

BIDFREIGHT PORT OPERATIONS (PTY) LTD

STANDARD TRADING TERMS AND CONDITIONS

These Bidfreight Port Operations (Pty) Ltd (“BPO”) standard trading terms and conditions set out the general standard terms on which BPO performs any Services or undertakes any business.

Interpretation

1. Definitions and Interpretation

1.1. In these STCs, the words set out hereunder shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, unless the context clearly indicates the contrary:

- 1.1.1. “STCs” shall mean these standard trading terms and conditions as updated from time to time;
- 1.1.2. “Business” shall mean all and any business undertaken, including any advice, information or Service provided, whether gratuitously or not, by BPO;
- 1.1.3. “Carrier” means any carrier of Goods;
- 1.1.4. “Charges” means demurrage, detention, delay, storage or any other charges or penalties;
- 1.1.5. “Customer” shall include any person who instructs BPO to perform any of the Services, any person who accepts BPO’s quotation for the performance of any Services, any person who accepts BPO’s STCs, any person who contracts with BPO either directly or through the services of an employee or an agent, any person at whose request or on whose behalf BPO undertakes any business or provides any advice, information or Services, the Owner of the Goods and any person who has a risk in and to the Goods;
- 1.1.6. “Clearing and Forwarding Services” means freight forwarding (by air, ocean, road or rail) or customs clearing and related functions;
- 1.1.7. “Dangerous Goods” shall mean Goods, including without limitation radioactive materials, which are or may become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including Goods likely to harbour or attract vermin or other pests, or any Goods defined as hazardous and/or dangerous in the Tariff or rules for carriage of Transnet Limited, the National Road Traffic Act, 93 of 1996 and/or SANS 10228, or classified as such in the International Maritime Dangerous Goods Code or any other code or regulations of, or published by, any government authorities;
- 1.1.8. “Day” means a calendar day;
- 1.1.9. “Duties” shall mean and include taxes, fines, penalties, wharfage, imposts, levies, deposits, expenses or similar charges or out-lays;
- 1.1.10. “Goods” means any goods, items, commodities, material or cargo of any nature whatsoever that are, or are intended to be, the subject of the Services rendered by BPO or are otherwise handled or dealt with by or on behalf of at the instance of BPO, or which come under the control of BPO or its agents or nominees on the instructions of the Customer and includes any Transport Unit into or onto which the Goods have been Vanned;
- 1.1.11. “Law” means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, standard, instrument, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law;
- 1.1.12. “Notice” means notice in writing;
- 1.1.13. “Owner” shall mean the owner of the Goods and any other person who may have or who acquires any interest, financial or otherwise, therein;
- 1.1.14. “Parties” shall mean BPO and the CUSTOMER collectively, and “Party” shall mean either one of them;
- 1.1.15. “Port” means the port or ports at which the Services are, or will be carried out;
- 1.1.16. “Possession” means possession, care, custody and control;
- 1.1.17. “Rates” shall mean the rates as agreed between the Parties in writing;
- 1.1.18. “Services” includes all business conducted by BPO including but not limited to those Services reflected in any Rates agreement which may contain any or all of the following: Stevedoring Services, Warehousing Services and Clearing and Forwarding Services and includes the provision of any advice to the Customer in respect of such Services and any other operations and services that BPO or any other person perform or agree to perform for or on behalf of the Customer;
- 1.1.19. “Stevedoring Services” include the handling, tallying, loading, stowing, discharging, Vanning and any related transport of Goods;
- 1.1.20. “Transport Unit” means any container, pallet, crate, flat rack, drum, canister or any load device specifically constructed for the consolidation goods;
- 1.1.21. “Van” means to stuff, stow, tom, lash, secure, load, pack or unpack a Transport Unit;
- 1.1.22. “Vessel” means any vessel in respect of which BPO is carrying out Services or undertakes any business; and

1.1.23. “Warehousing Services” include, but are not limited to, the transport, distribution, warehousing, stacking, storage, Vanning, receipt or despatch of Goods via rail or road.

- 1.2. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of these STCs.
- 1.3. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.4. The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (*eiusdem generis*) shall not apply, and whenever a term is followed by the word “including” which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.
- 1.5. Any number of days prescribed in these STCs excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day.
- 1.6. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these STCs.
- 1.7. The rule of construction that these STCs shall be interpreted against the Party responsible for the drafting or preparation of these STCs shall not apply.
- 1.8. These STCs and all agreements entered into between BPO and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

Application and Legal Standing

2. Application of STCs

- 2.1. All and any Services undertaken or provided by BPO, whether gratuitous or not, or any liability which may apply to BPO, whether or not arising from the performance of the Services, shall be undertaken or provided subject to these STCs and they shall form part of and be incorporated into any agreement or contract concluded by a Customer with BPO.
- 2.2. These STCs shall apply to the exclusion of the Customer’s or any other parties’ trading terms and conditions unless specifically agreed in writing and signed by a director of BPO. The STCs shall at all times take precedence over any terms, conditions or stipulations contained or reflected in any of the Customer’s or Carrier’s documentation.
- 2.3. Any employee, agent or representative of the Customer appointing or instructing BPO warrants that he/she has the authority to bind the Customer to these STCs.
- 2.4. The Customer warrants that when it acts as an agent for any third party, that the third party, in authorising the Customer to enter into contracts on its behalf, is bound by these STCs. The STCs will thus be applicable between BPO and the Customer’s principal.
- 2.5. If, where applicable, a Customer sells its business or the whole or a greater part of its undertaking or assets (the Business) or undergoes any restructure of any nature whatsoever, the Customer undertakes as soon as possible to notify BPO thereof, and to provide details of the name, corporate identity and registration number of the purchaser of the Business and any entity arising out of a restructure (the New Entity). Whether or not the Customer has advised BPO, the Customer must procure that the New Entity is aware of these STCs and agrees that these terms and conditions apply to it, *mutatis mutandis*. In so far as any business is or has been carried out between BPO and the New Entity, the New Entity must be deemed bound by these STCs.
- 2.6. These STCs shall also apply to any company which is or may in future become a subsidiary, holding, controlled or controlling company (all as defined in the Companies Act 2008) of any Customer. The Customer must procure that such entities consent to the terms of this clause.

3. Agent

- 3.1. Unless otherwise agreed in writing, BPO shall carry out the Services as a principal, or shall procure the Services as agent for and on behalf of the principal as it in its absolute discretion deems fit.
- 3.2. The offer and acceptance of a fixed price for the performance of any Services shall not mean that BPO is acting as agent for and on behalf of the Customer or as a principal.
- 3.3. The Customer acknowledges that when BPO, as agent for and on behalf of the Customer, concludes any agreement or contract with a third party, such agreement is concluded between the Customer and the third party on such terms as the third party may stipulate (notwithstanding that BPO may have made payment to the third party).
- 3.4. Unless otherwise agreed in writing, BPO, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any agreement or contract it reasonably deems necessary for the fulfilment of the Services or any of the Customer’s instructions.
- 3.5. The relationship between the Parties is a contract of service and does not constitute a contract of employment or partnership.

4. Subcontracting

- 4.1. All Services may, in the absolute discretion of BPO, be fulfilled either in whole or in part, by BPO itself, or by BPO employing third parties on such conditions as may be stipulated by, or negotiated with, such third parties.
- 4.2. Notwithstanding anything to the contrary contained herein, where Services are carried out by an Agent or Sub-contractor, the Customer agrees that all Goods and Services shall be dealt with by BPO on the terms and conditions, whether or not inconsistent with these STCs, stipulated by any Agent or Sub-contractor.

Remuneration and Payment

5. Quotations and estimates

- 5.1. BPO is entitled at any time by Notice to the Customer to cancel, amend or resile from any quotation, estimate or executory agreement in circumstances where it becomes impracticable or uneconomical for BPO to carry out the contract at the quoted or estimated rate and the Customer shall have no claim whatsoever against BPO for any loss or additional expense that the Customer might incur as a result of BPO cancelling, amending or resiling from the quotation, estimate or executory agreement.
- 5.2. Without in any way limiting the provisions of Clause 5.1, all quotations, estimates and agreements are subject to revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of BPO to third parties including, without limitation, freight, surcharges, Duties, insurance premiums, equipment rental and labour which charges and upward movements take place after the provision of the quotation or estimate. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable.
- 5.3. Quotations and estimates are based, inter alia, on weight, volume, quantities, densities, dimensions, mass, properties, and any other available technical data, loading and off-loading hours and any other relevant information supplied by the Customer and are accepted by BPO in good faith under representation of the Customer. Any variants therefrom shall entitle BPO to require the amount quoted to be adjusted to take into account such variants or to suspend, or cancel the quotation or estimate, without thereby incurring any liability whatsoever and in the event of any such cancellation, reserving to itself the right to claim from the Customer such damages as BPO may have suffered.
- 5.4. In all cases where there is a choice of tariffs rates or premiums offered by any agent, Sub-Contractor or other service provider, and, depending upon the declared value of the relevant Goods or the extent of the liability assumed by the agent, Sub-Contractor or other service provider, it shall be in the discretion of BPO as to what tariffs, rates or premiums it shall accept; declaration, if any, shall be made; and what liability, if any, shall be imposed on the Carrier, warehouseman, or other person.

6. Payment

- 6.1. Unless otherwise specifically agreed by BPO in writing, the Customer must pay to BPO, in cash, immediately upon presentation of any account, all sums due to BPO. Payment shall be made without deduction or set off and payment shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.
- 6.2. In the absence of any written agreement to the contrary, payment of all amounts due to BPO shall be made in South African Rands at the address or into the bank account nominated by BPO.
- 6.3. The CUSTOMER shall pay BPO Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.
- 6.4. All documents, cash, cheques, bank drafts or other remittances, sent to BPO through the post or electronically transmitted shall be deemed not to have been received by BPO unless and until they are actually received by BPO. If any payment to BPO is effected electronically, then the CUSTOMER bears the risk in respect of such payment until the payment is received and cleared into BPO's bank account.
- 6.5. All and any moneys received by BPO from the Customer shall be appropriated by BPO in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to BPO, notwithstanding that BPO might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
- 6.6. BPO shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.
- 6.7. When Goods are accepted or dealt with by BPO upon instructions to collect freight, Duties, Charges or other expenses from a consignee or any other person, the Customer must remain responsible therefore if they are not paid by such consignee or any other person immediately when due.
- 6.8. Notwithstanding that BPO may seek recovery of any amount due to it, from any person other than the Customer, the Customer shall remain liable to make payment of the said amount to BPO upon demand, at any stage.
- 6.9. In the event of BPO having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to effect payment of any amount due to BPO, and in the event of the Customer being in default of payment of any one or more amounts due and payable, or being in default of any other term or condition on which such credit facility was granted, and notwithstanding any other terms to the contrary whatsoever contained, BPO shall be entitled to immediately revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to BPO, were it not for the credit terms or facilities granted to the Customer.
- 6.10. Notwithstanding the account limit requested or required by a Customer (if any), all accounts and credit limits will be determined at BPO's election and in its discretion and BPO is entitled to cancel or amend any account or credit limit at any time, on notice to the Customer.
- 6.11. The CUSTOMER acknowledges that BPO shall be entitled to provide invoices, statements and supporting documents in electronic form, and accepts electronic invoices for the purposes of claiming Value Added Tax.

7. Duties, Taxes, Imposts, Levies, Deposits and Discounts

- 7.1. BPO shall not be liable for any Duties or Charges incurred in respect of the Goods or the provision of the Services, howsoever arising, whether by delay, consequences of strikes, interruptions, hindrance, local traffic, municipal regulations or the non-production of necessary licences, permits, custom forms or otherwise.
 - 7.2. The Customer shall be liable for and pay all and any Duties or Charges of whatsoever nature levied by or payable to any government authorities, whether or not the Duties or Charges become payable at the time of entry, export and/or at any other time and whether or not the payment is due to an act, instruction or omission of BPO, the Customer, shipper, consignee, or any other party, including the provision of incorrect information.
 - 7.3. Where BPO pays any such Charges such Charges must be refunded to BPO by the Customer immediately on demand.
 - 7.4. The Customer indemnifies BPO to the extent that BPO is liable to pay, or has paid, any Duties or Charges. Without limiting the provisions of this clause, the Customer shall in particular be liable for and agrees to Indemnify BPO against any Duties incurred in respect of any Goods and/or Services as a result of or in connection with the loss or non-acquittal of Goods for whatever reason, or in connection with the incorrect use of any tariff headings.
 - 7.5. Where required, the Customer shall deposit with BPO in good time such sums as are determined by BPO in order for BPO to make payment of any Duties as and when they become due.
 - 7.6. In no circumstances will BPO be liable in the event that there may be a change in the rate or amount of any Duties, Charges, freight, rillage, or cartage or any other rate or tariff, before or after the performance by BPO of any Service.
 - 7.7. Where as a result of any act or omission by or on behalf of or at the instance of BPO, and whether or not such act or omission was negligent, any Duties, Charges rillage, freight or cartage has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which BPO may otherwise have will cease and fall away if the Customer does not:
 - 7.7.1. within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise BPO that an incorrect amount has been paid or levied, and
 - 7.7.2. do all such acts as are necessary to enable BPO to effect recovery of the amount incorrectly paid. The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of Clause 7.7.1. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice BPO's right of recovery, the Customer shall be deemed not to have complied with the provisions of clauses 7.7.1 and 7.7.2.
 - 7.8. BPO is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such amounts received or receivable by it.
- 8. Default and Debt Collection**
- 8.1. BPO reserves the right to discontinue any account and summarily to cancel any agreement in respect of which any payments have fallen in arrears. In the event of these rights being exercised by BPO, all amounts owing by the Customer shall immediately become due and payable to BPO on demand.
 - 8.2. BPO may charge interest at the maximum rate allowed by law, calculated on daily balance and compounded monthly in arrears on any amount not paid to BPO by the CUSTOMER on due date.
 - 8.3. BPO shall be entitled to recover any amounts due to it by the Customer or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as BPO in its absolute discretion deems fit.
 - 8.4. The Customer agrees that it will pay all costs of whatsoever nature incurred by BPO in recovering any amounts or incurred by BPO in the enforcement of any other obligations or for the recovery of damages owed by the Customer to BPO on the scale as between attorney and own client, as well as any interest, collection commission and tracing agent's fees.
- 9. Lien**
- 9.1. BPO shall have a special and general lien or pledge over all Goods and any documents including without limitation bills of lading and permits relating thereto in its possession, as well as all refunds, repayments, claims and other recoveries and such Goods and documents shall be deemed to be pledged to BPO as security for all moneys whatsoever due to BPO by the CUSTOMER, sender, Owner, consignee, or their agents, if any, whether relating to the Goods or not.
 - 9.2. In delivering the Goods into the custody of BPO or its agents for any purpose whatsoever, such delivery shall for the purpose hereof be deemed to be delivery of the same in pledge and as security for all amounts owing to BPO at that time or which become payable in the future. In the event of BPO utilising the services or premises of any third party for any purposes including the transportation or storage of any Goods, such third party shall be the agent of BPO for purposes of exercising BPO's right of retention under the said lien and/or pledge.
 - 9.3. The CUSTOMER shall not be entitled to effect or allow to be effected any security in respect of the Goods or the documents relating to the Goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of BPO. The lien and pledge in favour of BPO referred to in this clause, shall operate as a first and prior charge against the Goods and the documents relating to the Goods and no other security shall rank prior to BPO's lien or pledge.
 - 9.4. Should any amount due to BPO remain unpaid, BPO shall be entitled to immediately

exercise its lien and shall advise the CUSTOMER in writing that it has done so. Should the amount remain unpaid for a further 14 days, BPO shall be entitled to dispose of or sell the Goods by private treaty or public auction or otherwise, provided that:

- 9.5. The CUSTOMER hereby authorises BPO to effect such a sale by either public auction or private treaty, on reasonable notice not exceeding 14 days. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by BPO, shall be applied in reduction or discharge as the case may be, of the CUSTOMER's obligations to BPO in respect of such Goods without prejudice to BPO's rights to recover from the CUSTOMER any balance which may remain owing to BPO after the exercise of such rights. Should the total amount collected by BPO, after deducting therefrom all costs, charges and expenses incurred by BPO in respect thereof, exceed the full amount of the CUSTOMER's obligations to BPO in respect of such Goods, BPO shall be obliged to refund such excess to the CUSTOMER.

Liability and Insurance

10. Limitation of Liability

- 10.1. BPO shall not be liable for any claim of whatsoever nature and howsoever arising (whether in contract or in delict or arising out of the provision of the Services or not or for damages or otherwise) unless such claim arises from a grossly negligent act or omission on the part of BPO, its employees or subcontractors.
- 10.2. Without limiting the generality of the limitations or exclusions of BPO's liability, BPO is specifically not liable for:
- 10.2.1. any shortage, loss of or damage to Goods, unless it occurs at a time when the Goods in question is in the actual care, custody and control of BPO, its employees or subcontractors;
- 10.2.2. any shortage, loss of or defect in Goods in BPO's warehouse which does not exceed 0.5% of the quantity of the Goods as evidenced by the warehouse receipts; or
- 10.2.3. any shortage, loss of or damage to Goods dispatched directly from a Vessel to the Customer's nominated transporter.
- 10.3. Notwithstanding anything to the contrary contained in these STCs or elsewhere, BPO shall not be liable to the Customer for any indirect loss, including but not limited to: consequential, incidental or remote loss; special or speculative damages; or loss of profit, business or production.
- 10.4. If BPO is liable to the CUSTOMER in terms of these STCs or otherwise, in no case whatsoever shall any liability of BPO, howsoever arising, exceed:
- 10.4.1. Where the Claim relates to the loss or damage to Goods in storage, the lesser of the fair market value of the lost or damaged Goods in respect of which the Claim arose as at the time and place of their loss or damage, or R100,000.00 (One Hundred Thousand Rand), per occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;
- 10.4.2. Where the Claim relates to the loss or damage to Goods in transit, the lesser of the fair market value of the lost or damaged Goods in respect of which the Claim arose as at the time and place of their loss or damage, or R500,000.00 (Five Hundred Thousand Rand), per conveyance giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;
- 10.4.3. Where the Claim relates to the loss or damage to a Vessel, vehicle or Transport Unit, the lesser of the fair market value of the lost or damaged Vessel, conveyance, vehicle or Transport Unit as at the time and place of their loss or damage, or the cost of the reasonable cost of repairs to the Vessel, vehicle conveyance or Transport Unit, or R100,000.00 (One Hundred Thousand Rand), per occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;
- 10.4.4. Where the Claim relates to a Service that did not result in the loss of or damage to Goods or other property, then the lesser of double the amount of the fees raised by the Company for its services in connection with the Goods (but excluding any amount payable to sub-contractors, agents and third parties) or R100,000.00 (One Hundred Thousand Rand), per occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;
- 10.4.5. In any event, R100,000.00 (One Hundred Thousand Rand) per occurrence and R500,000.00 (Five Hundred Thousand Rand) in respect of all occurrences (whether relating to Goods or Services) giving rise to liability in any 12 (twelve) month period, regardless of the nature, number and amount of claims arising.
- 10.5. The CUSTOMER agrees that no claim shall be made against any director, employee or employee of BPO in his personal capacity which imposes or attempts to impose any liability upon him in connection with the provision of the Services, and the CUSTOMER waives all and any such claims.

11. Claims

- 11.1. Without prejudice to any other provisions in these STCs, no Claim may be brought against BPO or any of its Directors or Employees, unless the Customer:
- 11.1.1. has given Notice of the Claim to BPO either at the time of the removal of the Goods from the custody of BPO, or within 7 (seven) days of the date when the loss or damage occurred, or of the Customer reasonably becoming aware thereof, whichever is the later; and
- 11.1.2. has provided BPO with a fully documented claim setting out the precise nature and quantum of the claim within 3 (three) months of the date of the Notice of the Claim required in clause 11.1.1.
- 11.2. In addition to clause 11.1 it is agreed that BPO shall in any event be discharged from all liability whatsoever and howsoever arising unless summons or other process initiating legal proceedings is issued and served on BPO within 9 (nine) months after the cause of action in respect of any such alleged liability arose and immediate Notice is given to BPO of such legal proceedings having been brought.

12. Insurance

- 12.1. BPO shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer or in respect of the Goods.
- 12.2. However, and subject to the provisions of this clause, BPO may, on written request from the Customer, at its absolute discretion and to the extent that the Law shall allow, endeavour to facilitate insurance cover for the Goods. Such insurance will be subject to all terms, exceptions and conditions as may be imposed by BPO and the insurance company taking the risk and BPO shall not be obliged to obtain separate cover for any risk excluded.
- 12.3. Should any insurer dispute its liability in terms of any insurance policy effected in terms of clause 12.2, the Customer concerned shall have recourse against such insurance company only and BPO shall not have any responsibility or liability whatsoever in relation thereto.
- 12.4. Notwithstanding anything to the contrary contained in these STCs, BPO shall in no circumstance be liable for any consequences or any failure to obtain any insurance cover or any appropriate insurance cover, or otherwise, and any liability of BPO in respect of any claim brought against BPO arising out of or connected with the provisions of this clause 12 shall be regulated and determined in accordance with the provisions of these STCs.
- 12.5. Notwithstanding the provisions of clause 12.1 BPO may, acting as bailee, and in its sole discretion taking into account the nature of the Goods, arrange for appropriate insurance cover in which case the provisions of Clause 12.1 to 12.4 inclusive shall also apply mutatis mutandis.

13. Indemnity

- 13.1. Without prejudice to BPO's rights and securities under these STCs, any agreement between the Parties and/or at law, the CUSTOMER indemnifies and holds BPO harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by BPO arising directly or indirectly from or in connection with:
- 13.1.1. BPO complying with the express or implied requirements or instructions of the CUSTOMER or any Authority regarding the Goods or Services;
- 13.1.2. any warranty given to BPO by the CUSTOMER being untrue or incorrect;
- 13.1.3. any act or omission or breach of these STCs by the CUSTOMER or any person, subcontractor, Carrier or other third party acting on its behalf or under its instruction;
- 13.1.4. the late or non-provision by the CUSTOMER of any documentation required by any government authorities;
- 13.1.5. any claim made by the Owner, consignor, consignee, Carrier, the CUSTOMER's clients or suppliers or any third party in connection with the Services or Goods;
- 13.1.6. the consequences resulting from the transport, handling or storage of the Goods;
- 13.1.7. the contents, quality, nature, legality, inherent vice, counterfeit nature, defect in or description of the Goods;
- 13.1.8. the loading, offloading, marking, labelling, numbering, weight, measurements, non-delivery, mis-delivery or defective packaging of the Goods;
- 13.1.9. the defective condition of, or overweight, containers or vehicles;
- 13.1.10. notwithstanding the provisions of clause 4.2, any claim or liability arising from Stevedoring Services to the extent that such claim or liability exceeds BPO's liability as per clause 10;
- 13.1.11. any claims of a general average or salvage nature which may be made against BPO in connection with the Goods; and / or
- 13.1.12. death, bodily injury or damage to persons or personal property as a result of the wilful or negligent act or omission of the CUSTOMER or any person acting on its behalf.

Customer

14. Instructions

- 14.1. The Customer's instructions to BPO must always be in writing and shall be precise, clear and comprehensive and in particular, but without limitation, cover any valuation or determination issued by Customs in respect of any Goods to be dealt with by or on behalf of or at the request of BPO.
- 14.2. BPO shall not be obliged to accept any oral instructions, standing or general instructions or instructions given late, even if received by BPO without comment, but BPO may act thereupon in the exercise of its absolute discretion.
- 14.3. In the absence of instructions, either written or oral, given timeously by the Customer and accepted by BPO:
- 14.3.1. it shall be in the reasonable discretion of BPO to decide at what time to perform or to procure the performance of any of the Services or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
- 14.3.2. BPO shall have an absolute discretion to determine the means, route, equipment and procedure to be followed by it in performing all or any of the acts or Services it has agreed to perform.
- 14.4. Notwithstanding anything to the contrary contained in these STCs, if at any time BPO should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, BPO shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 14.5. If events or circumstances come to the attention of BPO, its agents, employees, or Sub-contractors which, in the opinion of BPO, make it in whole or in part, impossible

or impracticable for BPO to comply with a Customer's instructions, BPO shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by BPO in writing, BPO shall, at its sole discretion, be entitled to detain, return, store, sell, abandon or destroy all or part of the Goods concerned at the entire risk and expense of the Customer.

14.6. Unless specific written instructions are timeously given to and accepted by BPO, BPO shall not be obliged to:

14.6.1. make any declaration for the purpose of any Law, convention, or contract, as to the nature, condition, weight or value of any Goods or as to any special interest in delivery. In particular, BPO shall be under no obligation to make any declaration or to seek any special protection or cover from any Carrier in respect of any Goods which are, or fall within the definition ascribed thereto by that body of Dangerous Goods or other Goods which require special conditions of handling or storage; or

14.6.2. arrange for any particular Goods to be carried, stored or handled separately from other Goods, unless those goods are the subject of a collateral management or similar agreement.

14.7. BPO may in its sole discretion taking into account the nature of the Goods, arrange for protection of the Goods, including but not limited to the provision of security services, at the risk and expense of the Customer.

14.8. BPO shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those Goods together with all necessary documents.

15. CUSTOMER'S Undertakings

15.1. The Customer warrants that:

15.1.1. it has knowledge of all matters directly or indirectly relating to the Goods and Services to be rendered by BPO including, without limitation, terms of sale and purchase and all matters relating thereto, and the Customer undertakes to supply all pertinent information to BPO;

15.1.2. it is either the Owner, or the authorised agent of the Owner, of any Goods in respect of which the Customer instructs BPO or of any person on whose behalf BPO undertakes the Services, and that each such person is bound by these STCs;

15.1.3. in authorising the Customer to enter into any contract or agreement with BPO and/or in accepting any document issued by BPO in connection with such contract or agreement, the Owner, sender or consignee is bound by these STCs for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, it accepts that BPO shall have the right to enforce against them jointly and severally any liability of the Customer under these STCs or to recover from them jointly and severally any sums due by the Customer which upon proper demand have not been paid;

15.1.4. all information and instructions supplied or to be supplied by it to BPO is and shall be accurate, true and comprehensive, and in particular, the Customer is deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to BPO for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information;

15.1.5. all Goods will be properly, adequately and appropriately prepared and packed, stowed, weighed, labelled and marked, having regard inter alia to the implementation by or on behalf of BPO or at its instance of the contract or Services involved, and the characteristics of the Goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract or the carrying out of such Services;

15.1.6. where Goods are carried in or on any Transport Unit (unless BPO has agreed to Van the Transport Unit), the Transport Unit has been properly and competently Vanned, the Goods involved are suitable for carriage in or on the Transport Unit, and the Transport Unit is itself in a suitable condition to carry the Goods Vanned therein or thereon and complies with the requirements of all relevant transport authorities and Carriers;

15.1.7. where the Customer nominates a road freight transporter to load Goods directly from a Vessel, the transporter will comply with all legal requirements as well as the obligation to both weigh in on arrival and weigh out after loading at BPO's weighbridge.

15.2. The Customer indemnifies BPO against all claims, losses, penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of any warranties, whether negligently or otherwise, including any assessment or reassessment;

15.3. The CUSTOMER undertakes:

15.3.1. that no claim shall be made by it against any employee, agent or subcontractor of BPO which imposes or attempts to impose upon him or her any liability in connection with the Goods or the rendering of any Services and the CUSTOMER hereby waives all and any such claims, which claims should be made directly against BPO in terms of these STCs; and

15.3.2. to ensure that any contracts, including contracts of carriage, relating to the Goods concluded by the Customer with third parties (including but not limited to Vessel owners, demise, bareboat, time, voyage, slot or any other type of charterer, container or Goods owner), shall include a provision that BPO, its employees, agents and subcontractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Customer in respect of the Goods as if such provisions were expressly for their benefit, which benefits BPO accepts.

15.4. BPO stipulates in favour of each of its employees, agents and subcontractors, existing and future, that the CUSTOMER gives the undertakings, waivers and indemnities in clause 15.3 to them, which stipulation is open for acceptance by the said employees, agents and subcontractors for an indefinite period.

15.5. Time is of the essence for the performance by the Customer of all obligations owed to BPO in terms of any agreement which is governed by these STCs.

Services

16. Stevedoring

16.1. BPO shall, in accordance with the Customer's reasonable instructions:

16.1.1. provide all labour and supervision necessary for the performance of the Stevedoring Services at the load and/or discharge rates agreed between the Parties;

16.1.2. provide such equipment as may be necessary for the performance of the Stevedoring Services; and

16.1.3. perform the Stevedoring Services during the shift times applicable from time to time at the Port in question.

16.2. The Customer acknowledges that;

16.2.1. the supervision and performance of any Stevedoring Services relevant to any ship will always be subject to the direction, instructions, control and approval of the ship's Master and Goods officers and accordingly BPO's ability to provide the Services and fulfil its obligations is subject to such direction, instruction, control and approval;

16.2.2. the choice of equipment used by BPO as contemplated in clause 16.1.2 is entirely within the discretion of BPO;

16.2.3. BPO is required to comply with the terms of its stevedoring licenses and terminal operating licences and leases in respect of the Ports and any Road Haulier license and any other licenses issued by the South African Revenue Services (SARS) and as such its fulfilment of its obligations in terms of these STCs will be subject to such terms; and

16.2.4. notwithstanding anything to the contrary, BPO will not be obliged to perform any Stevedoring Services at a Port or elsewhere if BPO is no longer licenced to do so by SARS or the applicable Port authority.

16.3. BPO shall use its best endeavours:

16.3.1. to ensure that in carrying out the Stevedoring Services it complies with all Laws or other lawful safety and other requirements; and

16.3.2. to identify its own labour and/or personnel.

16.4. In the case of any ship for, relating to or in respect of which BPO is required to perform any of the Stevedoring Services, the Customer or its agent must give not less than 72 (seventy-two) hours' Notice to BPO of:

16.4.1. the port, berth or terminal where the Stevedoring Services are required to be rendered;

16.4.2. the ship's estimated date and time of arrival;

16.4.3. a full description of any Goods to be loaded onto or discharged from that ship;

16.4.4. if the Goods are to be loaded, then the estimated date of arrival of the Goods at the relevant Port and the location of the Goods at the time when the Stevedoring Services will first be required.

16.4.5. the Stevedoring Services and any other Services which BPO will be required to carry out;

16.4.6. stowage plans, engagement lists and/or landing lists together with any special requirements, if applicable; and

16.4.7. the estimated time and date of the commencement of the Stevedoring Services.

16.5. The Customer or its agent must include BPO representatives in any meetings as may be required in order to enable BPO to properly plan and carry out the Stevedoring Services. The provision of such information and inclusion at meetings shall be in accordance with the general accepted practices of the Port in question.

16.6. The Customer warrants that:

16.6.1. the Goods will bear all proper marks and labels to facilitate easy identification so as to enable BPO to perform the Services;

16.6.2. before the Stevedoring Services commence, or can commence, any Goods to be loaded or discharged shall be suitably positioned and ready in every respect to be loaded or discharged;

16.6.3. where Goods are to be loaded or discharged, BPO (at no cost to BPO) shall have access to and use of the ship's equipment, including, but not limited to, derricks, cranes, winches, attachments and lighting necessary for BPO to properly perform the Stevedoring Services; and

16.6.4. all the ship's equipment is and will be properly certified and maintained in safe and proper working order and in compliance with all the relevant International Maritime Organisation and the Vessel's classification society's requirements, as well as all relevant South African statutory requirements.

16.7. BPO shall be entitled to issue in respect of the whole or part of any Service suitable Logistics Documents, provided that where a Logistics Document is issued, these STCs shall continue to apply except insofar as they conflict with the terms and conditions applicable to the Logistics Document.

17. Logistics Documents

17.1. The Customer must complete and sign all Logistics Documents relevant to the Stevedoring Services and such other Services as may be required.

17.2. Where BPO issues a Logistics Document, BPO shall be entitled to raise additional charges to cover any additional obligations arising under the Logistics Document.

17.3. Logistics Document means any Sea Transport Document (of the type defined in Section 1 of the Sea Transport Document Act, 2000, and otherwise accepted by custom or practice as a sea transport document and whether or not produced by a telecommunication system or an electronic or other information technology system) or any other document issued by BPO, or any agent or subcontractor of BPO, relating to any Services in respect of Goods including the handling, vaning, stoving, transport, carriage, movement, receipt, delivery or storage of Goods whether by land, sea or air and whether negotiable or not including without limitation any silo or warehouse certificate, licence or release order;

18. Warehousing

18.1. In providing any Warehousing Services the Goods may be warehoused, stored, handled, stacked or otherwise held at any place and in any manner as determined by BPO, in its absolute discretion, at the Customer's expense.

18.2. Where BPO provides Warehousing Services, whether in premises owned, leased or operated by it, or on premises operated by a third party, the Warehousing Services are provided subject to these STCs and BPO shall not be liable at common law or otherwise as a bailee or depositee.

18.3. The Customer acknowledges and agrees that BPO is required to comply with the terms of its terminal operating licences and leases in respect of the Ports and any Road Haulier licenses and any other licenses issued by SARS and as such its fulfilment of its obligations in terms of these STCs will be subject to such terms.

18.4. The Customer agrees that, notwithstanding anything in these STCs to the contrary, BPO will not be obliged to perform any Warehousing Services at a Port or elsewhere if BPO is no longer licenced to do so by SARS or the applicable Port authority, or BPO no longer has any lease suitable for the carrying out of the Warehousing Services.

18.5. The Customer warrants that:

18.5.1. all Goods that are the subject of the Warehousing Services or are otherwise delivered to BPO shall be properly packed and labelled and in the event of any Goods requiring special storage, packing or labelling, by reason of its nature or properties, or in accordance with any Law, that all such requirements shall be complied with;

18.5.2. it shall give Notice to BPO of any special storage requirements of any such Goods prior to the delivery of the Goods into the Possession of BPO or its agents, provided that BPO shall not be obliged to take delivery of any Goods or provide any other Services in the event that BPO is of the view that taking delivery of such Goods or the provision of any Services is for any reason whatsoever undesirable.

18.6. In the event that BPO agrees to undertake, as part of the Warehousing Services, the Vanning of the Goods into or onto any Transport Unit, such Vanning shall be undertaken at the expense of the Customer and the Customer undertakes to provide BPO (and warrants the accuracy thereof) with the full packing, stowing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the Goods and any noxious or other possible hazardous or dangerous properties that they might possess.

19. Transport

19.1. BPO deals with Goods only on the basis that it is neither a common carrier nor a public carrier

19.2. Every undertaking to convey Goods is subject to the condition that BPO has available a suitable vehicle or vehicles at the appropriate time.

19.3. In the absence of any Notice of damage or loss to BPO by the Customer at the time of delivery, the Goods shall be deemed prima facie to have been delivered in good order and condition.

19.4. If delivery of any Goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then:

19.4.1. BPO shall be entitled to store the Goods or any part thereof at no risk to BPO and at the expense of the Customer.

19.4.2. the provisions of Clause 21 shall apply mutatis mutandis.

19.5. If the ownership or the right to take delivery of the Goods, as the case may be, is in dispute, or if a third party claims to be entitled to the Goods, or if Goods have been attached by order of court, BPO shall have the right to retain the Goods in question in its possession and charge storage therefore at rates that are in accordance with these STCs until the identity of the party who is entitled to take delivery of the Goods has been determined by a final and enforceable order of court, alternatively, if BPO, in its sole discretion, is satisfied that the identity of the party who is in entitled to take delivery has been agreed to in writing by all the parties concerned.

19.6. BPO shall have the right to protect its interests in connection with the dispute or attachment, as referred to in this Clause, by seeking legal assistance and/or by instituting or defending legal proceedings, in which case the reasonable costs thereof on an attorney and own client scale shall be for the account of the Customer.

19.7. The fact that the Goods are subject to dispute shall not limit BPO's rights to dispose of the Goods in accordance with these STCs.

Goods

20. Examination of Goods

20.1. Where it is necessary for an examination to be held or other action to be taken by BPO in respect of any discrepancy in the Goods which are received or discharged from any Vessel, vehicle, or Transport Unit, no responsibility shall attach to BPO for any failure to hold such examination or to take any other action.

20.2. BPO will not be responsible for examining, weighing or counting any Goods received by it where such Goods are bundled, palletised, unitised or packed in any manner such that their number or condition cannot be quickly and easily examined, weighed or

counted. Should BPO undertake to examine, inspect, weigh or count Goods so received, it shall incur no liability in respect of any error or inaccuracy in such examination, inspection, weighing or counting, whether such error or inaccuracy is the result of negligence or gross negligence on the part of BPO or otherwise and BPO shall be entitled to levy a charge on the Customer for the examination, inspection, weight or counting of Goods.

21. Goods requiring special arrangements

21.1. Except under special arrangements previously made in writing, BPO will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to BPO or cause BPO to handle or deal with any such Goods otherwise than under special arrangements previously made in writing, BPO shall incur no liability whatsoever in respect of such Goods, including, without limitation, liability in respect of its negligent acts or omissions in respect of such Goods.

21.2. The Customer undertakes not to tender for storage, handling or transportation any Goods which require temperature control without previously giving at least two days' Notice to BPO of their nature and particular temperature range to be maintained and in the case of a temperature controlled container stuffed by or on behalf of the Customer, the Customer further undertakes that the container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with BPO shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

22. Dangerous Goods

22.1. The Customer must obtain in advance BPO's specific written consent to accept into its Possession, or into the Possession of any of its employees, agents or employees, any Dangerous Goods. BPO is not obliged to provide any Services in respect of Dangerous Goods

22.2. Should BPO agree to provide such Services, the Customer must:

22.2.1. provide BPO with current Safety Data Sheets in respect of Dangerous Goods as required by law;

22.2.2. provide a full written disclosure of the nature and properties of the Dangerous Goods to BPO;

22.2.3. prior to loading, give BPO special written and detailed instructions to enable BPO to place Dangerous Goods for the proper safety and handling;

22.2.4. comply with all Laws governing the loading, off-loading, storage and carriage of Dangerous Goods;

22.2.5. provide proof to the satisfaction of BPO, that the Customer has obtained suitable insurance in respect of any liabilities that might arise following the loss, damage, spillage of the Dangerous Goods, including any environmental damage or clean-up costs; and

22.2.6. ensure that such Dangerous Goods, or any Transport Unit or other case, crate, box, drum, canister, tank, flat pallet, package or other holder or covering of such Dangerous Goods, will bear the warning labels and declarations required in terms of any Law or other requirements of any authority or Carrier and that the nature and characteristics of such Dangerous Goods and all other data required by such Law, or other requirements will be prominently and clearly marked on the outside cover of such Dangerous Goods.

22.3. BPO will only render Services with regard to Dangerous Goods at the Customer's risk and BPO shall not be liable to the Customer for any loss or damage to the Dangerous Goods, howsoever arising. The Customer shall indemnify BPO against all losses or damages, howsoever caused, arising out of the rendering of any Services in respect of the Dangerous Goods, including third party claims.

22.4. If any such Dangerous Goods are delivered to BPO, whether or not in breach of the provisions of Clause 22.1, such Dangerous Goods may, at the sole discretion of BPO be sold, disposed of, destroyed, abandoned, dumped or rendered harmless or otherwise dealt with in terms of these STCs at the risk and expense of the Customer. BPO shall not be liable to the Customer or any other party, and without prejudice to BPO's rights to recover its charges and/or fees including the costs of such Disposal or rendering harmless or other dealing with the Goods. BPO shall furthermore be entitled to recover from the Customer the freight in respect of any such carriage, notwithstanding the non-delivery of the Dangerous Goods.

23. Disposal of Goods

23.1. BPO may Dispose of Goods in such a manner as BPO in its sole discretion decides, without Notice to the Customer, shipper, consignee or any other party, if:

23.1.1. such Goods have begun to deteriorate or are likely to deteriorate;

23.1.2. such Goods are insufficiently addressed or marked;

23.1.3. the Customer cannot be identified;

23.1.4. the Customer has confirmed that it no longer intends collecting or accepting delivery of the Goods;

23.1.5. the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 (twenty-one) days from BPO notifying the Customer in writing to collect or accept such Goods, provided that if BPO has no address for the Customer such Notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by BPO in respect thereof shall be equivalent to delivery of such Goods.

23.2. BPO shall not be liable to the Customer or any other party and without prejudice to BPO's rights to recover its charges and/or fees including the costs of such Disposal or other dealing with the Goods. BPO shall furthermore be entitled to recover from the Customer the freight in respect of any such carriage, notwithstanding the non-delivery of the Goods.

24. Waste

- 24.1. If waste (defined in the National Environmental Management: Waste Act, 59 of 2008, as amended) is generated at any premises controlled by BPO, whether as a result of the leakage of the Goods or otherwise:
- 24.1.1. BPO shall be responsible for the management, clean-up and/or disposal of such waste in an environmentally sound manner and with no harm to health, in accordance with the relevant legislation;
- 24.1.2. the CUSTOMER shall approve the manner of transport and place of disposal of such waste in writing within a reasonable time if required by BPO; and
- 24.1.3. the CUSTOMER shall be responsible for any costs incurred as a result of any actions taken by BPO in terms of this sub-clause, unless and to the extent that the waste was caused by the gross negligence or wilful default of BPO.
- 24.2. If BPO stores waste on behalf of a CUSTOMER and such waste has not been uplifted within 90 days of BPO receiving same, despite a request thereof by BPO, BPO shall, without further notice, be entitled to dispose of such waste forthwith in accordance with the relevant legislation at the CUSTOMER's cost.

General

25. Compliance

- 25.1. If BPO is obliged, in the execution of any of its duties and/or responsibilities, to comply with any Law, then BPO by complying with the Law, shall not be deemed to have waived nor abandoned any of its rights in terms of these STCs. Furthermore, in complying with the Law, BPO shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 25.2. BPO shall perform the Services in accordance with the relevant port, harbour master or shipping rules at the Port, local authority rules and directives and the provisions of BPO's lease and terminal operator or rail license conditions. BPO shall not be liable for any inability to provide Services due to the amendment or termination of any licence provisions or lease agreements in place.
- 25.3. BPO will retain all records in relation to the Services for the period required by the applicable laws and regulations.
- 25.4. The CUSTOMER agrees to abide by BPO's Safety, Health and Environmental Rules when on any of BPO's sites.
- 25.5. BPO and the CUSTOMER, as well as their agents, employees, subcontractors and intermediaries, will comply with any anti-corruption legislation applicable to either or both Party.
- 25.6. BPO and the CUSTOMER, as well as their agents, employees, subcontractors and intermediaries, hereby warrant that they have not and will not engage in any anti-competitive behaviour in relation to these STCs or any contract between the Parties.

26. Confidentiality, Personal Information and Intellectual Property

- 26.1. Each Party agrees to treat as strictly confidential the operations, business and affairs of the other Party and not to divulge any information relating thereto to any third party, agent or employee, save as required by law, in respect of the execution of these STCs or agreement between them, whether prior to, during or after the currency of these STCs or the said agreement. All documentation furnished by one Party to the other Party pursuant to these STCs or any agreement between them will remain the property of that Party and upon the request of that Party will be returned to it. Each Party acknowledges that all right, title and interest in and to any information which the other Party has an interest in being kept confidential vests in that Party and that neither Party has any claim of any nature in and to the confidential information of the other Party.
- 26.2. The Parties acknowledge that they will receive and may process, each other's Personal Information as defined in the Protection of Personal Information Act, 4 of 2013. Both Parties consent to the collection and processing of the Personal Information for the purposes of fulfilling their obligations to each other in terms of these Conditions, and the provision of services by BPO to Customer. Failure to provide the Personal Information may result in the cancellation of these Conditions. In processing the Personal Information both Parties:
- 26.2.1. Shall comply with all the Protection of Personal Information Act, 4 of 2013 and all other applicable local and international laws and regulations pertaining to the processing of Personal Information;
- 26.2.2. Shall use and/or hold such Personal Information only for the purposes of performing their obligations and shall not otherwise modify, amend or alter the contents of such Personal Information or disclose or permit the disclosure of such Personal Information to any third party, unless specifically authorised to do so or as required by law or any regulatory body and shall take all such reasonable steps as may be necessary to safeguard such Personal Information;
- 26.2.3. shall ensure that reasonable appropriate technical and organisational measures are taken to prevent the unauthorised or unlawful processing of such Personal Information and the accidental loss or destruction, of, or damage to, such Personal Information;
- 26.2.4. shall immediately notify the other Party when it becomes aware of, or has reasonable grounds to suspect, any unauthorised, unlawful or dishonest conduct or activities, or any breach of these Conditions relating to Personal Information;
- 26.2.5. shall cooperate with the other Party in complying with any request for access or query from an individual who is the subject of Personal Information and/or responding to any enquiry made, or investigation or assessment of any processing initiated by a relevant regulatory authority in respect of such Personal Information;
- 26.2.6. acknowledge that the Personal Information may be sent to a country outside the Republic of South Africa in which the Customer may or may not be trading;

- 26.2.7. shall bind any operators to which they subcontract to the provisions of this clause; and
- 26.2.8. indemnify each other against all claims, penalties and fines in the event of a Personal Information breach within its business.

- 26.3. All intellectual property rights of any nature whatsoever whether capable of registration or not (and whether registered or not) in either Party's name including but not limited to either Party's trademarks, logos and images shall remain the sole property of that Party. The other Party shall not acquire any rights in relation thereto and shall not make any use thereof without formal written consent.

27. Breach and Termination

- 27.1. If BPO breaches any of these STCs or any agreement between it and the Customer and fails to remedy such breach within 30 (thirty) days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by BPO of the obligations it has defaulted in, but shall not be entitled to cancel these STCs or any agreement between the Customer and BPO.
- 27.2. No provision in these STCs shall derogate from BPO's common law rights in the event that the Customer breaches any term or condition of the agreement.
- 27.3. Without prejudice to its rights under these STCs, any agreement between the Parties and/or at law, either Party shall be entitled to cancel any agreement between it and the other Party by written notice if:
- 27.3.1. the other Party commits any breach of its obligations under these Conditions or the said agreement and fails to remedy that breach within 14 days of its being given written notice to do so;
- 27.3.2. the other Party commits any act of insolvency in terms of any applicable insolvency legislation;
- 27.3.3. the other Party commences business rescue proceedings;
- 27.3.4. the other Party is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
- 27.3.5. the other Party compromises or attempts to compromise with its creditors;
- 27.3.6. any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management of the other Party, or any equivalent order is made in terms of any applicable law regarding the status of the other Party; or
- 27.3.7. the other Party fails to satisfy any default or other judgement granted against it, within 10 days.

28. Force Majeure

- 28.1. A Party shall not be liable for a failure to perform any of its obligations hereunder due to a force majeure event (which includes but is not limited to war, civil war, civil violence, riots, revolutions, acts of piracy, acts of sabotage, terrorism, sabotage, pandemics, epidemics, natural disasters, destruction by lightning, explosions, fires, destruction of installations, industrial action or strike, changes of law, acts of Authority, whether lawful or unlawful) that is beyond its reasonable control and that it could not reasonably be expected to have taken into account at the time of the conclusion of these STCs or any agreement between the Parties, provided that the Party subject to the force majeure event shall give prompt notice (within 5 days) to the other Party of its nature and estimated duration.
- 28.2. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the force majeure event relied upon and shall terminate upon the date which such event ceases to exist.
- 28.3. The Parties hereto shall co-operate and collaborate and use all reasonable efforts to overcome the force majeure event concerned and/or nullify its effect.
- 28.4. If the *force majeure* event substantially or permanently prevents the continued performance by either Party of its obligations in terms of these STCs or any agreement between them for a period exceeding 30 consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the said agreement with effect from 7 days after giving of such notice.

29. Hardship

- 29.1. The Parties hereby record that each of them entered into these STCs on the basis that execution of their respective obligations in terms hereof shall, during the currency of these STCs, be economically viable to them.
- 29.2. If during the term of these STCs, it becomes evident that the execution or implementation of any provision hereof would, due to changes circumstances, impose Hardship (the existence of changed circumstances resulting therein that a party shall not be able to execute its obligations in an economically viable manner) on either party, the Parties shall, after consideration of the reason and circumstances presented by the party in question, consult as to the manner in which the Hardship may be resolved in a fair manner.
- 29.3. For purposes hereof the Parties agree, that should any one allege the existence of Hardship, such allegation shall be addressed in terms of the dispute resolution procedure referred to herein.

30. Notices and domicilia

- 30.1. All Notices in terms of these STCs must be delivered by hand or emailed.
- 30.2. The Customer appoints as its *domicilium citandi et executandi* for all purposes under these STCs its service address and email address provided by the Customer in terms of Clause 2 of BPO's business application form. Where no such address has been provided, the Customer appoints as its *domicilium citandi et executandi* its physical address and email address provided by the Customer on any letterhead, order or other

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document generated or completed by the Customer. In any event, the Customer agrees that any Notice may be served on its registered address.

30.3. BPO appoints its *domicilium citandi et executandi* as that of its Managing Director, 1st floor, Millweed House, 169-175 Maydon Road, Maydon Wharf, Durban, with a copy being sent by email to commercial@bidports.co.za.

30.4. Either party may by Notice to the other party change its chosen physical address and email address to any other physical address or email address, provided that the change shall become effective 14 (fourteen) Days after the receipt of the Notice by the addressee.

31. Electronic Data

31.1. Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, BPO shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.

31.2. Under no circumstances whatsoever and howsoever arising shall BPO be liable for any loss or damage arising from or consequent upon the provision by BPO to the CUSTOMER in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to BPO by any person with whom BPO conducts business, and/or any other third party.

31.3. BPO shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of BPO, of BPO' computer systems and/or software programmes provided and/or operated by BPO and/or by any person with whom BPO conducts business and/or any third party, which systems shall include BPO' electronic automated information service provided to the CUSTOMER.

32. Licences

32.1. If any permit, license, consent or approval (Permits) to handle the Goods or to provide the Services is required under any Law, none of BPO's obligations or duties shall take effect unless and until BPO obtains or receives from the Customer the relevant Permits. Where BPO must obtain the relevant Permits, the Customer must provide all assistance and information as required.

32.2. BPO shall be excused from performing Services in terms of any agreement between it and the CUSTOMER if any licence, permit or similar authorisation lawfully required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever.

33. Performance

33.1. Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these STCs and whether or not BPO has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer must nevertheless be obliged to perform its obligations in terms of any such agreement as though BPO had performed properly and to the Customer's satisfaction.

33.2. The Customer's remedy, having performed its obligations as provided in Clause 33.1, shall be limited to a claim against BPO for repayment of either the whole or a portion of the amount which the Customer alleges constitutes an overpayment.

33.3. Without affecting the generality of Clauses 33.1 and 33.2 the Customer shall not be entitled to withhold or set-off payment of any amounts, by reason of any dispute with BPO, whether in relation to BPO's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against BPO in terms of this Clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to BPO which releases such rights and makes them available to the Customer in respect of any claim that he may have against BPO.

33.4. In any dispute between BPO and the Customer BPO shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

34. Dispute Resolution

34.1. The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the relevant High Court that has jurisdiction in regard to all matters arising from these STCs.

34.2. Any Dispute must in the first place be discussed by duly and properly mandated representatives from both Parties (who may not be legal representatives unless they are in the employ of either Party) at a meeting, with the object of arriving, if possible, at an amicable and negotiated solution to such dispute.

34.3. Such meeting must be held at a venue as agreed by the Parties within (5) five calendar days after either Party has called for such a meeting by Notice to the other Party. Such written notice must include details of the dispute and copies of all relevant correspondence and documentation.

34.4. In the event of the representatives being unable to negotiate and agree on an amicable settlement of such dispute within 7 (seven) calendar days after such meeting has been held, or such further period as agreed between the parties in writing, or if no meeting is held as requested then the Dispute must be referred to the High Court.

35. General

35.1. Notwithstanding the Electronic Communications and Transactions Act, 2002, no amendment or variation of these STCs or any agreement between the Parties shall be of any force or effect unless reduced to writing and physically signed by a duly authorised director of BPO. Whilst correspondence for operational reasons may occur via email, no formal amendment or variation may be concluded via email.

35.2. Any purported variation or alteration of these STCs otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral or takes place before or after receipt of these STCs by the Customer. However, BPO may vary or replace any clause, term or provision of these STCs by giving Notice thereof to the Customer. Any such variation shall become effective from the date reflected in the said Notice.

35.3. No failure, refusal or neglect by a Party to exercise any rights under these STCs or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party's obligations under these STCs or such agreement, shall constitute a waiver of the provisions of these STCs or such agreement or of any of that Party's rights. A Party may at any time require strict compliance with the provisions of these STCs or any agreement between the Parties and shall not be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.

35.4. Each of the provisions of these STCs and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these STCs or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these STCs or any agreement between the Parties.

35.5. Neither Party may cede or assign any of its interest in, or its rights and obligations deriving from, these STCs or any agreement to any third party without the other party's prior written consent, except for a cession or assignment made as part of an internal reorganization of either party, which will not affect their shareholding.

35.6. BPO makes no warranties and representations to the CUSTOMER save as may be specifically provided herein or as notified in writing by BPO to the CUSTOMER. The CUSTOMER acknowledges that BPO is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act on BPO's behalf, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of BPO in response to a written enquiry specifying accurately and in complete detail what information is required.

SIGNED at _____ on this the _____ day of _____ 20__.

WITNESS:

1. _____

Print Name

For and on behalf of
CUSTOMER

Duly Authorised

Print Name

Capacity

Initial