



## STANDARD TRADING CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, in these STCs the following words and phrases have the meanings attributed to them in this clause:

- 1.1.1 **“Agreement”** means each contract for the provision of the Services by BTT to the Customer which contract is concluded on these STCs and the Schedule as signed by BTT;
- 1.1.2 **“BTT”** means Island View Storage (Pty) Ltd trading as Bidvest Tank Terminals;
- 1.1.3 **“Business”** means those of the services offered by BTT as described in clause 4 and which the Customer requires BTT to provide and **“Service/s”** has a corresponding meaning;
- 1.1.4 **“Business Day”** means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 1.1.5 **“Claim”** means any claim arising from or in connection with any cause of action, including contract, delict, strict or statutory liability, and for any loss, damages (that is direct, special, indirect and consequential damages), costs (including legal costs on the attorney and client scale and on a full indemnity basis), expenses, interest, fines, penalties, settlement payments or other liabilities;
- 1.1.6 **“the Customer”** means the person identified as “the Customer” in the Schedule;
- 1.1.7 **“the Customs Authorities”** means the Customs and Excise Department of the South African Revenue Service or any legislatively substituted authority, of the Republic of South Africa;
- 1.1.8 **“Delivery”** means delivery of the Product to BTT which delivery is deemed to take place when the Product passes the flange of BTT’s receiving Tank or the permanent manifold connecting BTT’s pipeline to the ship’s manifold and **“Delivered”**, **“Deliver”**, **“Receive”** and **“Received”** and **“Receipt”** have corresponding meanings;
- 1.1.9 **“Dispatch”** means dispatch of the Product by BTT and is deemed to take place when the Product passes the flange connecting BTT’s Tank, pipeline or hose to road or rail tanker or ship’s manifold and **“Discharge”** shall have a corresponding meaning;
- 1.1.10 **“Drumming Service”** means discharging Product from Tanks into drums and ancillary services such as stencilling Product descriptions and other information prescribed by the Customer onto drums;
- 1.1.11 **“Force Majeure”** means 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;
- 1.1.12 **“the Installation”** means the Tanks and other equipment situated on any premises at which BTT provides any of the Services;

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- 1.1.13 **“the Instructing Party”** means a person from whom the Customer authorizes BTT, in writing, to accept instructions to release Product;
- 1.1.14 **“Law” or “Laws”** means all laws including the common law, statute, regulations and any other document which has the force of law;
- 1.1.15 **“Lockup and Release Service”** means a Service which BTT only provides if and when it specifically agrees to do so, in writing and on each occasion at the Customer’s specific written request and comprising:
- 1.1.15.1 Receiving and storing Product in the Customer’s Reserved Capacity on behalf of the Customer and the Instructing Party;
  - 1.1.15.2 issuing written confirmation of Receipt of Product to the Customer and the Instructing Party setting out a description of each Product received and in respect of which the Lockup and Release Service is being provided and the quantity/ies of each such Product Received by BTT;
  - 1.1.15.3 only Dispatching all or any of the Product if and when BTT receives the original bill of lading in respect of that parcel/s of Product or a written instruction from the Instructing Party authorizing the Dispatch of that parcel/s of Product and identifying the person to whom the Product is to be Dispatched;
  - 1.1.15.4 issuing written confirmation of Dispatch of Product to the Customer and the Instructing Party setting out a description of each Product Dispatched and in respect of which the Lockup and Release Service is being provided and the quantity/ies of each such Product Dispatched by BTT and the name of the person to whom the Product was Dispatched;
  - 1.1.15.5 after Dispatch of any Product in respect of which the Lockup and Release Services are provided, sending the Customer and Instructing Party written confirmation of the quantity of Product in respect of which the Lockup and Release Services are being provided and which remains in storage;
- 1.1.16 **“Loop Line Service”** means a Service which BTT only provides if and when it specifically agrees to do so, in writing and on each occasion at the Customer’s specific written request and comprising making BTT’s pipelines, a pig receiver, line accessories and hoses available for use in transferring the Customer’s Product from a ship to a specified end point;
- 1.1.17 **“Month”** means a calendar month, that is from the first to the last day of each named month of the year, both days included;
- 1.1.18 **“NERSA”** means the National Energy Regulator of South Africa and its successors;
- 1.1.19 **“Normal Hours”** means BTT’s normal working hours, that is from 08:00 to 16:00 on Business Days;
- 1.1.20 **“Overtime Hours”** means any time outside Normal Hours;
- 1.1.21 **“the Party/ies”** means BTT and the Customer or either of them;
- 1.1.22 **“Product”** means any product in respect of which BTT agrees to provide any of the Services for the Customer as set out in the Schedule or in a separate written agreement in the case of Lockup and Release Services and Loop Line Services, and includes any containers not supplied by BTT and **“Products”** has a corresponding meaning;
- 1.1.23 **“Reserved Capacity”** means the Tank space made available to store the Customer’s Product and which is described in the Schedule;
- 1.1.24 **“Schedule”** means the schedule of charges agreed to by BTT and the Customer;

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- 1.1.25 “**STCs**” means the standard trading terms and conditions set out in this document;
  - 1.1.26 “**Storage Charge/s**” means BTT’s charge/s for providing the Services as detailed in the Schedule;
  - 1.1.27 “**Tank/s**” means the bulk liquid and/or liquefied gas storage tank/s at the Installations;
  - 1.1.28 “**Temporary Capacity**” means any Tank space other than the Reserved Capacity which is made available to the customer;
  - 1.1.29 “**Throughput**” means the quantity of Product Received into the Installation; and
  - 1.1.30 “**Waste**” means Tank and other washings and any substance, whether or not it can be re-used, recycled or recovered, that must be treated or disposed of or any material identified as waste by the National Environmental Management: Waste Act, 59 of 2008.
- 1.2 Clause headings are for convenience only and must not be used when interpreting the Agreement.
  - 1.3 Unless inconsistent with the context, words relating to any gender include the other genders, words relating to the singular include the plural and *vice versa* and words relating to natural persons include juristic persons.
  - 1.4 Any substantive provisions conferring rights or imposing obligations on any Party and which is included in a definition is still effective even though it is only contained in a definition.
  - 1.5 The rule of construction that a contract shall be interpreted against the Party responsible for drafting it does not apply when interpreting the Agreement.
  - 1.6 “Including” means “including but not limited to” and includes has a concurrent meaning. The use of the word “including” followed by a specific example does not limit the meaning of any 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 any document (including any statute) includes every amendment of or supplement to, or replacement or novation of that document.
  - 1.8 Terms defined in these STCs have the same meanings in any schedules attached to them unless otherwise indicated or clearly apparent from the context.
  - 1.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words prevail.
- 2. BTT ONLY DOES BUSINESS IN TERMS OF THESE STCS**
- 2.1 All and any Business undertaken or provided by BTT, or any liability which may apply to BTT, whether or not arising from the performance of the Services is subject to these STCs. The Customer’s STCs do not apply.
  - 2.2 Each Agreement between BTT and the Customer is only concluded when BTT signs the Schedule in respect of that Agreement.
  - 2.3 These STCs are available on BTT’s website at <http://www.bidtanks.com> or on request by email to [info@bidtanks.com](mailto:info@bidtanks.com) or phone on +27(0)31 277 5600.
  - 2.4 BTT may amend these STCs from time to time and the amended STCs apply to any Business undertaken after any such change is made.

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### 3. CONSUMER PROTECTION ACT

- 3.1 The Customer warrants that, at the time it signs every Agreement, both its annual asset value and annual turnover each exceed R2 million and accordingly it is not a “consumer” as envisaged in the Consumer Protection Act, 68 of 2008. If at any time during an Agreement the Customer qualifies as a “consumer” in terms of this act, it must immediately notify BTT thereof and the Customer agrees that in that event, it will sign any addendum to the Agreement as BTT in its sole discretion determines is reasonably necessary to amend that Agreement to take account of the provisions of this act.

### 4. SERVICES

- 4.1 As and when BTT agrees, in writing, to provide the Services in respect of each Product, then, on the terms and conditions of each Agreement, BTT shall provide to the Customer the following Services:
- 4.1.1 making available Reserved Capacity at an Installation/s for storage of the Customer’s Product, which Reserved Capacity may be made available in such Tanks/s as allocated by BTT in its sole discretion from time to time;
  - 4.1.2 making available Temporary Capacity at an Installation/s for storage of the Customer’s Product, which Temporary Capacity may be made available in such Tanks/s as allocated by BTT in its sole discretion from time to time;
  - 4.1.3 Receiving the Customer’s Product and determining the quantity of Product Received;
  - 4.1.4 storing the Product;
  - 4.1.5 transferring Product between Tanks at the Customer’s request (this Service will only be provided if a minimum volume of 100 tonnes of Product is being transferred);
  - 4.1.6 Discharging the Product from the Installation;
  - 4.1.7 Tank cleaning;
  - 4.1.8 empty slop drums;
  - 4.1.9 Waste disposal;
  - 4.1.10 Waste disposal administration;
  - 4.1.11 using nitrogen when Discharging Product from a ship or Delivering Product to a ship for safety or Product quality reasons, for nitrogen purging or blanketing and to ensure pipelines are dry;
  - 4.1.12 weighing road vehicles entering and leaving each Installation on a weighbridge;
  - 4.1.13 loading Product into drums or intermediate bulk containers, provided that BTT is only obliged to provide this Service if it agrees to do so, in writing, on each occasion when asked by the Customer to do so;
  - 4.1.14 decanting Product from intermediate bulk containers into Tanks, provided that BTT is only obliged to provide this Service if it agrees to do so, in writing, on each occasion when asked by the Customer to do so;
  - 4.1.15 providing Customers with the Drumming Service, provided that BTT is only obliged to provide the Drumming Service if it agrees to do so, in writing, on each occasion when asked by the Customer to do so;
  - 4.1.16 providing Customers with the Loop Line Service, provided that BTT is only obliged to provide the Loop Line Service if it agrees to do so, in writing, on each occasion when asked by the Customer to do so;
  - 4.1.17 providing Customers with the Lockup and Release Service, provided that BTT is only

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obliged to provide the Lockup and Release Service if it agrees to do so, in writing, on each occasion when asked by the Customer to do so;

4.1.18 providing the Customer with any other ancillary services requested by the Customer and which BTT agrees in writing to provide, on each occasion.

- 4.2 Despite any allocation of Reserved or Temporary Capacity to any particular Tank/s, BTT retains the sole right to direct which Tanks/s may be used, the purpose for which and the method by which any Tank/s may be used, which right shall also include issuing any operating instructions from time to time.
- 4.3 BTT provides the Services subject to all applicable Laws and any requisite approvals of, and licence terms and conditions imposed by, Transnet SOC Limited and any other authority having jurisdiction, from time to time. BTT shall not be liable for any inability to provide Services due to the termination of any licence or lease agreement in place with Transnet SOC Limited.
- 4.4 BTT can provide customs clearing services in respect of the Customer's Product. BTT only provides customs clearing services in terms of its "Standard Trading Conditions for Customs Clearing and Related Activities" which are available on BTT's website at <http://www.bidtanks.com>. If BTT provides any customs clearing services to the Customer, the Customer shall be bound by BTT's "Standard Trading Conditions for Customs Clearing and Related Activities" in respect of those customs clearing services.
- 4.5 Any Services entrusted by the Customer to BTT may, in the absolute discretion of BTT, be fulfilled by BTT itself, by its own servants performing part or all of the relevant Services, or by BTT employing, or entrusting such Services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Services, or such part thereof as they may be employed to carry out. Where BTT subcontracts any Services, it remains responsible for the performance of its obligations to the Customer.

#### **RESERVED AND TEMPORARY CAPACITY AND CHARGES**

- 4.6 BTT must make the Reserved Capacity available for storage of the Customer's Product.
- 4.7 If the Customer's storage requirements exceed the Reserved Capacity, BTT may make Temporary Capacity available to the Customer but is not obliged to do so. If BTT makes Temporary Capacity available to the Customer, BTT's Storage Charges for that Temporary Capacity are:
- 4.7.1 as set out in the Schedule; or
- 4.7.2 if BTT's Storage Charges for the Temporary Capacity are not set out in the Schedule, the charges agreed between the parties and recorded in a written addendum to the Schedule which is agreed to by both parties.
- 4.8 Irrespective of the period for which the Customer stores Product in the Temporary Capacity:
- 4.8.1 the Customer must pay BTT a minimum of one Month's Storage Charges for that Temporary Capacity;
- 4.8.2 either Party may give one Month's written notice of termination of the Agreement in respect of that Temporary Capacity; and
- 4.8.3 the Customer will be responsible for all tank cleaning and Waste disposal charges.
- 4.9 Irrespective of whether the Customer uses the whole volume of the Reserved Capacity or the Temporary Capacity or not, the Customer must pay BTT an amount for the Reserved Capacity and the Temporary Capacity calculated by multiplying the total volume thereof by the applicable Storage Charges set out in the Schedule.

#### **LOOP LINE SERVICES**

- 4.10 The Customer must request provision of the Loop Line Services, in writing, on each occasion when it requires the Loop Line Services.

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- 4.11 The Customer's request for Loop Line Services must specify:
- 4.11.1 the type and quantity of Product in respect of which the Loop Line Services are required;
  - 4.11.2 the ship from which the Product is to be transferred;
  - 4.11.3 the beginning and end points of the transfer; and
  - 4.11.4 the date when it requires the Loop Line Services.
- 4.12 BTT only provides the Loop Line Services in respect of parcels of Product of at least 500 tonnes. The Customer agrees to pay a minimum fee for Loop Line Services calculated on a minimum parcel size of 500 tonnes even if the Customer's parcel is less than 500 tonnes.
- 4.13 The Customer must ensure that a marine surveyor is present throughout the provision of the Loop Line Services on each occasion and must pay all the surveyor's costs.

#### **LOCKUP AND RELEASE SERVICES**

- 4.14 The Customer must request provision of the Lockup and Release Services, in writing, on each occasion when it requires the Lockup and Release Services.
- 4.15 The Customer's request must specify:
- 4.15.1 the type and quantity of Product in respect of which the Lockup and Release Services are required;
  - 4.15.2 the name and contact details of the Instructing Party and every person authorized to represent the Instructing Party;
  - 4.15.3 the Reserved Capacity where the Product subject to the Lockup and Release Services is or will be stored.
- 4.16 The Customer must pay all costs incurred by BTT in providing the Lockup and Release Service.
- 4.17 The Customer must ensure that a marine surveyor is present on each occasion when Product which is subject to the Lockup and Release Services is Received and Dispatched and the Customer must pay all the marine surveyor's costs on each occasion.

#### **5. SERVICE CHARGES**

- 5.1 The Customer must pay BTT charges for the Services as set out in the Schedule or calculated by applying the rates set out in the Schedule or as recorded in a written agreement concluded by both of the parties.
- 5.2 BTT changes the Storage Charges annually. If BTT changes the Storage Charges, it will give the Customer written notice of the new Storage Charges at least two weeks before it implements them. Should the Customer not accept the new Storage Charges, either Party may terminate the Agreement on three Months' written notice to the other Party.
- 5.3 BTT may change those of its charges for the Services other than the Storage Charges at the intervals set out in the Schedule and where no such intervals are stipulated, at any time during this agreement on reasonable written notice to the Customer.
- 5.4 The Customer must pay to BTT, immediately on request, all costs incurred by BTT in restoring the Tank/s and / or pipelines used to move or store the Product to the condition in which they were immediately before they were used to move or store the Product.

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**6. PAYMENT**

- 6.1 Despite any other provision of these STCs, all BTT's charges exclude value added tax which the Customer must pay at the applicable rate and simultaneously with payment of those charges.
- 6.2 The Customer must pay BTT all charges raised for the Services set out in the Schedule or, where those charges are not specified in the Schedule, in accordance with BTT's usual charges for such Services.
- 6.3 BTT renders statements of account monthly and payment of all BTT's charges must reflect in BTT's bank account as freely available funds, in South African currency, free of all bank charges, withholding, set-off, deduction or demand, in Durban, by the 25th day of the Month following the first statement rendered by BTT for those charges.
- 6.4 The Customer hereby agrees that all invoices for the Services rendered in terms of each Agreement, or for any disbursements paid on the Customer's behalf shall be transmitted electronically via email.
- 6.5 BTT may raise and recover payment of a charge for Services or a disbursement even if a previous charge/s for the Services or disbursement was raised, irrespective of whether the Customer was notified that further charges or disbursements were to follow or not.
- 6.6 BTT may appropriate the Customer's payments in its sole and absolute discretion to any indebtedness owing by the Customer to BTT, notwithstanding any attempt by the Customer to appropriate the payment to any particular debt or portion of a debt when making that payment.
- 6.7 BTT invoices disbursements, including but not limited to any payments due to the Customs Authorities and Port authorities monthly. The Customer must ensure that payment of all disbursements reflects in BTT's bank account as freely available funds by the last day of the same Month in which BTT raised those disbursements, or any earlier date required by the Customs Authorities, Port Authorities or any other authorities as notified to the Customer by BTT.
- 6.8 If any payment is not made when due, all amounts then owing and payable to BTT shall become immediately due and all amounts that become owing and payable to BTT thereafter, including disbursements, shall become due immediately they are raised by BTT.
- 6.9 All late payments are subject to interest at the prime overdraft lending rate of the Standard Bank of South Africa Limited from time to time plus 2%.
- 6.10 NERSA regulates tariffs applicable to BTT's charges for certain Services. The Parties agree that:
- 6.10.1 BTT may vary those of its charges subject to NERSA's approved tariff upon receipt of tariff approval; and
  - 6.10.2 if BTT, in its sole and absolute discretion, considers that it is not economically viable to continue providing Services, the charges for which are subject to the NERSA approved tariff, then BTT may immediately cancel every Agreement insofar as it applies to the provision of those Services, without penalty and the Customer shall not have any Claim against BTT arising from or in connection with that cancellation.
- 6.11 Transnet SOC Limited may impose certain charges and penalties relating to minimum throughput. The Customer agrees that it is responsible to pay any charge or penalty imposed relating to a failure to achieve minimum throughput and which is attributable to the Services or Tank Capacity made available to the Customer and the Customer hereby indemnifies BTT against any such charge and/or penalty. The Customer also acknowledges that Transnet SOC Limited may change the minimum throughput requirements from time to time. If BTT, in its sole discretion, decides that Transnet SOC Limited's minimum throughput requirements make it economically unviable for BTT to continue rendering the Services to the Customer, then BTT may cancel the Agreement with immediate effect and without penalty.
- 6.12 BTT has the right to recover, on written notice to the Customer, 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

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promulgated. BTT may recover from the Customer any additional costs which it is obliged to pay because of any changes to any applicable Laws after the commencement of any Agreement.

## **7. LIEN, PLEDGE AND OTHER SECURITY**

- 7.1 The Customer warrants that it owns the Products and that the Products are unencumbered.
- 7.2 Irrespective of whether the Customer owns the Products or not, the Customer agrees that it is liable to pay all amounts owed to BTT in terms of every Agreement.
- 7.3 The Customer shall not pass any bond over or encumber the Product in any way without BTT's prior written consent on each occasion. The Customer shall ensure that BTT's interest in and to the Product is duly endorsed as such when encumbering the Product.
- 7.4 BTT shall have a lien over all the Products in respect of which any of the Services are provided in terms of every agreement. The Customer expressly agrees that BTT shall have this lien over the Products in respect of which the Services are provided, irrespective of whether the Customer owns the Products or not. The Customer agrees that BTT's lien constitutes continuing covering security for all amounts owed to BTT in terms of each agreement.
- 7.5 The Customer hereby pledges to BTT all the Products delivered in terms of this Agreement as security for any claim which BTT may have against the Customer which arises directly or indirectly, from or in connection with this agreement.
- 7.6 If the Customer fails to pay any amount to BTT when due, then without prejudice to any of BTT's other rights, and without further notice to the Customer, at BTT's option, BTT may sell all or any part of the Product, either by public auction or by private treaty, and apply the proceeds of any such sale, after deducting all expenses thereof, in payment of or towards any sum due by the Customer to BTT.

## **8. DURATION**

- 8.1 This Agreement commences on the date as specified in the Schedule and, subject to its other provisions, will be automatically renewed every 12 months unless written notice of termination is given by either Party three Months prior to the termination date.
- 8.2 The Customer must remove its Product from the Installation by the termination date (and BTT is not obliged to give the Customer notice to remove its Product).
- 8.3 If the Customer does not remove the Product from the Installation as required by BTT in terms of clause 8.2 above, then the Customer shall be liable to BTT for, and indemnifies BTT against any and all Claims sustained by BTT as a result thereof.

## **9. PARTIES' RIGHTS AND OBLIGATIONS**

- 9.1 If the Customer requires BTT to Receive or Discharge Product during Overtime Hours, BTT will charge the overtime rates set out in the Schedule for those Services.
- 9.2 If the Customer requires BTT to Receive or Discharge Product to or from road vehicles or rail cars during Overtime Hours, the Customer must ensure that BTT receives a written booking for those Services on the last Business Day before the date on which those Services are required and by 14H00 on that Business Day if booked by email and by 15h00 on that Business Day if booked via electronic data interface on BTT's computer system.
- 9.3 The Customer must pay for Services which it books and requires to be performed during Overtime Hours whether it uses those Services or not at the aborted overtime rate set out in the Schedule.
- 9.4 If the Customer requires BTT to heat Tanks at the Installation in order to Receive Product, the

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Customer must notify BTT accordingly at least three Business Days before the date on which Receipt of the Product is scheduled to take place.

- 9.5 Whenever Product is Received or Dispatched, BTT will advise the Customer of the quantities of Product Received into storage or of the quantities of Product Dispatched.
- 9.6 Unless otherwise agreed in writing with the Customer in the Schedule, and excluding the circumstances set out in clauses 9.7, 9.8 and 10.11 hereof, BTT shall have the right at any time to withdraw any Tank allocated to the Customer as part of its Reserved Capacity or Temporary Capacity on the condition that another Tank of suitable capacity is substituted therefor. Should such substitution necessitate pumping Product from one Tank to another, the expenses of such pumping and of cleaning the Tank from which the Products are pumped will be borne by BTT unless otherwise agreed.
- 9.7 By giving the Customer 180 days written notice to that effect, BTT may require the Customer to ensure that the Tanks in which its Product/s is being stored are empty in order to allow BTT to undertake statutory inspections of those Tanks. The Customer shall have no Claim against BTT arising from or in connection with the exercise by BTT of its rights in terms of this clause 9.7. Despite the fact that the Customer is unable to store Product in the Tanks being inspected during the inspection period, the Customer must pay BTT the storage charges for that specific Tank for the period of such Tank inspection.
- 9.8 Upon reasonable notice by BTT the Customer shall ensure that the Tanks in which its Product/s is being stored are empty in order to allow BTT to undertake routine or special maintenance. The Customer shall have no Claim against BTT arising from or in connection with the exercise by BTT of its rights in terms of this clause 9.8. BTT shall not be entitled to payment of Storage Charges in respect of the specific Tank being maintained for the period of the routine or special maintenance.
- 9.9 The Customer must ensure that all pumping from ship to Tank is carried out by the ship without cost to BTT. In all other circumstances, the costs of pumping Product to or from the Installation are to be borne by BTT unless otherwise agreed.
- 9.10 When BTT undertakes to Receive Products in bulk from a ship or to pump from shore to ship, the Customer must ensure that the Products are free-flowing and capable of being pumped at a minimum of 100 cubic metres per hour. This rate is not a guaranteed pumping rate and is merely an indication of the viscosity of the Product required in order for BTT to Receive or Dispatch such Products. BTT is not obliged to comply with any unloading or loading rates unless those rates are expressly agreed between the parties and set out in the Schedule.
- 9.11 The Customer must ensure that the Product to be Received is freely pumpable at ambient temperatures unless the Customer has notified BTT that it requires the Product to be heated or cooled. Such notification is required at least three Business days before the Product is due to be Received or Dispatched for Products at 49°C and below, and at least five Business days before the Product is due to be Received or Dispatched for Products above 49°C. If the Product to be Received requires heating or cooling, then the heated or cooled Product must be freely pumpable. If required by the Customer by written notice to BTT, BTT will provide steam for heating the Tank in the Installation in which the Product is stored at an additional charge to the Customer as set out in the Schedule. If required by the Customer by written notice to BTT, BTT will provide a cooled Tank in the Installation in which the Product is stored at an additional charge to the Customer as set out in the Schedule.
- 9.12 Unless otherwise agreed in writing with BTT before a ship berths, the Customer must ensure that every ship carrying or to carry the Customer's Product which is to be Delivered to BTT or Discharged by BTT is berthed at a wharf in the port from which BTT can Receive Product or to which BTT can Discharge Product, directly into or from, BTT's pipelines connecting the quayside to the Installation.
- 9.13 The Customer must ensure that every ship loading or offloading the Customer's Product from or into an Installation at all times provides and operates suitable lifting equipment so that BTT's hoses and other gear can be lifted onto and off the ship. Any offloading or loading of a ship will be undertaken entirely at the Customer's risk and the Customer hereby indemnifies BTT against any Claim which

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arises from or in connection with such activity.

- 9.14 Products Received from ship, road or rail will be Received by BTT and the Customer shall be entitled to be present during Delivery to check all measurements.
- 9.15 Where it is reasonable to do so in the circumstances, BTT must clean the Tanks and pipelines which it intends to use to provide the Services and make those Tanks and pipelines available for inspection by the Customer in terms of clause 9.16.
- 9.16 The Customer may nominate an inspector to examine the relevant Tanks and/or pipelines before Receipt or Dispatch of the Customer's Product. If the relevant Tanks and/or pipelines have been certified clean by the Customer's inspector, BTT shall have no further responsibility for any contamination of the Customer's Product caused by the state of the Tanks and pipelines before use and the Customer shall not have any Claim against BTT in this regard. Should the Customer fail to nominate an inspector, or should the nominated inspector fail to inspect the Tanks and/or pipelines, the Customer shall be deemed to have accepted the condition of the Tanks and/or pipelines as satisfactory and BTT shall not be liable to the Customer for any Claim due to contamination or losses that may arise from the use thereof.
- 9.17 The quantities of Product shall be determined:
- 9.17.1 where Product is Dispatched by road, from the weighbridge ticket issued by BTT's weighbridge reflecting the mass of that road vehicle; and / or
  - 9.17.2 where Product is Received or Dispatched by rail or ship, by measurement in the Tanks at the Installation carried out by BTT. If applicable, this measurement may be witnessed by the Customs Authorities. If requested by the Customer, this measurement may be certified by an independent surveyor appointed by the Customer. Any independent surveyor appointed by the Customer shall be the Customer's agent for all intents and purposes and the Customer shall be responsible for all his fees and expenses and any instructions given by that independent surveyor to BTT shall be deemed to have been given by the Customer.
- 9.18 The Customer must pay all the Customs Authorities' charges for attendance to supervise the Receipt or Discharge of the Product into or from a BTT bonded Installation.
- 9.19 At any time during BTT's business hours on Business Days and after giving at least one Business Day's prior written notice to BTT, the Customer may inspect and check the Customer's Product at any of the Installation/s.
- 9.20 The Customer must notify BTT of the estimated date and time of arrival of any ship from which Product is due to be Received or to which Product is due to be Discharged, in writing seven Business Days before that date. Such notice must state the name of the ship, the expected date of her arrival, the value, quantity and description of each Product to be loaded or unloaded. BTT must be notified in writing at least four Business Days before the arrival of the ship of the Customer's Tank allocations from its Reserved Capacity for the Product to be Received. Where different grades or qualities of a Product are to be loaded or unloaded, the value, quantity and description of each Product and the Customer's Tank allocations must be supplied for each grade of Product. The Customer must ensure that the bills of lading in respect of the Product are marked "Notify Bidvest Tank Terminals" and that one original bill of lading together with a copy of the loading report is sent to BTT as soon as possible after the bills of lading are signed by the master of the ship.
- 9.21 Before Discharge, if requested by the Customer, BTT must permit the Customer access to the Installation/s for the purpose of taking ullages and samples and carrying out any other steps necessary to identify and verify the Product before Discharge. The Customer agrees that BTT may take samples of any Product, at any time for the purposes of any Agreement.
- 9.22 Unless otherwise agreed in writing, the Customer must pay all costs of transporting Product to or from BTT.
- 9.23 The Customer must provide BTT with all information or documents that may be required to enable

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BTT to comply fully with all Laws.

- 9.24 BTT will maintain the Tanks at all times to reasonable industry standards.
- 9.25 If Waste is generated at any premises controlled by BTT, whether as a result of the leakage of the Product or otherwise:
- 9.25.1 BTT shall be responsible for the management thereof and for arranging the clean-up and/or disposal of such Waste in accordance with the relevant Laws;
  - 9.25.2 The Customer shall be responsible for any and all costs incurred as a result of any actions taken by BTT in terms of this sub-clause, unless and to the extent that the Waste was caused by the gross negligence or wilful default of BTT.
  - 9.25.3 Subject to the provision of valid permits and/or licenses required, where the Customer, in agreement with BTT, has requested to remove and dispose their own Waste, they shall do so at their own cost.
- 9.26 If BTT stores Waste on behalf of a Customer and such Waste has not been uplifted within 30 days of BTT notifying the Customer thereof, BTT shall, without further notice, be entitled to dispose of such Waste forthwith in accordance with the applicable Laws at the Customer's cost.
- 9.27 If BTT stores excisable or bonded Product on behalf of a Customer, and such Product has not been removed within the prescribed period from date of Receipt for any reason whatsoever, duty and VAT may become payable, and penalties will be imposed by SARS Customs and / or other relevant authorities. The Customer will be fully liable for these payments and penalties.

## **10. LIMITS AND EXCLUSIONS OF LIABILITY, INDEMNITIES AND INSURANCE LIMITATION OF LIABILITY**

- 10.1 Despite any other provision of these STC's and/or the Agreement, BTT 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 BTT, its employees or subcontractors.
- 10.2 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.
- 10.3 If BTT is liable to the Customer in terms of these STCs and / or the Agreement or otherwise, in no case whatsoever shall any liability of BTT, howsoever arising, exceed the lesser of R 500 000 per incident, or:
- 10.3.1 in the case of loss of or damage to Product, the actual customs or insurance declared value of the Product;
  - 10.3.2 in the case of any claim relating to Drumming, Lockup and Release or Loop Line Services, three times the charges for those particular services;
  - 10.3.3 in the case of any other loss, double the charges raised by BTT for its Services rendered in connection with the Product which gave rise to the claim, but excluding any amount payable to sub-contractors, agents and third parties; and
  - 10.3.4 in any event, R 2 000 000 in the annual aggregate regardless of the number of claims.
- 10.4 The Customer agrees that no Claim shall be made against any director, officer or employee of BTT 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 and indemnifies BTT in this regard.

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- 10.5 Without limiting the generality of the limitations or exclusions of BTT's liability contained in these STCs or elsewhere, BTT is specifically not liable for:
- 10.5.1 any claims arising from or in connection with the reception, handling, accommodation or demurrage of, or relating to, any ship carrying or to carry the product, or delay in connection therewith or in relation to the discharge of cargoes;
  - 10.5.2 any claims arising from loss prior to Delivery or after Dispatch;
  - 10.5.3 any contamination or alteration of the Product due to the mixing or blending of Products carried out in accordance with the Customer's instructions;
  - 10.5.4 any evaporation, leakage or handling losses outside of the control of BTT;
  - 10.5.5 any inherent vice in the Product;
  - 10.5.6 any gradual deterioration of the Product; or
  - 10.5.7 any other deterioration in the quality of the Product.
- 10.6 BTT only has the Product under its control and in its care and custody from the time that the Product is Delivered to BTT until the time that it is Dispatched. Dispatch of the Product by BTT to the Customer or any person to whom the Customer instructs BTT in writing to release the Product shall remove the Product from the control, care and custody of BTT.

#### **CLAIMS**

- 10.7 No Claim of any nature whatsoever and howsoever arising may be brought against BTT unless BTT has received written notice of the Claim from the Customer specifying full details thereof within 21 days of the date of the event giving rise to the Claim, or of the Customer reasonably becoming aware thereof, whichever is the later.
- 10.8 BTT shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any Service provided to the Customer or which BTT has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on BTT within 12 months after the cause of action in respect of any such alleged liability arose.

#### **INSURANCE**

- 10.9 The Customer must procure any insurance it considers necessary including insurance of its Product against all risks. BTT is not obliged to insure the Product.

#### **INDEMNITY**

- 10.10 Without prejudice to BTT's rights under these STCs, any agreement between the Parties and/or at law, the Customer indemnifies and holds BTT harmless against all Claims whatsoever incurred or suffered by BTT (unless and to the extent caused by the wilful misconduct or gross negligence of BTT) arising directly or indirectly from or in connection with:
- 10.10.1 the contamination or damage to other product caused by the Customer's Product or any act or omission by any of the Customer's shareholders, directors, officers, employees, invitees or contractors;
  - 10.10.2 any environmental contamination or pollution which occurs whilst the Product is not under the care, custody and control of BTT;
  - 10.10.3 BTT complying with the requirements or instructions of the Customer or any Authority regarding the Product or Services;
  - 10.10.4 any warranty given to BTT by the Customer being wholly or partially untrue, inaccurate or incorrect;
  - 10.10.5 any act or omission or breach of these STCs by the Customer or any of its shareholders, directors, employees, agents, subcontractors, carriers or customers;

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- 10.10.6 any claim made by the Owner, the consignor or consignee, the carrier, the Customer's clients or suppliers or any third party in connection with the Services or Product;
  - 10.10.7 death, bodily injury or damage to persons or personal property as a result of an act or omission of the Customer or any person acting on its behalf;
  - 10.10.8 Customer's non-compliance with applicable Laws, regulations and rules including but not limited to those imposed by the SARS Customs Authorities, National Ports Act and Rules, environmental and waste management legislation and by-laws, SANS requirements and BTT health and safety rules and permits;
  - 10.10.9 the Customer removing and disposing of its own Waste; and / or
  - 10.10.10 any act or omission on the part of the municipality and other relevant authorities.

#### **FORCE MAJEURE**

- 10.11 A Party shall not be liable for a failure to perform any of its obligations hereunder due to a *Force Majeure* event. 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. 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.
- 10.12 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.

#### **WARRANTIES**

- 10.13 The Customer hereby warrants that the ships and the road and rail vehicles used to transport the Product to or from the Installation are properly maintained, fit for their purpose and comply with all Laws, regulatory, safety and other applicable requirements.
- 10.14 The Customer warrants that it is authorised to contract with BTT and to do so on the basis of the STCs, for itself and, where it does not own the Product, on behalf of the owner of the Product and the Customer hereby indemnifies BTT against any Claim by the true owner of the Product or any person having any interest in the Product. The person representing the Customer in contracting with BTT warrants that he is duly authorised to do so.

#### **11. DISPUTES**

- 11.1 Any dispute which arises from or in connection with any Agreement, including disputes relating to the interpretation of any Agreement, rectification or termination, must be dealt with in terms of this clause 11.
- 11.2 The Parties shall negotiate in good faith with a view to settling any dispute arising out of or relating to this Agreement. For the purposes of this clause, a dispute will not include an unpaid account where there is no valid reason therefor.
- 11.3 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.
- 11.4 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

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Arbitration Foundation of Southern Africa (“AFSA”).

- 11.5 The arbitration shall take place in Durban, South Africa and in the English language.
- 11.6 The arbitration will be heard by one arbitrator appointed by agreement between the Parties, or failing such agreement, by the AFSA.
- 11.7 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.
- 11.8 Nothing herein contained shall be deemed to prevent or prohibit the Parties from seeking interim or urgent relief in a court of competent jurisdiction.
- 11.9 While a dispute is subject to arbitration, extinctive prescription stops running and is suspended in respect of any debt related to the dispute.

## **12. CONFIDENTIALITY, PERSONAL INFORMATION AND INTELLECTUAL PROPERTY**

- 12.1 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 any agreement between them, whether prior to, during or after the currency of the STCs or said agreement.
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 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.

## **13. COMPLIANCE**

- 13.1 The Customer, its shareholders, directors, employees, contractors or agents shall at all times comply with BTT’s access, security, safety, computer network and other rules, procedures and standards.
- 13.2 The Customer must obtain the prior written consent of its shareholders, directors, employees, contractors and agents to submit to breathalyser testing and searches of their persons, possessions and vehicles by BTT upon entering and/or leaving any Installation.
- 13.3 BTT and the Customer, as well as their agents, servants, subcontractors and intermediaries, must comply with any anti-corruption legislation applicable to either or both Party. This includes not giving or offering to give, receiving or offering to receive any bribe, facilitation payment, political contribution, gift or other advantage which violates this anti-corruption legislation.
- 13.4 BTT and the Customer, as well as their agents, servants, 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 agreement between the Parties. Anti-competitive behaviour means any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means, whether formal, informal, contractual, non-contractual, written or verbal) or other form of co-ordination or co-

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operation with any competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition laws.

- 13.5 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 Product, 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.

#### **14. GENERAL**

- 14.1 The Agreement is the whole agreement between the Parties containing all the express provisions agreed by them about its subject matter. This Agreement supersedes all prior oral and written arrangements or agreements between the parties.
- 14.2 No Party may rely on any representation of any kind which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 14.3 No agreement varying, adding to, deleting from or cancelling this Agreement (including this clause) and no waiver of any right under this Agreement will be effective unless in writing and signed by or on behalf of the Parties.
- 14.4 By not exercising or enforcing any right in terms of this Agreement, a Party does not waive that right.
- 14.5 Neither Party may cede, delegate or assign any or all of its rights or obligations in terms of this Agreement without the prior written consent of the other Party except that BTT may cede, delegate or assign any or all of its rights or obligations in terms of this Agreement to its successor in title or any other company controlled by BTT's direct or indirect holding company.
- 14.6 The Agreement is deemed to have been entered into in Durban and is governed by South African law, excluding its conflict of laws rules. 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. Despite the Customer's consent to jurisdiction, BTT may, in its sole discretion, bring proceedings in any other court of competent jurisdiction.
- 14.7 The Parties may sign separate copies of this Agreement. Each copy is deemed to be an original, and all copies will together comprise one and the same Agreement.
- 14.8 Since the provisions of this Agreement have been settled by negotiation and each Party has been free to get independent legal advice about its provisions, this Agreement must not be interpreted against the Party primarily responsible for drafting it.
- 14.9 In the Agreement, whenever any period of time is prescribed, it excludes the first and includes the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the next Business Day.
- 14.10 Any costs incurred by a Party because of the other Party's breach of this Agreement must be borne by the Party in breach on the attorney and client scale and on a full indemnity basis, even if the matter is settled before legal proceedings commence.
- 14.11 Any reference to an amount in this Agreement means that amount excluding value added tax unless specified otherwise.
- 14.12 The various documents forming part of this Agreement are mutually explanatory. If they conflict or are inconsistent, the provisions contained in the STCs prevail.
- 14.13 Each Party must bear its own legal costs of and incidental to negotiating, preparing and implementing the Agreement

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- 14.14 Each provision of the Agreement is a separate term or condition. If this Agreement is affected by any Law or any amendment or replacement of any Law or if any of its provisions are found to be illegal, invalid, prohibited or unenforceable, then those provisions shall be ineffective only to the extent of that illegality, invalidity, prohibition or unenforceability and all the remaining provisions shall remain of full force and effect.
- 14.15 If Party commits a material breach of the Agreement and fails to remedy that breach within 21 days after receiving written notice calling upon it to do so, then without prejudice to any of its rights in terms of this Agreement or in Law, the other Party may immediately cancel the Agreement or claim specific performance and in both cases, claim damages.
- 14.16 BTT's *domicilium citandi et executandi* for the service of any legal process or notice in terms of this Agreement is 142 Wharfside Road, Island View, Durban.
- 14.17 The Customer nominates as its *domicilium citandi et executandi* for the service of any legal process or notice in terms of this Agreement it's the address set out in the Schedule.
- 14.18 Either Party may change its *domicilium citandi et executandi* to any other physical address within the Republic of South Africa by providing the other Party with not less than 30 days' prior written notice of its new address.