Polaris shall have a lien on all shipping documents in respect of which amounts remain due, owing and payable by The Customer to Polaris. Any telex fees or additional courier charges required as a result of late payment by the Customer, and to ensure documents arrive on time at destination, will be for The Customers' account. Polaris will not be liable for any costs as a result of late documentation if payment was not received on time and documents could not be couriered as a result thereof. These rights shall apply not only to COD accounts, but to all overdue accounts.
- 15.7 The Customer has no right to withhold payment for any reason whatsoever and therefore the Customer is not entitled to set off any amount due to the Customer by Polaris against any debt owed by the Customer to Polaris, nor shall any payment be withheld by virtue of any alleged counterclaim against Polaris by the Customer.
- 15.8 In the event of any query and pending that query being resolved in a period not exceeding the payment terms period, the client undertakes to withhold only the part of the due figure on an invoice as may be reasonably deemed to be in dispute. Any queries must be made in writing and will be dealt with in accordance with our standard terms and conditions.
- 15.9 Polaris shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the Customer, or if the Customer acts as an agent for a disclosed or undisclosed principal, as Polaris in its absolute discretion deems fit.
- 15.10 Polaris shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, has been raised and whether or not any notice has been given that further debits were to follow.
- 15.11 Polaris is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.
- 15.12 Notwithstanding any prior dealings between Polaris and the Customer all documents, cash, cheques, bank drafts or other remittances, sent to Polaris through the post shall be deemed not to have been received by Polaris unless and until they are actually received by Polaris.
- 15.13 Any amount due by the Customer to Polaris will incur late interest of prime + 5% per annum , calculated monthly in arrears on the amount due from the date such amount is due until payment thereof. Such interest shall be payable on demand or the date the amount due is paid by the Customer, which ever date is the earlier. This will vary from time to time in line with the prime interest rate.
- 15.14 A certificate under signature of any Director, Financial Manager or Credit Manager of Polaris whose authority shall not be necessary to prove, shall be prima facie proof of the obligation of the Customer towards Polaris and also of the fact that the amount so stipulated is already due and payable.
- 15.15 The Customer renounces the benefits of the legal exceptions, revision of accounts, non numerate petunia (no value received) error calculi (mistake in the calculation of outstanding amounts), and non causal debit (no cause of debt), the full force, meaning and effect of which the Customer acknowledges to know and understand.

16. WARRANTIES & GUARANTEES

- 16.1 No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth herein shall be binding on Polaris.
- 16.2 The Customer acknowledges that Polaris is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement, or otherwise which may have been made at any time by any employee, representative or any person acting or purporting to act for or on behalf of Polaris, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorized by written resolution of the board of directors of Polaris in response to a written enquiry specifying accurately and in complete detail what information is required.

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17. BREACH

- 17.1 If the Customer breaches any of the terms or conditions hereof or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavors to compromise generally with its creditors or does or causes to be done anything which may prejudice Polaris's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered, Polaris shall have the right, without prejudice to any other right which it may have against the Customer, to elect to—
 - 17.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable in future and to claim such amounts as well as any other amounts in arrears and to cease performance of its obligations hereunder as well as under any other contract with the Customer; and/or
 - 17.1.2 to cancel any contract.
- 17.2 No claim will arise against Polaris unless the Customer has given Polaris 30 (thirty) day's written notice to rectify any alleged defect in the Services or breach of contract.

18. GENERAL

- 18.1 The Contract constitutes the whole agreement between the parties and no amendment or consensual cancellation of these terms and conditions or other document issued or executed pursuant to or in terms of this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of the Contract or document issued pursuant to or in terms of a Contract shall be binding on Polaris unless recorded in a written document signed by a director of Polaris.
- 18.2 Polaris shall have the right to institute any action in either the relevant Magistrate's Court or the High Court at its sole discretion.
- 18.3 Through signature of this document, the Customer consents to the jurisdiction of the Magistrate's Court.
- 18.4 Each paragraph or clause in a Contract is severable the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.
- 18.5 The parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, serving of any process and for any other purpose arising from this agreement at their addresses and fax numbers as referred to in the Order or Polaris's invoice.
- 18.6 It is the obligation of the Customer to give Polaris written notice of any changes in company details, contact details or address. Polaris is indemnified against any loss incurred due to a change in ownership or change of address of the applicant, unless written notice of such change is received by Polaris prior to the relevant service being rendered.
- 18.7 Every Contract shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 18.8 The Customer undertakes that no claims shall be made against any director or employee of Polaris which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and hereby waive all and any such claims.

19. COSTS

The Customer shall be liable for all costs incurred by Polaris in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief 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.

20. INTERPRETATION

- 20.1 The headings of the clauses herein are for the purpose of convenience and reference only and shall not be used in the interpretation, nor amplify the terms of these terms and conditions or any clause hereof. Unless contrary intention clearly appears, wording importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include legal entities and vice versa.
- 20.2 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
 - 20.2.1 "Polaris" and "Company" means Polaris Logistics (Pty) Ltd;
 - 20.2.2 "Customer" means any person or entity ordering Services from Polaris as referred to in an Order;
 - 20.2.3 "the Contract" means the sale and purchase agreement of Services which comes into existence upon Polaris's acceptance of an Order, which acceptance needs not be communicated to the Customer.
 - 20.2.4 "Services" means Services to be supplied by Polaris to the Customer as set out in the Contract.
 - 20.2.5 "Order" means the placing of an order or a booking by the Customer to purchase Services from Polaris, whether same is conveyed to Polaris in writing or orally;
 - 20.2.6 "prime rate" means the publicly quoted basic rate of interest per annum from time to time (as certified by any officer of Standard Bank of South Africa Limited whose appointment and authority it shall not be necessary to prove) at which the said bank lends monies in South African Rand on unsecured overdraft to first class corporate borrowers in general on the basis of such interest being compounded monthly in arrear and calculated on a 365 (three hundred and sixty five) day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is sometimes referred to as the prime commercial overdraft rate of interest).
 - 20.2.7 "Owner" means the owner of the goods to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein.

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By signature hereof the Customer binds himself to the terms and conditions contained herein, acknowledging that he has read, understood and accepted them. The Customer also acknowledges the truthfulness and accuracy of the information herein provided. The Customer acknowledges that all business conducted is subject to these standard trading terms and conditions of Polaris Freight Services (PTY) Ltd. This Signatory warrants that he/she is authorised to bind the Customer under these Terms and Conditions. Further, the signatory authorizes, on behalf of the Customer, the bank and trade references as listed in the credit application form, to release credit information to Polaris Freight Services (PTY) Ltd. for use in the evaluation of this credit application, and therefore authorizes Polaris Freight Services (PTY) Ltd. to make contact with these references for this purpose.

Signed: _____ Date: _____

Name printed of signatory _____

Company name _____

Company designation of Signatory (duly authorized)