

Date

HAULAGE SERVICES AGREEMENT

between

ABC MANUFACTURING NIGERIA LIMITED

and

"XYZ HAULAGE LIMITED"

1. INTERPRETATIONS AND DEFINITIONS

In this agreement and unless the context otherwise requires –

- 1.1. clause headings are for convenience and shall not be used in its interpretation;
- 1.2. unless the context clearly indicates a contrary intention –
 - 1.2.1. an expression which denotes any gender includes the other genders,
 - 1.2.2. a natural person includes an artificial person and vice versa; and
 - 1.2.3. the singular includes the plural and vice versa;
- 1.3. the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- | | |
|--------------------------------|---|
| 1.3.1. “Carrier” | XYZ HAULAGE LIMITED, a private company with limited liability in accordance with the company laws of Nigeria; |
| 1.3.2. “Carrier Personnel” | all the personnel and/or subcontractors assigned to properly perform the Distribution Services, including, <i>inter alia</i> the Crew and Planning Personnel; |
| 1.3.3. “Commencement Date” | notwithstanding the Signature Date, {As agreed in prior discussion} ; |
| 1.3.4. “Crew” | the Vehicle Driver and Assistants of the Carrier; |
| 1.3.5. “Customers” | various ABC’ Customers situated at a variety of locations within various cities in Nigeria; |
| 1.3.6. “Distribution Services” | all the distribution services provided by the Carrier, which will <i>inter alia</i> include, - <ul style="list-style-type: none">- to collect the Products from the ABC Warehouse;- provide personnel and expertise to plan and schedule deliveries;- deliver the Products to specified Customers, Customer’s warehouses and/or ABC co-warehouses; any other services coincidental essential with distribution and as contemplated in this Agreement; |
| 1.3.7. “Initial Period” | 24 (twenty-four) months calculated from the Commencement Date; |
| 1.3.8. “Party/Parties” | ABC and the Carrier |
| 1.3.9. “Products” | general term to describe various plastic and household products manufactured by ABC and any promotional material which may accompany the |

load;

- 1.3.10. **"Responsibilities"** all obligations of both parties to this Agreement arising in terms of clause 6;
- 1.3.11. **"ABC"** ABC Manufacturing Nigeria Limited, a private company incorporated with limited liability in accordance with the company laws of Nigeria;
- 1.3.12. **"ABC Warehouse/s"** the ABC Warehouse situated at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX or any other warehouse as informed by ABC in writing from time-to-time;
- 1.3.13. **"Signature Date"** the date of signature of this Agreement by the signatory which signs it last;
- 1.3.14. **"this Agreement"** this Agreement together with its Appendices, Schedules and Annexure as amended from time to time;
- 1.3.15. **"VAT"** Value Added Tax;
- 1.3.16. **"Vehicles"** collective term for various types of delivery vehicles of the Carrier;
- 1.3.17. **"Working Hours"** the hours and part-hours falling between 06:00 and 20:00 on Mondays to Fridays (and Saturdays by mutual agreement between the parties) excluding Public Holidays.

2. **ABC MANUFACTURING LTD POLICIES**

2.1 The Carrier shall –

- 1.1.1 comply with the ABC's Code of Business Conduct and Anti-Bribery Policy as amended from time to time ("**Policies**");
- 1.1.2 promptly and in writing report to the ABC any violation of the Policies.

1.2 The Policies are available on demand

- 1.3 Breach of this clause shall be deemed as a material breach of this Agreement.

3. **THE SERVICE**

2.1 The Carrier is a transport and distribution contractor.

2.2 ABC has engaged the Carrier to provide the Service which will include, *inter alia* –

- 2.2.1 collect the Products from the ABC Warehouse;
- 2.2.2 distribute and/or deliver the Products directly to Customers and/or company warehouses;
- 2.2.3 any further service which may from time to time, during the period of this Agreement, be agreed upon in writing between the Parties in accordance with the terms and conditions contained herein.

4. **APPOINTMENT**

ABC appoints the Carrier, who accepts such appointment, with effect from the Commencement Date to provide the Distribution Services on the terms and conditions set out in this Agreement.

5. **COMMENCEMENT AND DURATION**

5.1. Notwithstanding the Signature Date of this Agreement, this Agreement shall be deemed to have commenced on the Commencement Date for the Initial Period, subject to –

5.1.1. clause 17;

5.1.2. the carrier strictly meeting the standards contained herein;

5.1.3. ABC's right to terminate this Agreement, without cause, at any time during the Initial Term by giving the Carrier not less than 3 (three) months written notice of termination.

5.2. After the Initial Period, the Agreement shall endure for an indefinite period until termination by either Party furnishing to the other not less than 1 (one) months written notice of termination. Such notice may be given 1 (one) months prior to the expiry of the Initial Period or at any time thereafter.

6. **DISTRIBUTION SERVICES AND THE CARRIERS GENERAL RESPONSIBILITIES**

6.1. In respect of **Local Distribution**, the Carrier will be required to collect the Products from the ABC Warehouse and transport the Products by road directly to the Customers as shall be specified in the relevant ABC delivery documents.

6.2. Carrier shall provide at its own cost such Carrier Personnel and Vehicles necessary to provide the Distribution service.

6.3. All Vehicles provided by Carrier shall at all times –

6.4. not be older than 10 (ten) years old;

6.4.1. be fully equipped for purposes of providing the Distribution Services, and shall have ancillary equipment reasonably necessary for efficient and safe securing of the Products/load;

6.4.2. be maintained to a standard meeting with ABC's requirements as to external

cleanliness and appearance;

- 6.4.3. the Crew provided by Carrier under sub-clause 6.2 shall be validly licensed by competent authority to drive the vehicles assigned to them;
 - 6.4.4. conform with the requirements for the time being of any legislative provision relative to roadworthiness and the undertaking of road transportation operations of the nature of the operations forming the subject matter of this agreement;
 - 6.4.5. belong to the Carrier and shall at all times remain at the sole risk of the Carrier.
- 6.5. The Carrier will provide qualified and competent Carrier Personnel and undertakes to institute disciplinary action against any Carrier Personnel in accordance with Labour Law Legislation on receipt of any properly motivated complaint by ABC accompanied by sufficient evidence to justify such action.
- 6.6. It shall be the sole responsibility of the Carrier to ensure that it has in place or shall procure timeously all such permits, licences and other documentation relating to the Vehicles, Business, Business premises and it's Crew as may from time to time be required with regard to the implementation of its Distribution Services responsibilities hereunder according to law.
- 6.7. On a regular basis ABC shall give the Carrier separate notice in the form of a Despatch advice and a summary of deliveries and/or Products that are required to be distributed to the various Customers. Should the need arise, these notices may be altered at ABC's sole discretion.
- 6.8. The Carrier shall, for the duration of this Agreement –
- 6.8.1. together with ABC representative, examine and analyse the Despatch advise and Summary in order to plan for collections of the Products from ABC Warehouse, and thereafter plan and schedule deliveries to the Customers based on the information contained in the ABC delivery documentation;
 - 6.8.2. schedule and plan deliveries to meet the Customers' fixed day delivery requirements, further detailed in Clause 7 ;
 - 6.8.3. provide a permanent on site representative to check the Product loads at the ABC Warehouse and thereafter sign the necessary ABC documentation to acknowledge receipt of the Products, before removing and/or distributing any Product/load from the ABC Warehouse.
 - 6.8.4. provide the Distribution Services, as amended from time to time, to ABC in a competent and professional manner and in accordance with the provisions of all relevant legislation and in the terms and conditions of this Agreement;
 - 6.8.5. perform all other necessary services in respect of the Distribution of Products supplied;
 - 6.8.6. perform and execute the Distribution Services with due diligence, care and skill required of professional transporter and distributor;
- 6.9. The Carrier shall provide sufficient Vehicles to effect the Distribution Services within the requirements of this Agreement.
- 6.10. The period for providing Vehicles for Local and / or upcountry when required shall be 12 (twelve) hours after receiving the instructions from ABC.

- 6.11. The Carrier is required to effect the transportation of a consignment of Products forming the subject matter of a notice given under sub-clause 6.7 shall Distribute the Products to the Customers specified in the relative ABC documentation, within the relative delivery period referred to in Clause 7.
- 6.12. All loading and unloading of Vehicles at the ABC Warehouse shall be carried out by ABC personnel only or the Customers' personnel, however the Carrier Personnel shall not load any Vehicles.
- 6.13. When necessary, the Carrier may request to continue loading outside of Working Hours and such request shall not be unreasonably withheld by ABC.
- 6.14. No Vehicle packed with Products shall be removed by the Carrier from the ABC Warehouse unless covered by a valid ABC gate pass and Delivery Document.
- 6.15. It shall be the responsibility of the Carrier to—
 - 6.15.1. ensure that the Products are not damaged prior to delivery and match the quantities and description of the Products detailed on ABC Delivery Notes;
 - 6.15.2. notify ABC' Warehouse & Logistics executive, before signing for or removing any consignment of Products from the ABC Warehouse, any damaged Product and or any discrepancy between the documentation and the Products. Any shortcomings in this regard will be for the Carrier's account. Any such notification shall be immediately investigated by ABC' Warehouse personnel in liaison with the Carrier Personnel and the relevant ABC delivery documentation shall be appropriately endorsed in conformity with the outcome of such investigation and such endorsement shall be initialled by the releant Carrier Personnel and a member of ABC's Warehouse personnel;
 - 6.15.3. ensure that all Product loads are adequately secured / insured against damage, theft or loss of any kind in transit and protected against the weather;
 - 6.15.4. plan delivery routes so as to ensure, as far as possible, the safe and time-efficient delivery of the products;
 - 6.15.5. remain courteous and helpful in all dealings with ABC Customers and Staff;
 - 6.15.6. ensure the safekeeping and obtaining signatures and Customer's stamp on the appropriate delivery documentation, by a person duly authorised for and on behalf of the Customers, acknowledging receipt of the Products concerned;
 - 6.15.7. return the Customer delivery notes to ABC Warehouse representative, after obtaining customer's signatures with date and time of truck arrival in terms of sub-clause 5.13.6, within one week from Date of delivery.
- 6.16. No loaded Vehicle shall be removed by the Carrier from the ABC Warehouse unless the requirements in sub-clause 6.8 are complied with, ABC delivery documents, and log sheets signed as aforementioned and, if bearing a duly initialled endorsement, the terms of such endorsement, shall be *prima facie* evidence of the fact that the load and the description of the Products therein, as reflected in the ABC delivery document, are correct, and were received by the Carrier at the ABC Warehouse and hence removed by the Carrier from the Warehouse in compliance with the foregoing, whereupon the onus shall be upon the Carrier to prove the contrary should it wish so to do.

- 6.17. The Carrier shall at all times for the duration of this Agreement maintain an accurate and efficient Vehicle tracking system capable of providing, *inter alia*, the following information –
- 6.17.1. the departure time and estimated time of arrival, at the Customer, of every Vehicle which is used for Distribution from the ABC Warehouse in terms hereof;
 - 6.17.2. the licence registration numbers of every Vehicle transporting the Products and the route, theoretical whereabouts based on the planned route, and the required Customer Destination of every such Vehicle transporting Products;
 - 6.17.3. The full names, identity numbers and addresses of each member of the Crew manning a Vehicle which is transporting the Products. ABC shall have the right to request the Carrier to provide ABC with any such information in terms thereof, at any time and from time to time during any Distribution of Products and the Carrier shall be obliged to provide such information to ABC immediately.
 - 6.17.4. The Carrier shall report during Work Hours to ABC any problem or event which occurs and which could or will affect, or which has affected, the distribution of Products in terms of this Agreement.
- 6.18. The Carrier expressly acknowledges and agrees that the consistent provision of sufficient and appropriate Vehicles, and efficient planning for Product collections from the ABC Warehouse and subsequent deliveries to the Customers, is of the essence regarding the performance obligations in terms of this Agreement.

7. DELIVERY PERIODS

- 7.1. The Distribution of Products shall be effectively managed by the Carrier, so as to consistently meet the Customers delivery time and delivery schedules and shall also be in accordance with, *inter alia*, the following delivery periods, namely –
- 7.2. all Customers categorised under local shall be done on the same day and;
- 7.3. all other Customers delivery periods for other locations shall be as below:

The delivery lead times slated here is only for one way location, in the case of a drop location, additional one day has to be added to the total lead time for delivery/per drop location.

<p>LEAD TIME & POD RETURN SCHEDULE</p>

8. PRODUCT LOSSES & DAMAGES

- 8.1. All risk of loss of, or damage to, any of the Products, including deterioration thereof as a result of damage, theft or loss to Products or Packaging due to carrier mishandling, shall be deemed to have been absolutely assumed by the Carrier for the whole of the period from time that the Carrier's representative has signed for the load of Products in ABC's Warehouse, time of obtaining signed receipt for the delivery of the Products at the correct Customer delivery point and ABC outstation warehouses. The liability of the Carrier, in respect of ABC's Products, subject also to the provisions

of sub-clauses 8.4 8.5, 8.6 and 8.8 which arises wholly or in part from its assumption of risk in terms hereof, shall be limited to a maximum amount of -

- 8.1.1. in the case of loads of Products being transported on vehicles up to and including 20 ton capacity, NGNxxxxxxmillion (XX Million Naira), per load, or part load, containing ABC Products;
 - 8.1.2. In the case of loads of Products being transported on vehicles up to and including 30 ton capacity, NGNxxxxxxmillion (XX Million Naira), per load, or part load, containing ABC Products or the value of the actual load, whichever is the greater.
- 8.2. The Carrier shall, on request from ABC, provide documentary proof meeting with ABC's reasonable approval as to the existence and validity of any such insurance that needs to be in place in terms of the requirements of this sub-clause. Insurance claims shall remain a matter entirely between the Carrier and their insurers. ABC undertakes to supply one set of the necessary documentation, free of charge to the Carrier, to facilitate the Carrier's insurance claims.
- 8.3. All claims instituted against the Carrier for shortages or breakage of ABC' Products during the Distribution thereof shall be charged to the Carrier at the original Customer invoice value pertaining to those particular Products.
- 8.4. ABC will maintain a debtor's account for the Carrier to which claims for agreed minor shortages or breakages will be charged and the Carrier undertakes to pay these within 30 days of statement. In the case of major insurance claims ABC shall allow the Carrier 60 (Sixty) days, from the date of the loss or damage, to settle the full claim amount. ABC should notify the Carrier of any such claims within 120 days from the date on which it is aware of the loss, theft or damage.
- 8.5. In the event of damage or loss to Products during the Distribution Service, then the Carrier's representative shall inform ABC as soon as possible thereafter of such damage or loss. The onus to report the incident to the Carrier's Management shall be on the Carrier's representative.
- 8.6. In the event of major Product damage during transportation, the damaged Products shall be returned to ABC' premises, or any such other storage place as informed by ABC in writing, subject to negotiation with ABC Warehouse Management and the availability of a suitable offloading and storage areas, where the Products shall be secured by ABC against further loss or theft. The Carrier shall at its own cost, provide labour to unpack and sort the damaged load into three categories at ABC Warehouse as follows –
 - 8.6.1. Undamaged stock/Products in undamaged packaging, returned to ABC for full credit to the Carrier;
 - 8.6.2. Recoverable stock/Products, returned to ABC after cleaning and repacking. The Carrier shall receive full credit less the cost of cleaning and repacking;
 - 8.6.3. Stock/Products damaged beyond recovery, to be disposed of and/or given to the Carrier entirely at ABC' discretion.
- 8.7. The sorting of stock into these categories shall be by mutual agreement between the Carrier's Representative and ABC' Warehouse Manager.
- 8.8. In the event of minor Product damage, the Products shall be returned to the ABC Warehouse, or any such other storage place as informed by ABC in writing, with relevant delivery documentation.
- 8.9. All rates and values referred to in this Agreement relating to shortages, breakages, losses and

insurance claims, shall EXCLUDE Value Added Tax. It is noted that in current Legislation no Value Added Tax is applicable in respect of Goods In Transit insurance claims.

- 8.10. In the event of any Vehicle breakdown, the Carrier shall ensure that a suitable replacement Vehicle is provided within 12 (twelve) hours of the breakdown.
- 8.11. In the case of any accident involving the Carrier's Vehicle, total liability arising out of the accident shall be for the Carrier.

9. **CHARGES PAYABLE TO THE CARRIER**

- 9.1. The maximum number of Customer delivery drops per load will be 2 (two).
- 9.2. All rates quoted shall exclude VAT.
- 9.3. Any increase that may arise in price of fuel up to 5% (five percent) from the base fuel price shall be entirely absorbed by the Carrier and any decrease up to 5% (five percent) shall be absorbed by ABC.
- 9.4. In the case of an increase/decrease in the price of fuel that exceeds 5% (five percent), the fuel surcharge shall be the difference between the base fuel price plus/minus 5% (five percent) and the current fuel price in the month of shipment multiplied by the amount of diesel as stipulated in Appendix 2.
- 9.5. In the event that fuel increase is above 25% (twenty five percent), there shall be review of the haulage rates to take into account this increase.
- 9.6. It is also agreed that all pending bills at the time of this agreement shall be settled applying the fuel consumption mentioned in Appendix 2.
- 9.7. It is hereby agreed that the base fuel price is NGN xxxx (One Hundred & xxxxxxxx) per litre or **NXX/LT**
- 9.8. The current fuel price will be the price ruling during the period the Carrier is picking up and delivering the Products.
- 9.9. The Carrier shall notify ABC of any statutorily imposed or generally reported Fuel increase or decrease and of the amount of the increase or decrease, as the case may be, to be applied to each rate specified in sub-clauses 9.4 . Such notice shall be in writing and shall be supported by relevant documentary evidence.
- 9.10. Should Carrier fail to give notice as aforesaid of any decrease in cost which may be statutorily imposed, ABC shall be entitled to claim the appropriate decrease in the respective rates specified in sub-clauses 9.4 by notice in writing to that effect given to Carrier.
- 9.11. ABC or Carrier as the recipient of any notice given in accordance with the foregoing provisions of this sub-clause, may notify the other Party in writing, within 30 (thirty) days after receipt of such notice, that it accepts the increase or decrease referred to in such notice, in which latter event it shall be bound by such acceptance, or that it disputes such increase or decrease. In the event that the recipient shall fail to give notice of acceptance or dispute as aforementioned, the increase or decrease, as the case may be, and the notice thereof, shall be deemed to be in dispute. In the event of any notified or deemed dispute, such dispute shall be determined in accordance with the provisions of the Arbitration Act.

- 9.12. Any increase or decrease forming the subject matter of a notice given by either Carrier or ABC to the other shall, once finalised by acceptance or arbitration as herein before provided for, take effect from the date from which Carrier shall become, or shall have become, liable therefore in the case of an increase, or entitled thereto in the case of a decrease.

10. ACCOUNTS

- 10.1. ABC shall pay the Carrier for the Distribution Service in arrears.
- 10.2. The Carrier shall compile a single consolidated invoice which shall contain, *inter alia*, the following minimum information -
- 10.2.1. reference to ABC Contract Order number;
 - 10.2.2. the period (start and end date) relating to that particular invoice;
 - 10.2.3. total invoice value with summary sheet of all transactions;
 - 10.2.4. full supporting documentation shall accompany each consolidated invoice.
- 10.3. The monthly invoices shall be made up by the Carrier and handed to the ABC's Warehouse & Logistics two (2) days before the ABC Accounts monthly period end.
- 10.4. The Carriers invoices shall be paid within 15 (Fifteen) working days after date of submission of the Carriers invoice.

11. SET-OFF

12. There may be set-off by ABC against any monies owing by it to the Carrier in terms of the provisions of this Agreement –
- 12.1. any monies owing to ABC, by the Carrier, by reason of any payment obligations as detailed in sub-clause 8.4 or by reason of any claim arising out of the Carrier's failure to meet its timing obligations in respect of sub-clause and in so far as such monies shall not have been paid by Carrier within 90 (ninety) days of the date of the event giving rise to ABC's claim therefore;
 - 12.2. any monies otherwise owing by the Carrier to ABC in terms of, or by reason of the conclusion of, this agreement.

13. EXCLUSIVITY

- 13.1. This agreement shall in no way be considered as –
- 13.1.1. a concession granting the Carrier the exclusive rights to Distribute Products on behalf of ABC;
 - 13.1.2. limit ABC's right to Distribute Products or operate its own vehicles in the area covered by this Agreement;
 - 13.1.3. creating a joint venture, partnership or agency relationship between the Parties for any purpose.

14. CONTRACTUAL RELATIONSHIP

- 14.1. In implementing its transportation responsibilities hereunder the Carrier shall not be acting as the agent of ABC but shall be acting as an independent contractor without any right to enter into any contract or undertaking or to give any warranty or representation which may in any way be binding upon ABC.
- 14.2. To the extent recognised by law, neither party to this contract shall act as the agent for the other in exercising their rights and performing their obligations in terms of this contract and neither party shall purport to act on behalf of the other.

15. INDEMNITY

- 15.1. The Carrier indemnifies ABC against all and any claims whether for damages, losses and expenses, personal injury or death, or otherwise and howsoever caused to, or sustained by, any third party by reason of any act or omission on the part of the Carrier itself or on the part of any person for whose actions the Carrier is vicariously responsible in law, in so far as any such act or omission relates to the implementation of the Carrier's transportation responsibilities hereunder.
- 15.2. ABC indemnifies the Carrier against all and any claims whether for damages, losses and expenses, personal injury or death, or otherwise and howsoever caused to, or sustained by, any third party by reason of the quality of the Products or the use thereof.

16. RESTRICTION AGAINST CESSION, ASSIGNMENT AND SUB-TRANSPORTATION

- 16.1. The Carrier shall be entitled to sub-contract the hire of vehicles, drivers and crew, for the purpose of ensuring continuity of the Distribution service during peak delivery volume periods and when the Carrier's own vehicles need to be withdrawn for maintenance and repairs, provided that the Carrier
 - 16.1.1. shall remain responsible to ABC for the performance of obligations assumed in terms of this Agreement; and
 - 16.1.2. disclose all its sub-contractors to ABC, on ABC's request.
- 16.2. Any such sub-contracted vehicles, drivers and or crew, shall at all times subject to the terms and conditions of this Agreement.
- 16.3. Neither party to this agreement shall, save with the prior written approval of the other party (which approval may not be withheld without having to assign any reason therefore),-
 - 16.3.1. cede any of its rights hereunder to any third party;
 - 16.3.2. assign any of its rights and obligations hereunder to any third party;
 - 16.3.3. grant any right to any third party to carryout, or sub-contract to any third party, any of its transportation responsibilities hereunder.

17. PENALTIES AND BREACH

17.1. Penalties

- 17.1.1. Having regard to the Carrier's obligations in terms of this Agreement and more particular, *inter alia*, sub-clauses acknowledgement and agreement, the Carrier agrees that it shall be subject to the penalties, referred to in sub-clause 17.1.2 at the instance of ABC should –

- 17.1.1.1. the Carrier not meet its obligations as herein elsewhere provided for;
 - 17.1.1.2. if it becomes apparent, at the sole discretion of ABC, that the Carrier shall be unable to meet the delivery requirements detailed in Clause 7;
 - 17.1.1.3. if insufficient Vehicles, in ABC's sole discretion, are provided by the Carrier to provide the service in terms hereof.
- 17.1.2. In the event of 17.1.1, ABC shall, without prejudice to ABC's other rights and remedies, be entitled to -
- 17.1.2.1. at the request of ABC, promptly remedy any breach of this Agreement or re-perform any non-conforming Distribution Service at no additional charge to ABC;
 - 17.1.2.2. entirely at the discretion of its Warehouse Management, engage additional resources or alternative transporters to effect the relative deliveries to the Customers, as may be necessary to perform the Distribution Services in accordance with the Agreement, at the Carrier's cost;
 - 17.1.2.3. subject to the limitation and exclusion of liability provided for in this Agreement, be liable for any loss, harm or damage suffered by ABC, including, without limitation, any fine or penalty imposed by statute or regulation on ABC.

17.2. **Breach**

- 17.2.1. Subject to any provision of this Agreement or its Annexures providing for an alternative remedy, should either Party commit a breach of any of the provisions of this Agreement ("**Defaulting Party**"), then the other Party ("**Aggrieved Party**") shall be entitled to give the Defaulting Party written notice to remedy the breach.
- 17.2.2. Should the Defaulting Party fail to comply with such notice within 7 (Seven) days of receipt of the notice then the Aggrieved Party shall be entitled to cancel this Agreement or to claim specific performance, in either event, without prejudice to the Aggrieved Party's rights to claim damages. The aforesaid is without prejudice to such other rights as the Aggrieved Party may have at law.

18. **FORCE MAJEURE**

If either Party is prevented from carrying out any of its obligations under this agreement by reason of *Force Majeure*, which in the case of this agreement, shall mean any act of God, riots, war or enemy action, fire, explosion, flood, civil commotion, industrial action, then and in the event the Carrier or ABC as the case may be, undertakes to do all things reasonable in the circumstances in co-operation with the other, to carry out its obligations as nearly as possible in conformity with all the terms and conditions of this agreement and take steps appropriate in the circumstances to minimise the losses which may be incurred by both parties.

19. **NOTICES**

- 19.1. Any notice given by either party to the other ("**addressee**") or in connection with any matter relating to this Agreement shall be given in writing and shall be delivered by hand to the recipient's address specified in Clause 20.

19.2. A notice given by way of telegram, telex, facsimile or e-mail transmission shall be deemed to have been given in conformity with the provisions of this clause.

19.3. Any notice given by either Party to the other which is –

19.3.1. successfully transmitted by telefax to the addressee's telefax domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the business day immediately succeeding the date of successful transmission thereof;

19.3.2. successfully transmitted electronically, to the addressee's email for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received on the first business day following the successful transmission thereof as evidenced by the electronic confirmation of receipt.

20. ADDRESSES FOR LEGAL NOTICES

20.1. For all purposes of, and arising in connection with, this agreement, the parties choose as their respective addresses for legal notices the undermentioned addresses, namely -

20.1.1. ABC MANUFACTURING NIG LTD

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Lagos.

Telephone
Telefax
E Mail

20.1.2. XYZ HAULAGE LIMITED

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Lagos

Telephone
Telefax
E Mail

20.2. Either party may change its address for the purpose of this clause from time to time to another address within the Nigeria upon not less than 10 (ten) days' notice given to the other party to such effect.

21. INDULGENCES

No relaxation, indulgence or concession granted by either Party to the other in respect of any of its obligations hereunder shall constitute a novation of any party of this Agreement nor shall otherwise prejudice, derogate from or affect any rights which the party granting the relaxation, indulgence or concession, may have against the Party in whose favour such grant shall have been made.

22. ENTIRE CONTRACT AND VARIATIONS

22.1. This Agreement constitutes the entire agreement between the Parties relative to the Carrier's Distribution Services from the ABC Warehouses to Customers and both Parties acknowledge that there are not representations or warranties made or given by whomsoever on which either of them is relying in concluding this Agreement save and except insofar as such representations and warranties are herein set out.

19.1 No variation of this Agreement and no agreement at variance with any of the terms and conditions hereof shall be binding on the Parties hereto unless contained in writing and signed by them (including their respective agents duly authorised thereto).

23. DISPUTE RESOLUTION

23.1. Each party shall appoint a representative to deal with issues arising out of or in connection with this Agreement.

23.2. Where any dispute or difference arises out of or in connection with this Agreement (the "Dispute") and it is not appropriate for such a Dispute to be discussed at the next meeting of the Parties' designated representatives, either party may by written notice to the other require the designated representatives to meet to resolve the matter within fourteen (14) days following service of the notice. If the Dispute has not been resolved within fourteen (14) days of such a meeting of the designated representatives, then the dispute shall be referred to the relevant Director of each party. If such Dispute remains unresolved after a further fourteen (14) days, it shall be referred to the respective Chief Executive of the parties who shall have the authority to settle the dispute.

23.3. If the Dispute remains unresolved one month after referral to the Chief Executives, the Dispute shall be referred to and finally resolved by arbitration under the Rules of Arbitration and Conciliation Act Cap A18 LFN 2004 which rules are deemed to be incorporated by reference to this sub clause. The number of arbitrators shall be three.

23.4. Either party may write to the other nominating their arbitrator and asking the other party to nominate an arbitrator. The third arbitrator who shall be the presiding arbitrator shall be appointed by the mutual agreement by the first two arbitrators.

23.5. If the first two arbitrators fail to agree on the appointment of the third arbitrator, the third arbitrator will be appointed by the President of the Chartered Institute of Arbitrators UK (Nigeria Branch) upon request of either party provided it had notified the other in advance.

23.6. The place of arbitration shall be Lagos, Nigeria.

23.7. The finding of arbitration shall be final and binding on the Parties and same may be registered as judgement of the court of competent jurisdiction.

24. GOVERNING LAW

This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of Nigeria which is applicable to agreements executed and wholly performed within Nigeria.

25. SEVERABILITY

25.1. All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other.

25.2. Any provision of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the Signature Date.

26. COSTS

Each Party shall bear and pay their own legal and other professional costs of and incidental to the negotiation, drafting and execution of this Agreement.

27. SIGNATURE

Signature below constitutes signature of the Agreement, its schedules and annexures, the relevant parties hereby warranting that they are duly authorised to sign this agreement

Signed at _____ on _____ 20__

For and on behalf of

ABC MANUFACTURING NIGERIA LIMITED

who warrants that he is duly authorised hereto

Name _____

Designation _____

Signed at _____ on _____ 20__

For and on behalf of

XYZ HAULAGE LIMITED

who warrants that he is duly authorised hereto

Name _____

Designation _____

Appendix 1

<h2>Haulage Rates Schedule</h2>

All late deliveries shall attract a penalty of Nxxxxx.00 per truck per day.

Any delay in offloading the transporter after 24 hrs of arrival at the distributor's premises shall attract a demurrage charge of Nxxxxx.00 per day per truck.

The following rates shall be applicable for any drop shipment:

[a] =N=xxxxxx extra from one customer to another within a city

[b] =N=xxxxxx extra from one town to another

Appendix 2

<h2>Diesel Usage Schedule</h2>

Appendix 3 – KPI

- 1) On time Delivery (95%) – As measured by the delivery lead times stated in clause 7.3
- 2) Truck availability (90%) – As measured by the number of trucks utilised vs. total number of trucks committed
- 3) Zero Safety violation