

# STANDARD TRADING CONDITIONS FOR CUSTOMS CLEARING AND RELATED ACTIVITIES

## 1. DEFINITIONS

- 1.1. Unless the context otherwise requires, the following words will have the meanings herein ascribed to them :
- 1.1.1. **“BTT”** means Island View Storage (Pty) Ltd trading as Bidvest Tank Terminals;
  - 1.1.2. **“the Customer”** means the person or entity with whom BTT conducts the services provided for herein and as further stipulated in the Customs Clearing Rates Schedule;
  - 1.1.3. **“the Customs Authorities”** means the South African Revenue Services Customs and Excise authorities, or any legislatively substituted authority, of the Republic of South Africa;
  - 1.1.4. **“Customs Clearing”** means any service provided by BTT which is subject to and regulated by the customs and tax legislation of the Republic of South Africa or any regulation or directive made in terms thereof;
  - 1.1.5. **“Customs Clearing Rates Schedule”** means the Customs clearing rates schedule provided by BTT to the Customer relating to this agreement for customs clearing and related activities;
  - 1.1.6. **“Disbursement”** shall mean any and all expense or cost incurred on behalf of the Customer, which shall include, but not be limited to any expense or cost for which the Customer is liable in terms hereof, or as otherwise in terms of legislation or by operation of the requirements of any regulatory authority.
  - 1.1.7. **“Owner”** shall mean the owner of the Product and any other person who may have or who acquires any interest, financial or otherwise therein;
  - 1.1.8. **“the Party/ies”** means BTT and the Customer collectively;
  - 1.1.9. **“Product”** means any product which BTT is requested to undertake the Customs clearing or related activity by and on behalf of the Customer **“Products”** shall have a corresponding meaning;
  - 1.1.10. **“Service/s”** means all and any business undertaken by BTT as a Custom’s Clearing Agent, including, but not limited to any information, customs clearing, calculation and payment of cargo dues, or any other service provided, whether gratuitously or not, by BTT to the Customer **“Services rendered”** shall have a corresponding meaning.
- 1.2. Headings of clauses shall be deemed to have been included for the purposes of convenience only and shall not modify or affect the interpretation of the agreement.
- 1.3. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include an association of persons having corporate status by statute or common law.
- 1.4. 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 the agreement.
- 1.5. The rule of construction that the contract shall be interpreted against the party responsible for drafting or preparation of this agreement shall not apply.
- 1.6. The use of the word “including” followed by a specific example will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example.
- 1.7. A reference to a document includes an amendment or supplement to, or replacement or novation of that document.
- 1.8. Schedules, annexures or appendices to this contract will be deemed to be incorporated into, and form part of this contract, and expressions defined in this contract will bear the same meanings in such schedules, annexures or appendices, as the case may be which do not contain their own definitions.
- 1.9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.

**SERVICES AND DURATION**

2. BTT offers the Customer its services as a Clearing Agent to undertake all the Customs Clearing and related Services of the Product, on the terms and conditions contained herein and as per the charges and ancillary matters as reflected on the Customs Clearing Rates Schedule.
3. Regardless of the duration of this contract it is hereby specifically recorded and agreed that any and all Services undertaken and any liability which may apply to BTT, whether or not arising from the performance of the Services, shall be on the Standard Trading Conditions for Customs Clearing and Related Activities contained herein.
4. Unless the Parties agree, in writing, specifically to the contrary, these Standard Trading Conditions for Customs Clearing and Related Activities prevailing at the time shall prevail and shall govern the relationship between the Customer and BTT in relation to the Services. In particular it is recorded that these Standard Trading Conditions for Customs Clearing and Related Activities will take precedence over any terms contained in the Customer's standard trading terms or purchase orders.

**REMUNERATION AND PAYMENT**

5. The Customer shall pay to BTT all charges raised for the provision of the Services and for any other Customs Clearing services rendered by BTT, which charges will be in accordance with the Customs Clearing Rates Schedule provided to the Customer by BTT, failing which, in accordance with BTT's usual charges for such services. The Customer shall pay BTT Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.
6. The Customs Clearing Rates Schedule is subject to amendment without notice, having regard to, among other things, variations in the dimension/ weight, changes in currency exchange rates and upward movements in amounts payable by or on behalf of, or at the instance of BTT to third parties which charges and upward movements take place after quotation.
7. Statements of account for Services rendered in terms hereof, including disbursements are submitted monthly and payment must reflect in our bank account, in South African currency, free of commission, and without any set-off, deduction or demand, in Durban, by no later than the last business day of the month in which such statement of account is presented for payment or such earlier date as notified by BTT as a result of a SARS requirement.
  - 7.1. The Customer hereby agrees that all invoices for the Services rendered in terms hereof, or in respect of any disbursements paid on the Customers behalf shall be transmitted electronically via email to the address stipulated by the Customer.
  - 7.2. BTT shall under no circumstances be precluded from raising a charge and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous charge or charges, 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 charges were to follow.
  - 7.3. All and any moneys received by BTT from or on behalf of the Customer shall be appropriated by BTT in its sole and absolute discretion in respect of any indebtedness owing by the Customer to BTT, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
  - 7.4. In the event that payment is not made in terms hereof, then all amounts which have accrued to BTT shall become immediately payable, and all amounts accruing to BTT thereafter shall become immediately payable as and when they are raised as charges by BTT. All late payments are subject to interest charges raised at the prime overdraft rate of the BTT bankers from time to time plus 2%.
  - 7.5. The Customer bears the risk in respect of electronically transmitted payment until the payment is received and cleared into BTT's bank account.
8. All goods and documents relating to Product, as well the Product itself including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for moneys due in respect of such Product or for other moneys due to BTT from the Customer, Owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any moneys due to BTT are not paid within 14 days after notice has been given to the person from whom the moneys are due that such Product or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of BTT and at the expense of such person, and the net proceeds applied in or towards satisfaction of such indebtedness. The lien and pledge in favour of BTT referred to in this clause, shall operate as a first and prior charge against the Products and the documents relating to the Products and no other security shall rank prior to BTT's lien or pledge.
9. BTT shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract in respect of particular product from the Customer, or if the Customer acts as agent for a disclosed or undisclosed principal from the Customer or the principal, as BTT in its absolute discretion deems fit.
10. BTT shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or estimate in circumstances where it becomes impracticable or uneconomical for BTT to carry out the contract at the estimated or quoted rate and the Customer shall have no claim whatsoever against BTT for any loss that the Customer might incur as a result of BTT cancelling or resiling from the quotation or estimate.
11. BTT has the right to recover, by means of a legislative levy yet to be determined, those costs that may be forced upon it due to legislation from any source being promulgated.

**CUSTOMER OBLIGATIONS**

12. The Customer must provide BTT with all information or documents that may be required to enable BTT to comply fully with all Customs, Port or other legislative regulations and/or requirements and to conduct the Services referred to herein on the Customers behalf.
13. The Customer's instructions to BTT shall be in writing, precise, clear and comprehensive and in particular, but without limitation, shall

cover any valuation or determination issued by Customs in respect of any product to be dealt with. Instructions given by the Customer shall be recognised by BTT as valid only if timeously given in writing specifically in relation to the particular transaction. Oral instructions, standing or general instructions or instructions given late, even if received by BTT without comment, shall not in any way be binding upon BTT, but BTT may act thereupon, or not, in the exercise of its absolute discretion, without any penalty whatsoever, and the Customer hereby indemnifies BTT against any claim made by any third party in respect thereof.

14. In the absence of specific instructions given timeously in writing by the Customer to BTT –
  - 14.1. it shall be in the reasonable discretion of BTT to decide whether to perform and at what time to perform any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
  - 14.2. BTT shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts, Services it has agreed to perform;
  - 14.3. BTT shall not be obliged to make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any Product or as to any special interest in delivery.
15. Notwithstanding anything to the contrary herein contained, if at any time BTT should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, BTT shall be entitled to do so and shall not incur any liability in consequence of doing so, and the Customer hereby indemnifies and holds BTT harmless against any claim made by any third party in respect thereof.
16. If events or circumstances come to the attention of BTT, its agents, servants, or nominees which, in the opinion of BTT, make it in whole or in part, impossible or impracticable for BTT to comply with a Customer's instructions BTT 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 BTT in writing, BTT shall, at its sole discretion, be entitled to detain, return, store, sell, abandon or destroy all or part of the product concerned, should the product be in the care and custody of BTT at the risk and expense of the Customer.
17. In any event, it shall always be in BTT's sole discretion as to whether to accept any instruction for Services to be provided.
18. The Customer warrants that it has full authority to engage the services of BTT and to contract on the basis of these Standard Trading Conditions for Customs Clearing and Related Activities on its behalf and/or on behalf of the Owner of the Product and it hereby indemnifies and holds BTT harmless against any claim by the true Owner of the Product or any party with an interest therein. The person representing the Customer in contracting with BTT warrants that he is duly authorised to do so.
19. Further, the Customer warrants that –
  - 19.1. it is either the Owner or the authorised agent of the Owner of any product in respect of which the Customer instructs BTT and that each such person is bound by these Standard Trading Conditions for Customs Clearing and Related Activities;
  - 19.2. in authorising the Customer to enter into any contract with BTT and/or in accepting any document issued by BTT in connection with this contract, the Owner, shipper or consignee, is bound by these Standard Trading Conditions For Customs Clearing and Related Activities for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without limiting the generality of the foregoing, it accepts that BTT shall have the right to enforce against them jointly and severally any liability of the Customer under these Standard Trading Conditions For Customs Clearing and Related Activities or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;
  - 19.3. all information and instructions supplied or to be supplied by it to BTT is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to BTT for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information;
  - 19.4. if any Goods require special storage, packaging or labelling because of their nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with.
20. The Customer undertakes that no claim shall be made against any director, servant, agent, subcontractor or employee of BTT which imposes or attempts to impose upon him/her any liability in connection with the rendering of any Services, which are the subject of these Standard Trading Conditions For Customs Clearing and Related Activities, and hereby waives and abandons all and any such claims.
21. Whenever Product is moved under duty and/or VAT suspension, either within South Africa or across border, the Customer is responsible for providing the acquittal documentation within the prescribed time period, and will be fully liable for any duty and VAT or penalties as a result if its failure to do so.

#### **LIABILITY AND INSURANCE**

22. All Services rendered in terms hereof, whether gratuitously or not, by or on behalf of or at the request of the Customer are rendered at the sole risk of the Customer and the Customer hereby indemnifies BTT and holds BTT harmless in respect thereof. The indemnity shall include but not be limited to any claim made by the South African Revenue Service, Transnet National Ports Authority or its affiliates, any other third party, or other lawful authority in relation to the Services. Subject to clause 18 hereof, BTT does not accept any responsibility whatsoever in connection with the reception, handling, accommodation or demurrage of or relating to any ship at the wharves carrying or to carry the Product, or delay in connection therewith or in relation to the discharge of cargoes or Services rendered in terms hereof.
23. Without derogating from the generality of the foregoing and despite any other provision of these STC's and/or the Agreement, BTT shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising unless such Claim arises from a grossly negligent act or omission on the part of BTT, its employees or

subcontractors and at a time when the Product in question is in the actual custody of BTT and under its actual control.

24. Notwithstanding anything to the contrary contained in these STCs or elsewhere, BTT shall not be liable 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.
25. In the event that, notwithstanding the foregoing, BTT is found liable to the Customer by a Court of competent jurisdiction, such liability shall not exceed double the amount of the fees, excluding disbursements, raised by BTT for its services under this Contract in connection with the particular transaction, but excluding any amount payable to sub-contractors, agents and third parties.
26. The Customer shall, at its own expense, be responsible for the insurance of its Product against all risks, including, but not limited to, duties, taxes, imposts, levies, cargo dues, deposits or out-lays of whatsoever nature levied by or payable to the Customs Authorities.
27. The Customer shall notify BTT, in writing, of its intention to make claim against BTT within 7 days of such claim coming to the knowledge of the Customer; and shall have 9 months from the date of such notification to institute action against BTT. In the event that the Customer fails to institute action or give notice in writing in accordance with the provisions of this clause the Customer's claim against BTT shall become prescribed and the Customer shall have no further right of action against BTT in respect of such claim.
28. Without prejudice to any of the rights of BTT under these Standard Trading Conditions for Customs Clearing and Related Activities, any agreement between the parties and / or at law, the Customer indemnifies and holds BTT harmless against all liabilities, loss, damages, costs and expenses whatsoever incurred or suffered by BTT arising directly or indirectly from or in connection with:
  - 28.1. the negligence or other wrongful act, omission or breach of the Customer or any of its servants, agents or contractors or of any Customer of the Customer or any of the servants, agents or contractors of such Customer, occurring during the storage, loading, unloading, description or movement of the Product or at any other time whatsoever;
  - 28.2. the Customer or any lawful authority's express or implied instructions or their implementation by or on behalf of or at the instance of BTT in relation to any product and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred to any lawful authority or legislative body, regulator, haulier, carrier, warehouseman or other person whatsoever at any time involved with such product arising out of any claim made directly or indirectly against any such person by the Customer or by any consignor, consignee or Owner of such product or by any person having an interest in such product or by any other person whatsoever;
  - 28.3. any warranty given to BTT by the Customer being untrue or incorrect;
  - 28.4. the late or non-provision by the Customer of any documentation required by the Customs Authorities;
  - 28.5. BTT being reflected on a SARS Customs SAD500 declaration as the importer or exporter when acting in its capacity as agent on behalf of the Customer; or
  - 28.6. the contents, quality, nature, legality, inherent vice, counterfeit nature, defect in or description of the Product.
29. The Customer, whether or not the cause of payment was due to an act, instruction or omission of BTT or its servants, or the sender, Owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, cargo dues, deposits or out-lays of whatsoever nature levied by or payable to the Customs Authorities, intermediaries or other parties at any port or place for or in connection with the Product and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the Customer or BTT in connection therewith and the Customer hereby indemnifies BTT accordingly.
30. BTT shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage, cartage, or any other tariff, before or after the performance by BTT of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.
31. Where as a result of any act or omission by or on behalf or at the instance of BTT and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which BTT may otherwise have will cease and fall away if the Customer does not within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of any amount overpaid, advise BTT that an incorrect amount has been paid or levied and do all such acts as are necessary to enable BTT to effect recovery, where applicable, of the amount incorrectly paid or levied.
32. A Party shall not be liable for a failure to perform any of its obligations hereunder due to any circumstances beyond a Party's control which directly or indirectly prevents that Party from complying with any or all of its obligations in terms of any Agreement between the Parties, temporarily or permanently, including but not limited to war, civil war, civil violence, revolutions, fire, storm, tempest, natural disasters, epidemics, pandemics, explosion, mechanical breakdown, spontaneous combustion, accident, destruction of installations, strikes, lockouts, riots, changes of Law, acts of authorities, acts of enemies of the state, acts of piracy, acts of sabotage, cybercrimes, failure of railway, pipelines and/or roads, vis major or casus fortuitous, damage to or destruction of any of the Tanks, or any change to BTT's licence or lease or any licence or lease condition as a result of which BTT, in its sole discretion, decides that continuing the Agreement is not commercially viable ("a Force Majeure event").
33. Relief from liability for non-performance by reason of a Force Majeure event shall terminate upon the date which such event ceases to exist. 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. 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 one Month after giving of such notice.
34. Without limiting the generality of the limitations or exclusions of BTT's liability, BTT is not responsible for any Claims caused directly or indirectly by Force Majeure and the Customer indemnifies BTT in respect of any and all Claims thus arising. BTT may rely on this clause even if BTT does not give the Customer written notice of a Force Majeure event.

**COMPLIANCE AND INFORMATION**

35. The clearing and related activities of Products is subject to all government and local authority regulations and to any requisite approvals by, or license conditions implemented by Transnet Limited, the South African Revenue Services or any other authority from time to time. BTT 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.
36. If BTT is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then BTT by complying therewith shall not be deemed to waive nor abandon any of its rights in terms of these Standard Trading Conditions For Customs Clearing and Related Activities. In addition thereto, in complying with the law, BTT shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer
37. The Customer, its employees, contractors or agents shall at all times adhere to the safety procedures and standards of BTT.
38. BTT and the Customer as well as their agents, employees, subcontractors and intermediaries, must comply with any anti-corruption legislation applicable to either or both Party.
39. BTT 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 Standard Trading Conditions For Customs Clearing and Related Activities or any agreement between the Parties.
40. BTT and the Customer undertake to strictly observe and abide by any rules and regulations applicable to the import, export, re-export or transshipment of the Goods, such as those relating to embargoed or sanctioned countries, commodities or services, for example and not limited to the economic and trade sanctions as defined by the Office of Foreign Asset Control (OFAC) of the US Department of the Treasury, the Export Administration Regulations (EAR) as defined by the Bureau of Industry and Security of the US Department of Commerce and the International Traffic in Arms Regulations (ITAR) as defined by the US Department of State or any other governmental authorities.
41. 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 Standard Trading Conditions for Customs Clearing and Related Activities or any agreement between them.
42. The Parties shall only process each other's personal information or that of their employees in accordance with the requirements of the Protection of Personal Information Act, 4 of 2013 and / or the EU General Data Protection Regulation as applicable.
43. Under no circumstances whatsoever and howsoever arising shall BTT be liable for any loss or damage arising from or consequent upon the provision by BTT 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 BTT by any person with whom BTT conducts business, and/or any other third party.
44. BTT 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 BTT, of BTT's computer systems and/or software programmes provided and/or operated by BTT and/or by any person with whom BTT conducts business and/or any third party, which systems shall include BTT's electronic automated information service provided to the Customer.

**DISPUTES AND TERMINATION**

45. The Parties shall negotiate in good faith with a view to settling any dispute. For the purposes of this clause, a dispute will not include an unpaid account where there is no valid reason therefor. If the dispute cannot be resolved, it will be referred to the managing director or chief executive officer (or such other director as designated by the foregoing) of each Party for determination, who will meet within 14 days of the referral. If the dispute cannot be resolved within 14 days of this meeting, it may be referred for resolution by arbitration in accordance with the rules (domestic or international, as the case may be) of the Arbitration Foundation of Southern Africa ("AFSA") and the laws of South Africa. The arbitration shall take place in Durban, South Africa and in the English language. The arbitration will be heard by one arbitrator appointed by agreement between the Parties, or failing such agreement, by the AFSA. This clause is a separate, divisible agreement from the rest of these STCs and shall remain in effect even if these STCs are nullified or cancelled for whatsoever reason or cause. Nothing herein contained shall be deemed to prevent or prohibit the Parties from seeking interim or urgent relief in a court of competent jurisdiction. While a dispute is subject to arbitration, extinctive prescription stops running and is suspended in respect of any debt related to the dispute.
46. Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these Standard Trading Conditions For Customs Clearing and Related Activities and whether or not BTT has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though BTT had performed properly and to the Customer's satisfaction
47. The Customer's remedy, having performed its obligations as provided for herein, shall be limited to an action against BTT for repayment of either the whole or portion of the amount which the Customer alleges, constitutes an overpayment.
48. Without affecting the generality hereof the Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with BTT, whether in relation to the performance of BTT in terms of any agreement, or lack of performance or otherwise. 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 BTT which releases such rights and makes them available to the Customer in respect of any claim that he may have against BTT.
49. In any dispute between BTT and the Customer, BTT 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.

50. Any agreement between the Parties is deemed to have been entered into in Durban and is governed by South African law. The Customer consents to the jurisdiction of the appropriate Magistrates' Court in respect of any claim arising out of such agreement or from any breach thereof. BTT shall nonetheless be entitled in its discretion to bring proceedings in any other court of competent jurisdiction.
51. Should BTT instruct an attorney to enforce compliance with any of the terms of this contract, the Customer shall be liable for costs on an attorney and own client scale and shall be liable for such charges from the moment they are incurred, irrespective of whether or not BTT's claim is settled before proceedings are instituted.
52. Without prejudice to its rights under these Standard Trading Conditions For Customs Clearing and Related Activities, any agreement between the Parties and/or at law, either Party shall be entitled to cancel any agreement between it and the other Party and/or institute action against the Customer for an order of specific performance by written notice if:
- 52.1. the other Party commits any breach of its obligations under these Conditions or the said agreement and fails to remedy that breach within 7 days of its being given written notice to do so;
  - 52.2. the other Party commits any act of insolvency in terms of any applicable insolvency legislation;
  - 52.3. the other Party commences business rescue proceedings;
  - 52.4. 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;
  - 52.5. the other Party compromises or attempts to compromise with its creditors;
  - 52.6. 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;
  - 52.7. the other Party fails to satisfy any default or other judgement granted against it, within 10 days.

#### GENERAL

53. Neither Party shall be entitled to cede any rights or benefits accruing to it in terms of an agreement between the Parties to any person, firm or company except with the written consent of the other Party being first obtained, provided however that BTT shall be entitled to cede and assign this agreement to any successor-in-title to the bulk liquid storage and handling business of BTT.
54. Any activities carried out by BTT which do not fall within the ambit of "Services" as defined herein, shall be subject to the " BTT Standard Trading Conditions" a copy of which is available on request."
55. This contract, as well as amendments made from time to time in accordance with the provisions herein, constitutes the entire agreement between the parties and supersedes all prior oral and written arrangements or agreements. The parties shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
56. No amendment or variation of this contract by the Customer, including this clause, shall be of any force or effect until reduced to writing and signed by the parties or their duly authorised representatives. Any purported variation or alteration of these Standard Trading Conditions For Customs Clearing and Related Activities 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 Standard Trading Conditions For Customs Clearing and Related Activities by the Customer. Whilst correspondence for operational reasons may occur via email, no formal amendment or variation may be concluded via email.
57. No failure, refusal or neglect by a party to exercise any rights hereunder or to insist upon strict compliance with or performance of another party's obligations under this contract, shall constitute a waiver or novation of the provisions of this contract and either party may at any time require strict compliance with the provisions of this agreement.
58. No indulgences or extensions of time or latitude which one of the parties may allow to the other shall constitute a waiver by that party of any of its rights, and it shall not thereby be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.
59. Each of the provisions of this agreement shall be considered as separate terms and conditions. In the event that this agreement is affected by any legislation or any amendment thereto or if the provisions herein contained 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 that illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not part thereof.
60. BTT hereby nominates as its domicilium citandi et executandi, for the service of any legal process or notice in terms hereof 142 Wharfside Road, Island View, Durban.
61. The Customer hereby nominates as its domicilium citandi et executandi, for the service of any legal process or notice in terms hereof its address which appears on the Customs Clearing Rates Schedule.
62. Either Party shall have the right to vary its domicilium citandi et executandi to an alternative physical address within the Republic of South Africa by providing the other Party not less than 30 days' notice thereof in writing.