

**BCSK LTD**  
**GENERAL COLD-STORAGE**  
**and**  
**FREEZING WAREHOUSE**  
**CONDITIONS**

**Version 202203**

**These General Conditions have been filed at the office of TAIBJEE & BHALLA  
ADVOCATES LLP, The Address, 10th Floor, Muthangari Drive and / or  
in the registry of the Chamber of Commerce of Nairobi, and can  
be downloaded from the BCSK website [www.bcskenya.co.ke](http://www.bcskenya.co.ke).**



## Index

Article	Description
Art. 1.	Definitions
Art. 2.	Applicability/scope of these conditions
Art. 3.	Conditions of forwarding and transports, etc.
Art. 4.	Nature of the coldstorage agreement
Art. 5.	Risk and the insurance thereof by the deposittee
Art. 6.	Depositing of the goods
Art. 7.	Inspection of the space in a coldstorage/freezing warehouse prior to the arrival of the goods
Art. 8.	Laws and regulations and inspections by the authorities
Art. 9.	Description of the goods
Art. 10.	Goods of different nature and/or temperature
Art. 11.	Liability for incorrect statements, communications and/or directions
Art. 12.	Special method of storage of goods
Art. 13.	Giving instructions
Art. 14.	Beginning and ending of the storage of the goods
Art. 15.	Agreements concerning the receipt of goods
Art. 16.	Consequences of delay
Art. 17.	Sequence in which vehicles, wagons and ships are handled and other work is carried out
Art. 18.	Delays in delivery or collection of the goods at the deposittee's
Art. 19.	Operating hours
Art. 20.	Inspection of the goods
Art. 21.	Directions on loading and unloading
Art. 22.	Visible condition of the goods on arrival
Art. 23.	Refusal to store goods
Art. 24.	Method of stacking the goods
Art. 25.	Depositor's own responsibility
Art. 26.	Temperature and humidity
Art. 27.	Place of storage and relocation of the goods
Art. 28.	Means of transport, packing materials, containers
Art. 29.	Goods for which charges are to be paid
Art. 30.	Duties, taxes and legal obligations
Art. 31.	Admittance
Art. 32.	Duration of the coldstorage agreement
Art. 33.	Taking back of the goods after termination of the cold-storage agreement
Art. 34.	Premature taking back of the goods by the depositor
Art. 35.	Premature termination of the coldstorage agreement by the deposittee for an urgent reason
Art. 36.	Special measures
Art. 37.	Prohibition of placing space at the disposal of third parties
Art. 38.	Delegation by the deposittee
Art. 39.	Repairs to coldstorage/freezing facility
Art. 40.	Cleaning of coldstorage space
Art. 41.	No obligation to provide replacing cold-storage/freezing space in case of a calamity
Art. 42.	Prices/rates
Art. 43.	Modification of prices/rates
Art. 44.	Operations to be carried out by the depositor
Art. 45.	Terms of payment
Art. 46.	Right of retention, right of lien and pledge
Art. 47.	Issue of warrants
Art. 48.	Notices to warrant holders
Art. 49.	Transfer of ownership of goods entrusted to the deposittee
Art. 50.	Delivery of the goods by the deposittee
Art. 51.	Loss or destruction of documents
Art. 52.	Insurance of the goods entrusted to the deposittee
Art. 53.	Damage to coldstorage/freezing warehouse and its installations
Art. 54.	Claims of third parties
Art. 55.	Description of the deposittee's liability
Art. 56.	Force majeure
Art. 57.	Scope of protective provisions
Art. 58.	Forfeiture of claims against the deposittee
Art. 59.	Partial nullity
Art. 60.	Translations
Art. 61.	Competent judge and applicable law
Art. 62.	Filed conditions and superseded conditions
Art. 63.	Abbreviated reference
Art. 64.	Copyright Notes

Article 1  
Definitions

In these conditions the following terms are understood to have the following meanings:

- a. **“Deposittee”**: the person that accepts goods for storage in the sense of e. of this article.
- b. **“Cold-storage warehouse”**: every room in use at the deposittee's, in which climatization methods facilitate cold-storage and/or processing of goods.
- c. **“Freezing warehouse”**: to this the same definition applies as to the “cold-storage warehouse”, on the understanding however, that the temperature in this room is below 0°C.
- d. **“Cold-storage/Freezing warehouse”**: here the cold-storage warehouse and the freezing warehouse are combined in one designation. In these conditions this designation shall concern situations and terms applying to both the “cold-storage warehouse” and “freezing warehouse”.
- e. **“Storing”**: one or more of the following acts:
  1. the depositing of goods in a cold-storage/freezing warehouse, if and for as far as the depositing is seen to be by the deposittee;
  2. the storing of goods in a cold-storage/freezing warehouse;
  3. the refrigerating or freezing of goods in a cold-storage/freezing warehouse;
  4. the otherwise handling and/or processing of goods in a cold-storage/freezing warehouse or similar room provided and for as far as such is carried out by the deposittee.
  5. the removal of goods from a cold-storage/freezing warehouse, if and for as far as this removal is effected by the deposittee.
- f. **“Cold-storage agreement”**: an agreement concluded verbally, in writing, or tacitly for storage as defined under e.
- g. **“Depositor”**:
  - he who has entered into a cold-storage agreement as referred to under f. of this article with the deposittee;
  - the warrant holder as referred to under i. of this article;
  - he who took over the rights of one of the above-mentioned;
  - any other person who acts or behaves as a person rightfully entitled to such goods; - agents acting as such;
  - forwarding agents;
- h. **“Warrant”**: a writing bearing the superscription “Ceel” respectively “Delivery Order”, provided with a legally valid signature by or on behalf of the deposittee, in which it is stated that the holder thereof is entitled to receive goods of a quantity mentioned therein of a kind mentioned therein
- i. **“Warrant holder”**: he who makes himself known to the deposittee as a holder of a warrant by producing said warrant.
- j. **“Warrant holder last known to the deposittee”**: he to whom the warrant has been issued and subsequently the warrant holder whose written request to the deposittee to be treated as such bears the most recent date, on the understanding, however, that the deposittee is entitled, but not obliged, to regard a different person as such if he has reason to presume that this latter person is the last warrant holder, all this in accordance with the principles of justice and equity.
- k. **“Goods”**:

This does not denote the legal notion of “goods” but the meaning given thereto in commerce for commercial goods.
- l. **“Storage”**: Where these Conditions refer to “storage” this may also apply to so-called “dry” storage, both indoors and outside, except in case of conditioned accommodation.

## Article 2

### Applicability/scope of these conditions

- 1. Every storing by a depositee and every order thereto as well as every offer submitted in connection thereupon shall be governed by these General Conditions.**
- 2. The application of other conditions of the depositor's is expressly excluded, unless the depositor expressly notifies the depositee in writing not to accept this BCSK conditions, and that they are to be replaced by his General Conditions, and the depositee has expressly agreed thereto in writing.**
- 3. By the simple fact of depositing the depositor submits to these conditions. A separate, written statement is not required therefor.**

## Article 3

### Conditions of forwarding and transports, etc.

- 1. If any forwarding work is carried out, it shall be carried out by the depositee and/or other persons acting on his behalf on the BCSK conditions. In the event of any conflict between any provisions of the latter conditions and the BCSK conditions, the BCSK conditions shall prevail.**
- 2. Should any stevedoring work be carried out, it shall be carried out by the depositee and/or other persons acting on his behalf on the basis of the BCSK conditions, completed by the General Conditions of the Kenyan Stevedores. In the event of any conflict between any provision of the latter conditions and the BCSK conditions, the BCSK conditions shall prevail.**
- 3. All transports, which the depositee and/or others on his behalf undertake, shall be subject to the General Transport Conditions (AVC conditions), for as far as domestic transport is concerned, and the CMR conditions for as far as international transport is concerned. In the event of any conflict between any provisions of the AVC or CMR conditions and the BCSK conditions the BCSK conditions shall prevail.**
- 4. If shipbroker's work is carried out, it shall be carried out by the depositee and/or other persons acting on his behalf on the basis of the BCSK conditions, completed by the latest General Conditions and Rules for Kenyan Shipbrokers and Agents. In the event of any conflict between any provisions of the latter conditions and the BCSK conditions the BCSK conditions shall prevail.**

## Article 4

### Nature of the cold-storage agreement

- 1. The cold-storage agreement shall, in so far as it applies to storage of goods and making available space in a cold-storage/freezing warehouse, always be an agreement of depositing, regardless of whether specified or unspecified space in a cold-storage/freezing warehouse is made available to the depositor.**

- 2. If an agreement should be in place under which a certain closed accommodation is provided by the depositee, article 46 of these conditions shall apply regardless of that (right of retention and right of lien). The goods in the accommodation provided shall be on the depositee's premises, so that the right of retention and right of lien apply in full.**

#### Article 5

Risk and the insurance thereof by the depositee

- 1. All storing and/or processing of goods in a cold storage warehouse/freezing accommodation shall take place at the expense and risk of the depositor. At all times the depositor is to have himself effectively insured against any risk that may affect the goods stored and/or provided for processing during the term of the storage agreement.**
- 2. In this connection article 52 of these BCSK conditions is referred to also.**
- 3. When insuring the goods stored and/or provided for processing the depositor is to take into consideration that the depositee has to possibility to store said goods elsewhere as provided for in article 27 of these BCSK conditions.**

#### Article 6

Depositing of the goods

- 1. The depositor shall see to it that the goods delivered are delivered free of charge by him or on his behalf at the cold-storage/freezing warehouse.**
- 2. On delivery of the goods at his premises the depositee shall provide to the depositor a receipt. Barring any other convincing evidence this receipt shall be the evidence that the goods described therein have been received for storage and/or processing by the depositee for the account of the depositor stated therein.**
- 3. If it has been agreed that delivery of said goods will be taken by the depositee at a different location than the location mentioned in the first paragraph of this article, and that they will be transported to the cold-storage/freezing warehouse, the charges/rates current for said transport shall be charged to the depositor.**
- 4. If goods - before they are accepted by the depositee - are to be supplied with accompanying documents, safety regulations and/or documentation due to instruction by the authorities, or if they should be subject to any other regulation (e.g. method of packing/coding), then the depositor is to comply with that himself. Therefore the depositee shall never be liable for any damage that may be caused to the depositor due to any noncompliance with any regulations (by the authorities) on the part of the depositor.**
- 5. Depositor indemnifies depositee against any (financial) consequences which may result from the nonobservance of the obligations referred to in paragraph 4 of this article**

#### Article 7

Inspection of the space in a cold-storage/freezing warehouse prior to the arrival of the goods

- 1. Prior to the delivery of his goods the depositor shall have the right to inspect the cleanliness, suitability and condition of the space in the cold-storage/freezing warehouse that is to be made available to him, after he has made an appointment to that effect with the depositee.**
- 2. If the depositor should omit such an inspection or make no objections to the cleanliness, suitability or condition of the space to be put at his disposal - except in cases referred to in article 27 of these General Conditions- the depositee has fulfilled the obligation by making available a clean space that is suitable for the storage of the goods concerned. The depositee shall not be liable for damage or loss on that account.**

#### Article 8

Laws and regulations, and inspections by the authorities

- 1. Storage shall be subject to the applicable laws, regulations and directions and/or instructions provided by the authorities.**
- 2. If such laws, regulations or directions or instructions provided by the authorities should be changed after the point in time at which a cold-storage agreement was made, such modifications shall nevertheless be deemed to be a part of this agreement.**
- 3. If such modifications should cause a change in costs, the depositee shall have the right to change the price of rate agreed on accordingly, taking effect on the date of said modification.**
- 4. If, due to an inspection by the authorities, such as Customs or "Health Government", extra, unforeseen work is to be carried out, the depositee shall have the right to charge any cost in connection with that to the depositor.**

#### Article 9

Description of the goods

- 1. On entering into the cold-storage agreement the depositor shall provide to the depositee a proper, sufficiently detailed written description of the goods stating the different kinds, qualities, weights, values and quantities, and further any other particulars and/or specific properties, the knowledge of which may be important for the depositee for the proper execution of the cold-storage agreement.**
- 2. If the goods concerned should be covered by the "Law on Dangerous Substances" or any other law, including laws regarding waste products and/or chemicals, the depositor is obliged to explicitly report this to the depositee in writing. The depositor shall expressly indemnify the depositee against any (financial) consequences which may be caused by non-compliance with this obligation.**
- 3. In addition to the details on the packages in questions, the depositor shall state the individual weights of any packages weighing more than 1.000 kilograms each.**

- 4. If the depositee should take delivery of goods of which the full particulars concerning kind, quality, nature or properties have not been stated to the depositor, the depositee shall not be considered to have knowledge of these particulars by the simple acceptance of said goods. The same applies if, on delivery, the depositor should not provide the depositee with that information which is reasonably required to facilitate correct storage.**

#### Article 10

##### Goods of a different nature and/or temperature

- 1. The depositee shall not be obliged to accept goods of which the kind, quality, weight, quantity and/or value differ from the original description or do not meet the requirements in connection therewith. The decision on this shall be made by the depositee, always in accordance with the principles of justice and equity.**
- 2. If the depositee should nevertheless agree to storing or processing such goods, any extra work necessary for preparing, cleaning or changing of the space made available for that purpose shall be carried out by or under supervision of the depositee, which shall take place at the expense and risk of the depositor. The depositor shall be notified of this as soon as possible.**
- 3. If the depositee should find that the product temperature differs from the temperature stated, the depositee shall have the right to adjust the temperature of the goods to the product temperature prior to storing said products in a cold store. The depositee shall notify the depositor of this. Any cost in connection with this shall be charged to the depositor according to rates as customary in the industry. The depositor shall be notified of this as soon as possible.**

#### Article 11

##### Liability for incorrect statements, communications and/or directions

- 1. The depositor shall be the sole party responsible for a correct and full statement of the goods offered for storage or processing by the depositor, and the packaging containing said goods.**
- 2. The depositee shall never be liable for the consequences, however caused, of incorrect, misleading and/or incomplete statements, communications and/or directions provided to him by or on behalf of the depositor concerning the goods, the packing material or the containers, nor for the consequences for or defects in the goods, the packing material or the containers.**
- 3. The depositor concerned shall indemnify the depositee against any such consequences, however caused.**



## Article 12

### Special method of storage of the goods

1. **If, at the time at which the goods are delivered for storage or processing, no written instructions were provided to the depositee by the depositor, the depositee shall store and/or process said goods according to his own views and in a way as is customary in the industry.**
2. **If, in the opinion of the depositor, a special method of storage of the goods should be required, the depositor shall at all times promptly notify the depositee thereof in writing, so as to enable the latter to take the required preparatory measures. Failing this notification the depositee shall not be liable for losses and/or damage, however caused, incurred during the storing of the goods concerned.**
3. **If the depositor demands a special method of storing the goods by the depositee, or if said method should be required due to the nature of the goods, any additional cost in connection with that shall be borne by the depositor.**

## Article 13

### Giving instructions

**All enquiries, orders, instructions, offers, requests and notifications intended for the depositor, especially with respect to the temperature in which the goods must be stored, must at all times be addressed or given to the local office of the depositor in writing. Nonobservance of this article on the part of the depositor is at depositor's risk and for his account and can never be relied upon as against the depositee.**

## Article 14

### Beginning and ending of the storage of the goods

1. **The storage and/or processing of the goods by the depositee has commenced:**
  - a. **if, when being deposited, the goods are unloaded by employees of the depositee; as soon as those employees have taken hold of the package;**
  - b. **if, when being deposited, the goods are not unloaded by employees of the depositee; as soon as the employees that carry out the unloading have placed a package of the goods in the proper place in the cold-storage/freezing warehouse.**
2. **The storage and/or processing of the goods by the depositee has ended:**
  - a. **if, when being removed, the goods are loaded by employees of the depositee; as soon as those employees have placed the package concerned of the goods at the appropriate place, i.e. either in the vehicle or vessel or in another place for removal;**
  - b. **if, when being removed, the goods are not loaded by employees of the depositee; as soon as the package concerned of the goods has been taken hold of by the employees that carry out the removal.**
3. **Without prejudice to the provisions in article 45 of these General Conditions storage charges and additional cost shall be payable to the depositee for the full period for which the space for the relevant goods was put at the depositor's disposal.**

## Article 15

### Agreements concerning the receipt of goods

**If goods are received by the depositee from ships, wagons or vehicles the depositee shall only be obliged to make available berths for ships and facilities for receiving loads from wagons or vehicles if this had been arranged with the depositee beforehand.**

## Article 16

### Consequences of delay

- 1. The depositee shall not be liable - not even if space was booked beforehand - for delay, loss of time, expenses or damage of whatever nature caused to any person, due to any berths or places of loading and unloading being not accessible or not usable or already taken.**
- 2. If ships, vehicles and/or wagons should not arrive or cannot be handled at the appointed time or if they should not be able to reach their berths or places of loading and unloading in time, for whatever reason, the depositee shall be entitled to damages, demurrage and/or compensation of unnecessary expenses, loss of time and/or other charges of whatever nature resulting therefrom, if the depositee cannot be held responsible for this.**

## Article 17

### Sequence in which vehicles, wagons and ships are handled and other work is carried out

- 1. Under normal circumstances vehicles, wagons and ships shall be handled by the depositee in the sequence of their arrival in the yard or at the quay of the yard.**
- 2. The depositee reserves the right to alter this sequence, if he reasonably considers it necessary to change it in order to comply with the regulations and/or directions of the Customs, the Food and Drug Inspection or other authorities, or if special arrangements must be made to promote a smooth traffic of goods, or if - in accordance with the principles of justice and equity - other legitimate reasons require this.**
- 3. The depositee shall not be obliged to pay or repay demurrage or expenses or compensation for loss of time or any other kind of compensation on account of delays or interruptions in connection with the operations carried out by the depositee, unless in cases of gross negligence or design on the part of the depositee.**

## Article 18

### Delays in delivery or collection of the goods at the depositee's

**If the depositor advises the depositee that the goods will be delivered or collected at the latter's place at a certain time, and this should require special activities or effort on the part of the depositee, the depositor, if the latter fails to deliver or collect these goods in a proper manner and in time, shall be liable for any damages and cost resulting from that and shall indemnify the depositee against any claims which third parties should make against the depositee in connection therewith.**

## Article 19

### Operating hours

- 1. Unless agreed on otherwise in writing all operations to be carried out by the depositee to or in connection with the goods shall be carried out on working days during the hours at which the cold-storage/freezing warehouse is normally opened.**
- 2. If, due to regulations or measures of the authorities, unforeseen circumstances, either in the interest of the goods or the depositor, any operations as referred to in the first paragraph are to be carried out at other times than those mentioned there, the depositee shall be authorized, if necessary without prior consultation with the depositor, to carry out said operations out of normal working hours.**
- 3. If the depositor demands that work be carried out outside regular working hours it will be the discretion of the depositee to comply with a request to that effect or not. The depositor shall, however, not refuse but on reasonable grounds.**
- 4. Any extra expenses incurred by the carrying out of operations outside regular working hours shall be borne by the depositor.**

## Article 20

### Inspection of the goods

- 1. When receiving the goods the depositee shall determine the number of packages, unless the nature or composition of the parcel makes the determination of the number of packages infeasible for practical reasons or of such cannot be reasonably required from the depositee, in which case the weight of the parcel will be determined by the latter.**
- 2. The depositee shall neither be obliged to inspect, weigh or measure goods given into his care, nor to examine those goods in order to verify their nature, unless the depositee has received a written order to that effect and without prejudice to the provision in paragraph 1 of this article.**
- 3. If an order as referred to in paragraph 2 of this article should be given, and if such a verification should require specific expertise, said expertise shall be hired by the depositee the cost of which is borne by the depositor. The depositee shall not be liable for the conclusions of the expert hired.**
- 4. The depositee shall, however, at all times be entitled to inspect, weigh or measure the goods or to ascertain the nature thereof in order to verify the particulars received from the depositor.**
- 5. If the depositee reasonably doubts whether the contents and nature of the goods had been stated correctly, the depositee shall at all times be entitled but not obliged to open packages or containers and/or draw a sample from them.**
- 6. If, in the cases as mentioned in the previous paragraphs of this article, the depositee should find that the quantity, weight, measurement or nature of the goods have been stated incorrectly the depositee shall be entitled to rescind the cold-storage agreement taking effect immediately. Any cost of the examination and any damage that will be or has been caused to the depositee as a result thereof, shall be borne by the depositor.**

- 7. The depositee shall never be responsible to the depositor for the description and/or designation of the goods taken in storage.**
- 8. The information obtained by weighing concerning the gross weight of the goods may be used by the depositee as a basis for the calculation of the payment which he is entitled to receive under the coldstorage agreement.**
- 9. The depositee shall not subject the goods offered to him for storage and/or processing to any other inspections on receipt than those concerning number of packages, weight and externally visible characteristics concerning nature and type. The depositee shall not be obliged to carry out further inspections, unless parties agree otherwise.**

#### Article 21

##### Directions on loading and unloading

- 1. If parties have agreed that the loading and/or unloading of vehicles, wagons or ships shall be carried out by employees of the depositee's, the depositor shall be required to see to it that the depositee will receive clear and prompt directions concerning the manner of loading and unloading and if a load consists of several parcels on delivery which goods belong to which of the individual parcels.**
- 2. If the depositor has failed to provide prompt and adequate directions as referred to in the previous paragraph of this article, and if parcels have been mixed up or loaded or unloaded incorrectly as a result of that, the depositor shall owe the depositee a separate compensation for any sorting out or different loading or unloading of the parcels; the depositee shall never be liable for any losses of any kind which may be caused by any mix-up of said parcels or their incorrect loading or unloading.**
- 3. If the loading of the goods should be carried out by the depositee, this shall always take place as ordered by the depositor or the forwarder hired by the latter. Therefore the depositee shall never be liable for any overloading, and the depositor shall expressly indemnify the depositee against this.**
- 4. If loading or unloading should take place by or as ordered by the depositor the appointment of the moment of loading and/or unloading shall be the depositor's risk. The depositee shall never be liable for any damage caused by:
  - a) an incorrect moment of loading and/or unloading;**
  - b) an excessively long period on loading and/or unloading platforms;**
  - c) the ambient temperature at the time of the loading and/or unloading.****

## Article 22

### Visible condition of the goods on arrival

- 1. Unless agreed upon otherwise the goods shall be delivered to the depositee at the depositee's location in a good and if packed properly packed condition, and clearly marked.**
- 2. If a so-called BAR code has been applied, this code has to be applied at an accessible position, in such careful manner that the reading of said code by means of a scanner is possible.**
- 3. If goods should arrive with visible damage on the outside or defects or without clear marks, the depositee shall be entitled to refuse delivery of these goods. Such refusal shall always be motivated by the depositee.**
- 4. If goods should arrive in a damaged or defective condition which is visible on the outside, the depositee shall be entitled, but not obliged, to promote the interests of the depositor at the latter's expense and risk against the carrier or others, and to provide evidence concerning their condition, however, without the depositor being able to derive any right from the manner in which the depositee has fulfilled this task.**
- 5. The depositee shall inform the depositor as soon as possible of the measures taken without the latter being able to lay any claim against the depositee on the grounds of the omission of such a notification.**
- 6. Any cost in connection with the acts on the side of the depositee as referred to in this article shall be borne by the depositor.**

## Article 23

### Refusal to store goods

- 1. The depositee shall have the right to refuse goods offered for storage and/or processing. The depositee shall make his decision on the basis of the principles of justice and equity.**
- 2. In addition to the cases as referred to in article 20, paragraph 6, and 22, paragraph 3, goods shall at all cases be refused if:**
  - a) the goods do not meet the requirements and regulations referred to in articles 8 and 9;**
  - b) the goods may cause danger and/or damage for other goods stored in the cold-storage/freezing facility;**
  - c) the goods are not correctly and/or properly packed;**
  - d) the goods are perceived as being not in order;**
  - e) the goods are not delivered at the temperature as prescribed/agreed on;**
  - f) the origins of the goods cannot be stated and proven at a request to that effect.**
- 3. The depositee shall have the right to refuse storage of goods which in his judgment may cause a danger or damage to other goods and/or persons or to the cold-storage/freezing warehouse and/or the refrigeration installation due to their nature, condition or otherwise.**

## Article 24

### Method of stacking the goods

- 1. The method of stacking the goods shall be determined by the depositee in accordance with proper professional practice.**
- 2. If in the interest of the goods, on account of their nature or packing or any other reason, it should be necessary to stack the goods by a different method than might reasonably have been expected by the depositee, any additional storage charges and extra expenses resulting from that shall be charged to the depositor.**
- 3. In case the goods are delivered on pallets stacked by the depositor, but safety requirements demand a different way of stacking or extra precautions, the goods shall be re-stacked by the depositee at the expense of the depositor, and/or those precautions shall be taken.**

## Article 25

### Depositor's own responsibility

- 1. Submitting orders to the depositee, whether detailed or not, shall not release the depositor from the own responsibility and care to inspect the goods offered for storage and/or processing in the cold-storage/freezing warehouse from time to time if necessary.**
- 2. The above especially applies to all those cases in which a critical temperature range and/or other critical circumstances (e.g. air humidity and ventilation) which may be important for the proper storage of the goods apply.**

## Article 26

### Temperature and humidity

- 1. The temperature related terms used in this article respectively these general conditions are defined as follows:**
  - Ambient temperature:**  
The ambient temperature as recorded by the Kenyan Meteorological Department (KMD) on any day and at any time at that day in any region of Kenya.
  - Storage temperature:**  
The temperature expressed in °C as required by the depositor under which the goods are to be stored or processed in a cold-storage/freezing warehouse. This temperature shall be recorded by the depositee.
  - Product temperature:**  
The temperature, as constant as possible, expressed in °C as required by the depositor, measured in the core of a product or measured in the core of a packing unit. The product temperature required is reached after the goods have been stored in a cold-storage/freezing warehouse for at least several weeks. The product temperature is only recorded and registered if this was expressly agreed upon at the time that the storage agreement was entered into.

- 2. If the depositor and the depositee have not agreed upon any storage temperature in the sense of paragraph 1 of this article, at which the goods are to be stored and/or processed, the depositee shall determine the storage temperature to the best of his knowledge and data gathered by experience. The depositee shall not be liable for any damage caused by the storage temperature chosen in this way.**
- 3. The depositee shall inspect the storage temperature at least twice every 24 hours except on days on which the cold-storage/freezing warehouse is normally closed and see to it that this temperature is maintained for as much as possible. Minor fluctuations, as they may occur during depositing and delivering goods, opening doors, defrosting air coolers, freezing refrigerator spirals from snow and ice, etc., shall not be considered deviations.**
- 4. Objections to deviations of the storage temperature agreed upon must be submitted to the management of the coldstorage/freezing warehouse in writing immediately after their detection.**
- 5. A specific air humidity shall not be guaranteed, unless explicitly agreed upon and barring any fluctuations allowed under such a guarantee.**
- 6. If the depositor offers the depositee goods for storage which may be damaged by carbon dioxide (CO<sup>2</sup> damage), a critical storage temperature or which may require other special attention, the depositor shall expressly notify the depositee of this in advance. Failing such notification the depositee shall not be liable for any damage caused by such circumstances as referred to herein.**

#### Article 27

##### Place of storage and relocation of the goods

- 1. The depositee shall at all times be authorized to store the goods in such space in any coldstorage/freezing warehouse as he may make available therefor. The starting-point for that is that in general terms the space must be suitable for the purpose which both parties have for the cold-storage agreement.**
- 2. Unless the parties have agreed upon otherwise in writing the depositee shall at all times be free to transport the goods offered to him for storage to a different coldstorage or freezing warehouse, provided it is suitable for the type of goods concerned. In that case the original depositee shall remain the depositee and the original depositor shall remain the depositor. Except in case an immediate transfer of the goods to a different cold-storage/freezing warehouse is unavoidable, the depositee shall notify the depositor of its intentions by fax or e-mail prior to the transfer of the goods, stating the address of the new cold-storage/freezing facility, in order to enable the depositor to inspect the new cold-storage/freezing accommodation. If the depositor does not object in writing to this intention within 12 hours (on business days) after receipt of the notification as referred above, the depositor shall be considered to have approved of the transfer. If the depositee has notified the depositor of the change, article 7 shall apply to the full extent.**
- 3. Both the cost of this relocation and the transport risk shall be borne by the depositor only if the relocation is to take place in the interest of the goods or due to circumstances that cannot be held against the depositee, such in accordance with the principles of justice and equity.**

## Article 28

### Means of transport, packing material, and containers

- 1. The depositor shall see to it that the means of transport, packing material and/or containers that are put available by him or on his behalf for the transport of the goods, are at all times complete, including all accessories, and in a clean, closed and sound condition.**
- 2. The mere acceptance of such means of transport, packing materials or containers shall under no circumstances imply that the depositee tacitly acknowledges that the requirements mentioned in the above paragraph have been fulfilled.**
- 3. If the means of transport, packing materials or containers should not meet these requirements, the depositee shall not be liable for damage or loss of any kind caused by that, and the depositor shall indemnify him against and be liable for any consequences, however caused, resulting from that.**
- 4. If, due to any regulations by the authorities, packing materials supplied by or on behalf of the depositor should be removed and/or destroyed in a prescribed manner, any cost in connection with that shall be borne by the depositor.**

## Article 29

### Goods for which charges are to be paid

- 1. The depositee shall under no circumstances be obliged to accept goods for which freight, taxes, duties, fines and/or other charges or expenses of whatever kind must be paid, unless adequate security is provided by the depositor.**
- 2. The depositor shall be liable for and indemnify the depositee against any freights, taxes, duties, fines and/or other charges or expenses of whatever kind that are to be paid in connection with the goods.**
- 3. Any freights, taxes, duties, fines and/or other charges or expenses however named, which are to be paid on arrival or afterwards, must be paid in advance by the depositor. Since this advance is a short-term advance because of its nature, no interest on said advance shall be refunded.**
- 4. The depositee shall never be liable for, nor obliged to reclaim freight, taxes, duties, fines and/or other charges or expenses however named that have been overpaid by him, unless the depositee, such in accordance with the principles of justice and equity, has not observed the required care. The depositor shall accept invoices in connection with such charges or expenses submitted to him as authentic and correct, unless the depositor has objected thereto beforehand.**



## Article 30

### Duties, taxes and legal obligations

#### Customs warehouse

- 1. If goods are subject to Customs and Excise Duty regulations or to other tax regulations and/ or regulations by the authorities (e.g. Agriculture regulations), the depositor shall at all times be obliged to supply any information required by the depositee in order to enable him to submit the statements concerned.**
- 2. The depositor shall be liable for any incorrect information that may have been provided by him or on his behalf for such purposes.**
- 3. The depositee shall not be responsible in any way for the correctness of the information stated on a consignment note. The depositee shall only be obliged to check weights, the number of packages and descriptions of the goods, the latter only if this is outwardly perceptible to him. The depositor expressly indemnifies the depositee against any damage that could result from consignment notes that are not correctly completed on the basis of statement of the depositor.**
- 4. The depositee shall never be liable for inspecting, accepting, keeping, completing or delivering of any document whatsoever, nor for the contents of such documents, unless under a legal obligation or if such has been expressly agreed upon in writing as an operation to be carried out by the depositee.**
- 5. If goods are to be stored in a bonded or non-bonded customs warehouse at the depositor's request, these goods must always be correctly and sufficiently individually marked, especially if their packages are (practically) identical, and if their contents cannot be easily verified. Damaged due to confusion and/or mix-up of goods which do not meet these conditions shall not be borne by the depositee.**

## Article 31

### Admittance

- 1. Admittance to the premises and the buildings of the cold-storage/freezing warehouse shall only be permitted to the depositor or someone on his behalf with a written permission given by the depositee, or in case a warrant is outstanding on presentation of the warrant, and exclusively during the normal opening hours of the cold-storage/freezing warehouse. The depositor or the person representing him shall at all times be required to report to the management prior to a visit to the cold-storage/freezing warehouse.**
- 2. Any persons representing the depositor or acting on his instructions, present in the yards of the depositee, including the employees and those accompanying the employees of the ships, wagons and vehicles arriving in the yards are obliged to closely observe the applicable rules, prescriptions, formalities and instructions of the Customs, Food and Drug Inspection and other authorities (e.g. AID and "Health Department") concerning hygiene, order and safety.**
- 3. The provision of paragraph 2 also applies to directions or instructions given by or on behalf of the depositee.**

- 4. Admittance to the yards shall only be granted under the guidance of persons appointed for that purpose by the management of the coldstorage/freezing warehouse.**
- 5. All persons and vehicles shall enter the yards of the depositee at their own risk. The depositee shall never be liable for loss or damage of any kind suffered in this connection.**
- 6. The depositor shall be liable for any loss or damage of any kind caused to the depositee of whatever nature, caused by acts or omissions of any person whether in the employment of the depositor or not who is present in the yards of the depositee in connection with the depositor's instructions or consent.**
- 7. The depositor shall indemnify the depositee against any claims of whatever nature that may be filed against the depositee by third parties and that result from nonobservance by the depositor or persons appointed by him of the directions and instructions described herein.**

#### Article 32

Duration of the coldstorage agreement

- 1. A coldstorage agreement that has been entered into for a limited period of time shall end by expiry of that limited period unless parties agree otherwise.**
- 2. If a coldstorage agreement has been entered into for an unlimited period of time the parties shall have the right to terminate the agreement with due observance of a one month's notice. Termination must be announced by registered letter against the end of a calendar month.**
- 3. If warrants have been issued these shall be sent to the depositee within 24 hours after termination, so that the termination can be noted on them. Lack of such a note cannot, however, be held against the depositee.**

#### Article 33

Taking back of the goods after termination of the coldstorage agreement

- 1. Without prejudice to the provisions of article 35 of these General Conditions the depositor is obliged to take back his goods no later than at the last on the day of the period covered by the agreement, and after payment of all that which he may owe, under whatever title, to the depositee, and after returning the warrant or delivery order, if it has been issued for that purpose.**
- 2. If the depositor should fail to fulfil one of these obligations the depositee shall be entitled to take any such measures as necessary for the clearing of the coldstorage/freezing space made available, including transfer of the goods to a different cold-storage/freezing space, all this at the expense and risk of the depositor. In addition to that the depositee shall then be entitled to a compensation of any direct and indirect cost and damage of whatever nature resulting from that act of negligence.**

#### Article 34

Premature taking back of the goods by the depositor

**With due observance of the provisions of these General Conditions the depositor shall at all times have the right to take back his goods after payment of any amounts which he may owe to the depositee on whatever grounds.**

## Article 35

### Taking back of the goods after termination of the coldstorage agreement

- 1. The depositee shall at all times have the right to terminate the cold-storage agreement prior to the expiry date or the completion of the operations without serving notice upon the depositor, if there should be an urgent reason therefor, such in the judgment of the depositee.**
- 2. An urgent reason shall be considered to exist if, in accordance with the principles of justice and equity:**
  - a. the depositor has not in time or not sufficient fulfilled one of the conditions of these General Conditions or one of the conditions of the coldstorage agreement or has acted contrary to it;**
  - b. the presence of the goods cause fear of loss of or damage to other goods or to the cold-storage/freezing warehouse or fear of death or physical injury of persons or animals;**
  - c. the goods are perishable or if changes occur therein that lead to the assumption that they are deteriorating, and the depositor omits to give clear instructions to prevent or neutralize this.**
  - d. the coldstorage space used for the execution of the coldstorage agreement is wholly or partially destroyed as a result of fire or has become unfit in any other way for coldstorage/freezing, respectively coldstorage/freezing operations.**
  - e. if the goods are goods that have been banned by a competent government authority, or if said competent government authority has ordered that the presence of said goods in Kenya is not allowed.**
  - f. if the depositor is declared bankrupt or if the depositor has asked for a suspension of payments.**

## Article 36

### Special measures

- 1. Without prejudice to what has been provided in the previous article the depositee shall have the right at the expense and risk of the depositor to take any immediate measures which the depositee may consider necessary, including the destruction of the goods, if, in accordance with the principles of justice and equity, omission of such measures may cause danger of loss of or damage to the goods themselves, of or to other goods, or of or to the coldstorage warehouse, or danger of death or physical injury of persons or animals. Any cost in connection with this, including those of destruction, shall be borne by the depositor.**
- 2. The depositee shall notify the depositor or if a warrant is outstanding the warrant holder last known to him of the measures that have been taken.**
- 3. In case of destruction of the goods such a notice to the warrant holders shall be given in the manner as specified in article 48 of these General Conditions.**
- 4. The depositee shall at all times be authorized to have the goods that have been removed from the coldstorage warehouse under this article sold in a public sale at the expense of the depositor. If great urgency should be necessary due to the condition of the goods, a private sale shall be considered the same as a public sale in order to limit damage. The price of said private sale shall at least be the average of the value as assessed by two independent assessors at a forced private sale.**

- 5. The depositee shall not proceed to a public sale until after the depositor, if possible, has been summoned by a registered letter, or in a case as referred to in article 48 of these General Conditions has been demanded by means of an advertisement, to collect the goods against payment of any amounts owed to the depositee with regard thereto, and the depositor has failed to comply with this within one week after the abovementioned registered letter was sent, respectively the advertisement appeared, on the understanding however, that if, in accordance with the principles of justice and equity, the condition of the goods makes it necessary, the sale may take place within a shorter period of time.**
- 6. The depositee shall be obliged to transfer to the depositor the proceeds of the goods after deduction of any costs caused in connection with said goods and any claims against the depositor, if possible within one week after receipt. If the latter is not possible the amount will be kept in deposit.**
- 7. If preservation of the goods stored requires additional operations or incurring extra cost, the depositor shall be obliged to pay to the depositee any cost in connection therewith, even if these additional operations/cost should ultimately not have achieved the desired result.**

#### **Article 37**

Prohibition of placing space at the disposal of third parties

**Without the prior written approval of the depositee the depositor shall not place at the disposal of third parties the coldstorage/freezing space placed at his disposal.**

#### **Article 38**

Delegation by the depositee

**The depositee shall have the right to delegate his rights and obligations under a coldstorage agreement to a third party, provided that the continuity of the existing cold-storage agreement is guaranteed.**

#### **Article 39**

Repairs to the coldstorage/freezing facility

- 1. Without prejudice to the provisions in the articles 55 and 56 of these General Conditions the depositee shall at all times properly maintain the coldstorage facility and keep it in dependable working order.**
- 2. The depositee shall at all times have the right to carry out without delay any such repair, rebuilding and/or alteration work on the coldstorage/freezing warehouse as is reasonably necessary in order maintain it and to keep it in dependable working order.**
- 3. The depositor agrees to it that the depositee shall relocate the goods of the depositor to a different cold-storage/freezing facility of his or a third party for the purpose of repair, rebuilding and/or alteration work, even if it would have been agreed that the goods would be stored in a particular coldstorage space. The obligation of the depositor's as formulated in article 27, paragraph 2 shall also apply under these circumstances.**

- 4. Without prejudice to the provisions in article 55 of these General Conditions the depositor shall waive the right to claim any compensation for loss or damage caused directly or indirectly by such repair, rebuilding, and/or alteration work, and for temporary loss of availability of the cold-storage/freezing space put available to him.**

#### **Article 40**

##### **Cleaning of cold-storage/freezing space**

- 1. Unless expressly agreed on otherwise in writing, at the end of the cold-storage agreement the depositor shall be obliged to pay to the depositee any cost in connection with the cleaning and/or repairs of cold-storage/freezing space used for his goods, to the extent that those costs are the result of (unforeseen) circumstances caused by or in connection with the depositor and/or his goods.**
- 2. If special measures have been taken by the depositor to the space put at his disposal, the situation as it was at the time at which the cold-storage agreement was entered into, is to be restored, unless parties should have agreed on otherwise.**

#### **Article 41**

##### **No obligation to provide replacing cold-storage/freezing space in case of a calamity**

**If the coldstorage space that has been placed at the disposal of a depositor is completely or partially damaged or becomes unsuitable for coldstorage/freezing or coldstorage/freezing operations due to fire or any other unforeseen circumstance, the depositee shall not be obliged to make available any other coldstorage/freezing space. Under those circumstances however, the depositee shall do all that which is reasonably necessary in order to find replacing cold-storage/ freezing space.**

#### **Article 42**

##### **Terms of payment**

- 1. Unless a price/rate has been explicitly agreed the depositor shall be obliged to pay the prices/ rates that are usually charged by the depositee and are customary in the industry.**
- 2. The prices/rates agreed upon shall only concern such operations of the depositee as stated in the coldstorage agreement. In case the operations have not been specified, only the following are meant: the depositing, the refrigerating or freezing, the storage and the removal of the goods.**
- 3. Any other cost, such as cost of relocation, handling and/or processing, even if not referred to in these General Conditions, shall be charged at the rates and on the conditions usual with the depositee and customary in the industry.**

#### Article 43

##### Modifications of prices/rates

- 1. If the cost price of the depositee should be affected by changes in the cost of labour or any other factor beyond his control, or in case of levies by the authorities, the depositee shall be entitled to alter the prices/rates agreed upon with the depositor accordingly.**
- 2. Such modifications of prices/rates shall as soon as possible be brought to the attention of the depositor or in case a warrant is outstanding to the warrant holder last known to the depositee and shall become effective not later than three months after the notification.**
- 3. If the prices of fuel are raised by more than 5% at once, the depositee shall be entitled to immediately pass any and all financial consequences of this price increase on to the depositor, that is as of the date at which the new energy prices shall apply to the depositee.**

#### Article 44

##### Operations to be carried out by the depositor

- 1. If the depositor wishes to have operations carried out to his goods, which operations should be beyond the storage already agreed upon, these shall be assigned to the depositee at the prices/rates and on the conditions of the cold-storage agreement or, if this agreement does not refer to said prices/rates, at such prices/rates as are customary in the industry. These operations shall also be covered by the General Conditions, on the understanding however, that any operations which the depositee does not wish to carry out, shall be carried out with his consent by or on behalf of the depositor under the supervision of the depositee and against payment for this supervision.**
- 2. The operations as referred to in the first sentence of paragraph 1 of this article include such operations as: freezing, re-packing, packing, defrosting, tempering, inspecting, weighing, cutting, portioning, collecting, marking, applying stickers, pricing and filling or emptying of barrels, tanks and containers.**
- 3. In accordance with the provision of article 55 of these General Conditions the depositee shall neither be liable toward the depositor, nor toward a third party for any damage caused during or in connection with the operations mentioned above.**
- 4. For as far as a "new product" in the sense of the product liability law may be created by the carrying out of the operations by the depositee, not the depositor, but the depositor shall at all times be considered the producer. The depositor shall be obliged to mark or have marked the processed goods with his own brand or identification mark. Should the depositor fail to do so, the depositee shall have the right to apply a designation to the goods stating the name, address and place of the depositor. Any cost caused in connection with this shall be borne by the depositor. If however, instructions by the authorities should require that designations are to be applied, the depositee shall have the right to rescind the agreement if the depositor should refuse to do so.**
- 5. The depositor shall indemnify the depositee against any claims of third parties, however named, under any product liability regulations.**

## Article 45

### Operations to be carried out by the depositor

- 1. All amounts which are to be paid to the depositee by the depositor for whatever reason, are to be paid without delay and without the application of any set-off at the due date as it has been communicated.**
- 2. Unless it has been agreed upon otherwise, the term of payment for the depositor shall be one month after the date of invoice. If payment has not taken place within the term of payment mentioned above, the depositor shall be in default by operation of the law. As of that point in time the depositor shall be obliged to pay the legal interest on overdue payments of 2% per month or part thereof as of the date of invoice.**
- 3. The storage charges and - if the goods have been insured through the intermediary of the coldstorage warehouse - the premiums and cost of insurance shall be charged on the basis of the period agreed upon; a part of this period shall be considered a full period.**
- 4. In the event of any change of the depositor's financial situation, change of owner/shareholder and in case of reasonable doubt about the depositor's solvency, the depositee shall have the right to demand additional security from the depositor. Reasonable doubt shall in any case exist if depositee learns that depositor owes third parties any due and payable amounts. The demand for (additional) security may be made both prior to and during the duration of the cold-storage agreement. In the event of a circumstance as referred to above, any terms of payment previously agreed shall be cancelled, and any and all invoices or claims of depositee towards depositor shall become immediately due and payable. Amounts due respectively payable are in any case deemed to include latent import duties and any other costs to be expected. In addition to that depositee may, prior to the delivery of deposited goods, measured by 2 TEU, determine an amount that must be paid in advance, i.e. before depositee is required to perform the service. This amount is paid towards the costs of delivering, preparing and loading and as payment for any storage charges due. In case of noncompliance with the above additional financial obligations or if no security is furnished, the depositee shall have the right, at depositee's discretion, to rescind the storage agreement or to invoke the right of lien as set out in article 46, all the above without obligation on the part of depositee to compensate any damage, and without prejudice to the depositor's obligation to compensate any damage caused to the depositee as a result of the above.**
- 5. Any claims of the depositor against the depositee shall be immediately due and payable in case the depositor is declared bankrupt, files a petition for an official moratorium, if the goods of the depositor's, whether or not deposited with depositee, are attached, or if the depositor loses the free disposal of his capital (or part thereof) in any other way, if he offers a settlement to his creditors, if he is in default in the fulfilment of any obligation towards the depositee, or if he discontinues the operation of his business or in case of a legal person or limited or general partnership if those are liquidated or dissolved. In those cases any claims of depositee against depositor shall become immediately due and payable, and depositor shall be in default immediately by operation of the law. In that case the depositor shall be given a term of not less than two but not exceeding four business days, depending on the condition (product life) of the goods stored, to entirely settle the amounts due as they have occurred. If the depositor remains in default, the depositee may invoke the right of retention and right of lien of depositee as set out in article 46.**

- 6. In the event of non-observance of any term of payment, as a result of which the depositor is automatically in default, the depositor shall be obliged to pay any cost incurred for the purpose of the collection of the claim. The extrajudicial costs shall be determined on the basis of duties carried out, with a minimum of KES50,000.-. By the mere instance of default the extrajudicial costs shall fall due, without any notice thereof being required.**
- 7. In all cases in which the depositee recovers his claim in or out of court, also in case he invokes his right of lien and right of retention, the stock records of depositee shall serve as full evidence of the accuracy and volume of the goods, barring proof to the contrary.**

#### Article 46

##### Right of retention, right of lien and pledge

- 1. As a security for payment of all that which the depositor and/or any sole warrant holder may or shall owe to the depositee for whatever reason, the latter shall have both a right of retention and a right of lien on any money and goods of the depositor and/or any sole warrant holder, which the depositee may have in his custody at any time. The right of lien is established by the mere entering into the cold storage agreement and the bringing the goods under the control of the depositee due to the fact that they are brought to his property. "His property" is also understood to include any cold-storage/freezing accommodation rented elsewhere.**
- 2. Should the goods be damaged, against which the depositor - whether or not through the intermediary of the depositee - has taken out an insurance, then the depositor shall be obliged to pledge the claim under the insurance agreement to the depositee within two days after a demand to that effect made by the depositee, unless the depositor proceeds to the immediate payment of all that which the depositee may claim and/or the depositee provides sufficient security - this to the satisfaction of the depositee - for the obligations in connection with the storage but which have not yet fallen due.**
- 3. The depositee shall also be able to enforce his rights of retention and lien against the holder of the warrant concerned in the same way as against the liable depositor, and - unless it has been agreed upon otherwise - also in settlement of claims against previous depositors of the goods concerned. The mere fact that the depositee is or will be involved in the issue of a warrant shall not affect the other provisions of this paragraph.**
- 4. In all cases in which the depositor recovers his claim in or out of court, also in case he invokes his right of lien and right of retention, the stock records of depositor shall serve as full evidence of the accuracy and volume of the stock, barring proof to the contrary. These cost shall also include the cost of valuation and the cost of legal assistance prior to that. The depositee and the depositor may also agree that a private sale can be effected, and in that case too, any cost caused to depositee for such sale shall be borne by the depositor. The depositee shall be allowed to recover these cost from the proceeds of the private sale. If the quality and condition of goods to be sold are such that it is impossible to wait for a public sale and sale requires the authorization of the duty judge of the Court then any cost in connection with that request shall be borne by the depositor. If the risk of deterioration of quality caused by lack of time beyond the responsibility of the depositee, or non-observance of the best before date is such that it is even impossible to wait for the authorization of the Court, the goods may be sold privately by way of exception. A condition for such sale is that the sale is based upon a proper valuation report, that there are at least three bids, and that the proceeds of the sale (exclusive of VAT) are at least equal to the value in case of execution.**



- 5. Depositee shall have the right to engage an enterprise affiliated to the company of the depositee (an enterprise that is part of the group of companies including the enterprise of the depositee) to perform services not being cold-storage or processing services (such as transport services) ordered by the depositor. Notwithstanding the fact that it may be decided for practical reasons that affiliated companies will invoice the depositor, the claim resulting from these services will be deemed a claim of the depositee against the depositor, so that the right of lien and retention right included in this article also applies to said claims.**
- 6. In case there are various quantities of goods that are subject to the right of pledge, the depositee shall determine the order in which his right is invoked. Whether any quantity of goods to which the pledgee invokes his right of pledge may represent a value higher than the amount which the depositee may claim from the depositor, does not in any way limit the depositee in the execution of his rights as contained in these BCSK conditions.**
- 7. In courteous occasions, all places in this article where have been mentioned the right of pledge, also the right of Retention has to be read.**

#### **Article 47**

##### **Issue of warrants**

- 1. After a parcel or a quantity of goods has been stored and the quantity and/or weight and its identity have been determined by the depositee, he shall issue a warrant or delivery order at the request of the depositor, on the understanding, however, that:
  - a. the depositee need not comply with the request for the issue of a warrant or delivery order before the depositor has met all of his obligations towards the depositee;**
  - b. the depositee shall be entitled to refuse the issue of a warrant if he holds that there are grounds for that, such to be determined in accordance with the principles of justice and equity.****
- 2. The warrants and delivery orders shall contain a clause declaring these General Conditions applicable to them.**
- 3. Notwithstanding the provisions in article 55 of these General Conditions the depositee shall have no responsibility for the correctness of the particulars stated on warrants and delivery orders or whatever other documents issued by the depositee and concerning the nature and quality of the goods, if special technical knowledge or a more than superficial examination should be necessary for the determination of that.**

#### **Article 48**

##### **Notices to warrant holders**

**If the depositee wishes to give notice to the holder of a warrant whose name or address has not been made known to him, said notice shall be given by means of an announcement in a national daily newspaper with a circulation of more than 300.000.**

#### Article 49

##### Transfer of ownership of goods entrusted to the depositee

- 1. In view of the right of pledge as referred to in article 46, the depositee shall not cooperate in a transfer of ownership in the goods that have been entrusted to the depositee to a third party by the depositor, before all claims, however caused, which the depositee may have against the depositor wishing to transfer the goods, have been settled**
- 2. If the ownership of the goods that are entrusted to the depositee is a matter of dispute between two or more parties, or if such goods are attached by third parties, the depositee shall have the right to protect his interests in the goods in connection with such a dispute or attachment by such means as calling in legal assistance and/or instituting proceedings. The costs of all this shall be borne by the depositor.**
- 3. The original depositor shall continue to be liable towards the depositee for any claims of the depositee in respect of or in connection with the storage, also if these have been created after the transfer of the goods, unless the depositee has discharged the depositor from this liability in writing.**
- 4. The right of lien as described in article 46 shall at all times apply to the goods until that point in time at which any claims of the depositee against the original depositor have been paid.**
- 5. After transfer of the goods the new owner shall be considered the depositor, and together with his predecessor he shall be severally liable for any claims referred to in paragraph 3 of this article, also if these existed before the transfer.**

#### Article 50

##### Delivery of the goods by the depositee

- 1. If a warrant is outstanding, the goods that have been entrusted to the depositee shall exclusively be delivered against surrender of that warrant.**
- 2. If no warrant has been issued the depositee shall have the right to demand that, before the goods are delivered, a receipt or written order, provided with a legally valid signature by the depositor or his representative be handed in to the depositee.**

#### Article 51

##### Loss or destruction of documents

- 1. If a warrant has been lost or destroyed or is missing in any other way, and the depositee has been given notice of that by registered letter in which the contents of that warrant are described, the depositee, if demanded and provided he has no reason for doubt as to the correctness of the grounds for such a request, will twice with an interval of at least fourteen days insert announcements in a daily newspaper, in which parties interested in the relevant document are called up to apply at the office of the depositee without delay. The cost of these announcements must be settled beforehand by the person who asserts a claim to the goods.**

- 2. The depositor shall be entitled to issue to the applicant a duplicate warrant or duplicate delivery order bearing the word "duplicate", provided that nobody has applied to the depositor as the rightful claimant to the destroyed or lost warrant or delivery order within fourteen days after the date of the second announcement. By the issue of such a duplicate warrant or duplicate delivery order the old warrant or delivery order loses its validity against the depositor.**
- 3. The person to whom the depositor has issued a duplicate warrant or duplicate delivery order indemnifies the depositor against any loss or damage which may be caused by such an issue and shall pay any expenses that have been caused for the depositor in connection with the issue.**

#### **Article 52**

**Insurance of the goods entrusted to the depositor**

- 1. Unless this has been explicitly agreed with the depositor, the depositor shall never be obliged to take out insurances for the goods entrusted to the depositor.**
- 2. In all cases in which the goods that are entrusted to the depositor have been insured, and damage is caused, the depositor is obliged to pledge his claim against the insurer to the depositor, such as an additional security for all that which the depositor owes the depositor.**
- 3. If, in case of damage to or loss of the goods that have been entrusted to the depositor, due to fire or any other cause, his cooperation is called in for assessing such a loss or such a damage, the depositor shall be entitled to claim that the amount of the expense involved, inclusive of any remuneration for his co-operation, be paid to him in advance or that security is provided for that.**
- 4. Unless otherwise agreed on, insurances concluded by the depositor at the express request of the depositor shall be continued from month to month. Insurances shall terminate at the end of the month in which the depositor has given the depositor notice to terminate them or in which the goods have ceased to be in storage with the depositor. At delivery of a part of the goods the depositor shall inform the depositor of the value, for which amount the depositor wishes to have the remaining goods insured. Failing such a statement the depositor shall be entitled to decrease the insured amount in the same proportion as the goods have been decreased in number, weight or size.**
- 5. The depositor shall never be liable for any incorrect amount of the values insured.**

#### **Article 53**

**Damage to cold storage/freezing warehouse and/or its installations**

**The depositor shall be liable for all damage of any kind caused by the goods he had delivered for storage and/or processing to the cold storage/freezing warehouse, cold-storage/freezing installations and/ or other possessions of the depositor, irrespective whether the damage could have been anticipated by the depositor.**

## Article 54

### Claims of third parties

- 1. If claims are made against the depositee by third parties on account of death, physical injury or damage in connection with the storage respectively the handling of the goods of the depositor, or their presence in the coldstorage/freezing warehouses, the depositor shall indemnify the depositee against any such claims as should be made against him, without prejudice to the provision in the second paragraph of article 55 of these General Conditions.**
- 2. Similarly, the depositor shall indemnify the depositee if the depositee is called upon in indemnity by third parties on account of a recovery claim however named, resulting from any claim to compensate damage caused to goods of the depositor's which are or were stored in the cold-storage/freezing warehouse, if said claim is brought by or on behalf of the depositor or any party that has effected subrogation of the rights resulting from said claim or that has taken over the rights in the claim brought against the depositor.**

## Article 55

### Description of the depositee's liability

- 1. Also on the basis of the circumstances as listed below the depositee and the depositor agree that the liability of the depositee is limited in the sense of the paragraphs below in this article. While not exhaustive, the following circumstances are among the reasons therefor:**
  - **There is a major discrepancy between the value of the goods delivered for storage and/or processing and the cost of storage and processing, which is charged to the depositor by the depositee. In that way the depositee would be subject to grave risks for a relatively small fee, which risks could even be a threat to the continued existence of his company.**
  - **Insuring liability under an agreement is only possible at very high premiums. The depositor himself has the opportunity to insure goods offered by him for storage and/or processing against all risks of external calamities at a considerably lower price.**
  - **Storage in a cold-storage/freezing warehouse takes place since the goods are perishable. The nature of the products and their quality at the moment of delivery is a major influence on their storage life, although the depositee cannot influence them in any other way than by maintaining the required storage temperature.**
  - **The origins and the composition of the goods are not or hardly known to the depositee, and the depositee cannot reasonably be demanded to conduct a special inspection concerning these.**
- 2. The depositee shall see to it that the care of a good keeper will be observed for the goods entrusted to him for storage/processing.**
- 3. Notwithstanding that which has been provided for on the exclusion of liability in any other part of these General Conditions, the depositee shall never be liable toward the depositor or any third party for damage, loss, claims of third parties, fines and/or expenses, however caused, unless the depositor should prove that such damage or that loss or those claims of third parties or those expenses have been caused - to be determined by objective standards - by design or gross neglect on the part of the depositee himself or his supervisory employees.**
- 4. The depositee shall never be liable for mistakes of employees, those not employed and representatives.**

5. If the depositee should be liable in accordance with the above paragraphs, this liability shall at all times be limited to:
- in case of storage of goods**
    - a maximum amount equal to six times the depositing charges of one month of the relevant parcel of goods concerned
  - in case of processing of goods**
    - a maximum amount of twice the processing fee charged for the parcel of goods concerned, but for that activity in which damage was caused.
- Any liability for collateral damage is expressly rejected.**
6. Subject to the provisions of the above paragraphs, any liability is in all cases limited to the amount paid by the (professional liability) insurance of the depositee in a given case, increased by the deductible excess.

#### Article 56

##### Force majeure

1. In the sense of these General Conditions, and apart from what law and jurisprudence regard as such, force majeure is considered to include any and all external causes, either direct or indirect, whether they could have been foreseen or not, as a result of which the depositee cannot fulfil his obligations under the cold-storage agreement, strikes in the own company and failure of the cold-storage/freezing installations included.
2. In the sense of these General Conditions force majeure also includes:
  - natural disasters (such as flooding, etc.);
  - fire;
  - natural quality of the goods;
  - changes in quality in the course of time;
  - mould and intrinsic deterioration;
  - fermentation, rust, mildew, freezing, melting, coagulation;
  - gasification, drying in, loss of weight, leakage and decay;
  - damage by rats, mice, insects, worms and other vermin;
  - damage caused by other goods;
  - hidden defects of coldstorage/freezing warehouse premises and/or coldstorage/freezing installations;
  - any other circumstances that the depositee reasonably could not have avoided, including an external cyberattack.
3. The depositee shall not be bound to fulfil his obligations during and after the period in which force majeure or the consequences thereof hamper or prevent the fulfilment of his obligations.

#### Article 57

##### Scope of protective provisions

**Any subcontractors, agents, representatives, employees or others who have received an order from or who have been appointed or engaged by the depositee, shall each separately enjoy the same protection and be entitled to the same exclusions, exemptions and limitations of liability as apply to the depositee himself under these General Conditions or under the coldstorage agreement between parties.**

## Article 58

### Forfeiture of claims against the depositee

- 1. All claims against the depositee shall be forfeited if the damage, the loss, claims of third parties, fines respectively expenses have not been brought to his knowledge in writing within 48 hours at the last after the goods cease to be deposited with the depositee, unless the depositor should prove that the damage, the loss, the claims of third parties, the fines respectively the expenses could not have been reported sooner, in which case the notification is to take place within 24 hours after the above-mentioned facts have become known to the depositor.**
- 2. Any right of the depositor to make claims against the depositee is forfeited six months after the day on which any damage to or loss of the goods has been brought to the attention of the depositor, or the depositor has brought any damage to the attention of the depositee, such in accordance with the stipulations of paragraph 1 of this article, unless the claim has been referred to a court within the period mentioned above.**
- 3. The term for objections against the invoices sent by the depositee shall be 5 calendar days. If no objection has been made within this period of time the invoice shall be considered to correctly state the storage and/or processing cost charged therein.**

## Article 59

### Partial nullity

**Should any stipulation of these General Conditions or any part of a cold-storage agreement be invalid or be annulled, then this does not affect in any respect whatsoever the other stipulations of these General Conditions or the other parts of the cold-storage agreement. In that case the parties shall replace the invalid or annulled stipulation respectively the invalid or annulled part of the cold-storage agreement by an arrangement that resembles the original intention the parties had with the cold-storage agreement and the General Conditions in connection therewith as closely as possible.**

## Article 60

### Translations

**Translations of these General Conditions into another language can be issued. In case of any dispute concerning the interpretation of these General Conditions only the English text shall be legally binding.**

## Article 61

### Competent judge and applicable law

- 1. All agreements to which these General Conditions are applicable shall exclusively be subject to Kenyan law.**
- 2. Any disputes as may arise with regard to agreements to which these General Conditions are applicable or with regard to further agreements in connection with them, shall be decided by the judge who is competent in the place in which the depositee is established, unless the depositee should decide to institute the proceedings with another competent judge.**

3. **If the depositee is requested in writing to express his opinion on the choice between the competent judge or arbitration, the depositee shall inform the depositor of his choice in writing within 14 days after receipt of the request.**

**Article 62**

**Filed conditions and superseded conditions**

**These General Conditions have been filed at the office of TAIBJEE & BHALLA ADVOCATES LLP, The Address, 10th Floor, Muthangari Drive and / or in the registry of the Chamber of Commerce of Nairobi, and can be downloaded from the BCSK website [www.bcskenya.co.ke](http://www.bcskenya.co.ke). The latest version that has been filed, or the version that was valid at the time at which the coldstorage agreement was entered into, shall be applicable.**

**Article 63**

**Abbreviated reference**

**These General Conditions may be referred to as the BCS KENYA LTD (BCSK) CONDITIONS.**

**Article 64**

**Copyright**

1. **These General Conditions (the BCSK Conditions) are issued by 'BCS KENYA LTD'. The copyright herein is owned by said company. Reproduction and/or publication of any part hereof by means of print, photocopy, microfilm or in any other way without the prior written permission from the company is strictly prohibited.**
2. **If these conditions are used without prior permission, an amount of Kes 10,000,000.- will be due for each infringement, in accordance with the regulations on damages of the Copyright Law.**

