

1. DEFINITIONS and INTERPRETATION

- 1.1. Clause headings and sub-headings are for convenience and shall not be used to interpret such terms and conditions, unless the context clearly indicates a contrary intention.
- 1.2. Any expression which denotes any gender includes the other gender.
- 1.3. The following expressions shall bear the meanings assigned to them below:
 - 1.3.1. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
 - 1.3.2. **“Entity”** includes any association, business, close corporation, sole propriety, BTT, concern, enterprise, firm, partnership, joint venture, person, trust, undertaking, voluntary association and any other similar entity;
 - 1.3.3. **“Equipment”** means any computer equipment, training equipment and/or any equipment utilized by Vendor in the delivery of the Goods/Services;
 - 1.3.4. **“BTT”** means Island View Storage Proprietary Limited t/a Bidvest Tank Terminals, a private company with limited liability incorporated and registered under the laws of the Republic of South Africa under registration number 1952/000715/07;
 - 1.3.5. **“BTT Representative”** means the person appointed by BTT to liaise with the Vendor on a day to day basis in respect of Goods/Services being provided;
 - 1.3.6. **“Industrial Action”** means any labour protest action; strike; lock-out; and any general retardation of work, whether unprotected or protected by legislation and as further comprehensively defined by the South African Labour Relations Act, 66 of 1995 and other relevant regulatory legislation;
 - 1.3.7. **“Intellectual Property”** means any computer software, material, name, concept, training material, training instruments, copyright in documents, patentable or non-patentable inventions, discoveries and improvements, patent, trade mark, trade name, drawings, designs, operational analysis, technology and know-how or other intellectual property;
 - 1.3.8. **“Month”** means a calendar month, being one of the 12 (twelve) periods into which a year is divided;
 - 1.3.9. **“Parties”** means BTT and the Vendor and “Party” means either BTT or the Vendor as the case may be;
 - 1.3.10. **“Purchase Order”** means a system generated document which details the price, quantity, delivery date, place and description of Goods/Services required;
 - 1.3.11. **“Vendor”** means the Entity with whom BTT contracts to provide Goods/Services.
 - 1.3.12. **“Vendor Representative”** means the person appointed by the Vendor to liaise with BTT on a day to day basis in respect of Goods/Services being provided;
 - 1.3.13. **“Goods/Services”** mean the products, materials, goods or services provided by the Vendor to BTT.
- 1.4. Unless the context clearly requires a different interpretation, any reference to:
 - 1.4.1. the singular includes the plural and vice versa; and
 - 1.4.2. natural persons include juristic persons and vice versa.
- 1.5. Where appropriate, meanings ascribed to defined words and expressions in clauses shall impose substantive obligations on the Parties.
- 1.6. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.7. 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 herein.
- 1.8. When any number of days is prescribed herein, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.9. The use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule (i.e. the rule that a general word or clause is restricted in meaning to the same class as the specific words which precede it) shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.10. The contra proferentem rule (i.e. that words should be interpreted against the stipulator) shall not be applied in the interpretation of these terms and conditions.
- 1.11. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Effective Date, and as amended or substituted from time to time.

2. INTRODUCTION

These terms and conditions shall govern all aspects of the business and working relationship between the Parties, unless a separate contract is executed in writing.

3. APPOINTMENT

- 3.1. BTT appoints the Vendor who accepts such appointment to provide the Goods/Services, subject to these terms and conditions.
- 3.2. The Vendor warrants that it has sufficient knowledge and expertise in all aspects of the Goods/Services and has the level of skill and experience to perform/supply the Goods/Services.
- 3.3. The Vendor hereby gives consent to BTT to process its information for all purposes with regard execution of the terms of these terms and conditions.
- 3.4. The Vendor shall use its best endeavours, care and skill in performing all its obligations. The provision of the Goods/Services shall be carried out at premises designated by BTT and the Vendor shall respect the laws and customs of the countries and provinces in which Services are conducted.
- 3.5. The Vendor shall in all professional matters act as a faithful advisor to BTT and, in so far as any of its duties are discretionary, act fairly between BTT and third parties.

4. DURATION

- 4.1. These terms and conditions shall remain applicable and may be amended from time to time.

5. VENDOR OBLIGATIONS

- 5.1. The Vendor shall be required to meet all pre-requirements prescribed by BTT.
- 5.2. The Vendor shall at all times ensure that it has the all the resources required to provide the Goods/Services.
- 5.3. The Vendor shall disclose any information which the cause of a conflict of interest between the Vendor may be and BTT.
- 5.4. The Vendor shall ensure that all supporting documents supplied to BTT remain valid for the duration of this working relationship. A change in the Vendor's B-BBEE status must be communicated to BTT immediately.
- 5.5. The Vendor agrees and undertakes to abide by all of BTT's Health and Safety rules and regulations as amended from time to time and to the extent that it is reasonably practical, the Vendor shall comply with the provisions of the Occupational Health and Safety Act No. 85 of 1993, insofar as it is applicable. Should the Vendor fail to comply with any of the said health and safety requirements, BTT shall be entitled to suspend any agreement until such time as compliance is established to the satisfaction of BTT.
- 5.6. Unless otherwise agreed between the Parties, the Vendor shall, as far as reasonably practicable provide adequate insurance cover against potential damage to BTT property by its employees or subcontractors and/or loss of whatsoever nature for any and all its Equipment utilized at any BTT designated premises.
- 5.7. The Vendor shall provide Goods/Services subject to a valid Purchase Order being issued to it by BTT Representative.
- 5.8. The Vendor shall be required to ensure compliance with the Bidvest Code of Ethical Purchasing as well as the BTT Code of Ethics which may be accessed on the BTT website.

6. PAYMENTS

- 6.1. Payments for Goods/Services by BTTT shall be made thirty (30) days from date of statement, unless agreed otherwise in writing.
- 6.2. The Vendor shall submit statement of account to BTT Finance department within 7 working days after the month end of Goods/Services being provided.
- 6.3. All invoices issued to BTT shall be accompanied with proof of delivery, duly signed by a BTT Employee, acknowledging that the Goods/Services have been supplied or rendered.
- 6.4. Should any dispute arise relating to the amount of the charges to which the Vendor is entitled, such dispute shall be determined in accordance with the Arbitration Clause below.

7. CANCELLATION, SUB-STANDARD SERVICE PENALTIES

- 7.1. The Vendor undertakes to deliver the Goods/Services in accordance with professional, high-quality standards and as such, it acknowledges that BTT may incur substantial costs in the preparation of receipt of the Goods/Services. In the event that the Vendor fails to deliver Goods/Services for any reason other than Force Majeure, and/or BTT determines that the Goods/Services are not in



Integrated Management System

BTT Conditions of Purchase (Vendors)

accordance with the conduct and standards as agreed to with the Vendor, then BTT shall notify the Vendor, who shall within 5 (five) Business Days, or any period as determined by BTT, re-provide the Goods/Services at no cost to BTT and to the satisfaction of BTT. Any re-provision of Goods/Services shall be without prejudice to BTT's rights to any claim of immediate or specific performance of all of the Vendor's obligations, to a claim of damages or losses, or to terminate the working relationship.

- 7.2. In the event that due to the Vendor's negligence or for reasons within its control, the Vendor does not perform within the periods agreed, BTT may, without prejudice to its other rights or remedies in law, claim penalties.
- 7.3. All claims shall exclude consequential loss.

8. STATUS OF VENDOR IN RELATION TO BTT

- 8.1. Nothing shall authorize, empower or constitute the Vendor as an agent of BTT in any manner; authorize or empower the Vendor to assume or create an obligation or responsibility whatsoever, express or implied, on behalf of or in the name of BTT; or authorize or empower the Vendor to bind BTT in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of BTT.
- 8.2. Nothing shall be deemed or construed to create, or have been intended to create, a partnership, joint venture, employment, franchise, agency or other similar relationship between the Parties hereto. In furtherance of and without limiting the foregoing, the Vendor shall not hold itself out to be BTT and the Vendor is not and shall not hold itself out to be or be deemed to be the legal representative or agent of BTT, for any purpose whatsoever; and the Vendor shall not act or bind BTT in any way or represent that BTT is in any way responsible for the Vendor's acts or omissions.

9. TERMINATION, CANCELLATION AND BREACH

- 9.1. BTT may summarily terminate any contracts if the Vendor is liquidated, whether provisionally or finally or has an execution levied against its assets or is investigated or found guilty by any official prosecution/investigative authority with regards to fraud or dishonesty or any criminal act and/or civil liability.
- 9.2. BTT may summarily terminate any contracts with the Vendor if the Vendor has failed to comply with the Bidvest Code of Ethical Purchasing and/or the BTT Code of Ethics.
- 9.3. BTT may, by 24 (twenty-four) hours written notice of termination to the Vendor, terminate any contracts and claim damages if, in BTT's sole discretion, the Vendor:
 - 9.3.1. has abandoned or breached a material term or condition of any contract;
 - 9.3.2. has breached any other term of condition of any contract and has failed to remedy the breach within a period of 7 (seven) days after receiving written notice of the breach from BTT;
 - 9.3.3. has persistently or flagrantly neglected to carry out its obligations;
 - 9.3.4. has committed an act of negligence or incompetence; or
 - 9.3.5. has assigned any contract or any part thereof without the consent in writing of BTT.
- 9.4. Should any contract be terminated by mutual agreement between BTT and the Vendor, the obligations of BTT shall be limited to the payment of such amounts of work done by the Vendor and failing such agreement shall not exceed such amounts as may be due and payable for Goods/Services rendered up to the date of termination.
- 9.5. BTT's termination of any contract or any claim for specific performance of all the Vendor's obligations shall be without prejudice to BTT's right to claim damages.

10. BTT PROPERTY

- 10.1. Upon termination of the contract, the Vendor shall return to BTT all property belonging to BTT, including but not limited to any books, documents, manuals, specifications, and technical data.

11. CONFIDENTIALITY

- 11.1. The Vendor and BTT, to the extent of their contractual and lawful right to do so, will exchange Confidential Information as is reasonably necessary for each to perform its obligations and for BTT to avail itself of the Goods/Services rendered by the Vendor. All information relating to any contract or the Goods/Services provided by either Party to the other, whether oral and or written, is hereby deemed to be Confidential Information.
- 11.2. If any of the Confidential Information were to be made public or given to or used by any of the Disclosing Party's competitors, potential

BTT Conditions of Purchase (Vendors)

competitors, service providers or clients, the Disclosing Party would be severely prejudiced and would suffer substantial damage and loss.

- 11.3. The Parties warrant that all information made available, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance, or advice given or requested, operating methods and costs, will be kept as strictly confidential and will not be divulged to any third parties without the written permission of the Disclosing Party or Data Owner, or unless required in law. The Parties, their employees, contractors or agents, will maintain the utmost secrecy in respect of all such information.
- 11.4. The Receiving Party shall take all such steps as may be reasonably necessary to prevent the Confidential Information from falling into the hands of an unauthorised third party or being disclosed in any manner which will cause or be likely to cause injury or loss to the Disclosing Party.
- 11.5. The above undertakings by the Receiving Party relating to the confidentiality shall not apply to information which;
- 11.5.1. is in fact lawfully in the public domain at the commencement of this agreement; or
- 11.5.2. lawfully comes into the public domain after the commencement of this agreement otherwise than as a result of the conduct of The Receiving Party;
- 11.5.3. The Receiving Party is compelled to disclose in terms of legislation; or
- 11.5.4. The Receiving Party is specifically authorised in writing by the Disclosing Party to disclose.
- 11.6. All documentation furnished by the Disclosing Party to the Receiving Party to enable it to provide the services will remain the property of the Disclosing Party and upon the request of the Disclosing Party will be returned to it. No copies or compilations of such documents may be made by the Receiving Party unless authorised in writing by the Disclosing Party. No representations are made as to the accuracy or completeness of the documentation.
- 11.7. The Receiving Party warrants that it will comply with all its duties and obligations in terms of the Protection of Personal Information Act 4 of 2013 in respect of the Confidential Information and indemnifies the Disclosing Party for any breach of this warranty.

12. INTELLECTUAL PROPERTY

- 12.1. Intellectual Property rights in material developed for BTT and paid for by BTT in terms of the Goods/Services shall vest in BTT. The Parties shall ensure that no infringements of whatsoever nature are made on the Intellectual Property rights and privileges of each other.

13. REPORTING

- 13.1. Reports will be prepared for BTT by the Vendor as and when reasonably requested by BTT.

14. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

- 14.1. The Vendor hereby accepts liability for and indemnifies and holds BTT harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses, or other liabilities, caused whether negligently or otherwise, by the non-compliance of the Vendor and/or its employees of their duties and obligations, in delict for breach of statutory duty or otherwise.
- 14.2. BTT shall not be liable for any losses, damages, costs, claims and demands which the Vendor may incur or sustain whilst carrying out or providing the tasks unless incurred as a direct result of BTT's gross negligence.

15. INDEMNITY

- 15.1. The Vendor indemnifies and holds BTT harmless for any penalty, fines, loss or damage and/or against any claim whatsoever, including but not limited to any tax, duty, excise, impost, charge, interest, penalty or fine, by any third party directly or indirectly attributable to the negligence or other wrongful act or omission of the Vendor or any of the Vendor's employees, servants, agents or contractors.

16. FORCE MAJEURE

- 16.1. If any Party is prevented or delayed in performing any obligation for any reason beyond the reasonable control of that Party, then that Party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.
- 16.2. Any Party so prevented or delayed shall inform the other in writing of that prevention or delay as soon as reasonably possible after

BTT Conditions of Purchase (Vendors)

the circumstances causing such prevention or delay has arisen.

- 16.3. The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the Party so prevented or delayed shall forthwith give written notice to the other Party. Where a Force Majeure lasts for 30 days or more, then either Party may terminate any contract.
- 16.4. While any such prevention or delay continues, the Parties shall continue to comply with their obligations which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other Party not prevented from continuing with all its obligations to cancel any contract by giving written notice of such termination to the other Party.
- 16.5. "Force Majeure" shall mean any circumstances beyond the reasonable control of the Party concerned and shall include but not be limited to:
- 16.5.1. the inconsistent and/or inadequate supply of electricity by the official South African energy supplying body;
 - 16.5.2. war, revolution, riots, mob violence, sabotage, epidemics, change or new legislation
 - 16.5.3. industrial Action by workers, agents or employees;
 - 16.5.4. earthquakes, floods, fires or other natural physical disasters.
- 16.6. The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

17. ARBITRATION

- 17.1. In the event of any dispute or difference arising between the Parties out of, or in relation to, or in connection with any contract, or the interpretation thereof, or its termination, both while in force and after its termination, the Party claiming such dispute or difference shall forthwith advise the other in writing thereof. The dispute shall be referred to the applicable authorities of the Vendor and BTT who shall within 14 (fourteen) days of receipt of such notice, meet and negotiate in good faith in order to resolve such dispute or difference. Should the Parties fail to resolve such dispute or difference within 14 (fourteen) days of their first meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the provisions of the Arbitration Act, Act No 42 of 1965, as amended and as amplified or limited by this clause.
- 17.2. Any Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 17.3. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 17.4. The arbitration shall be held:
- 17.4.1. In Durban in the English language;
 - 17.4.2. Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 (ninety) days after it is demanded.
 - 17.4.3. The Parties irrevocably agree that the decision in arbitration proceedings shall be final and binding upon the Parties and shall be carried into effect and may be made an order of any court of competent jurisdiction.
- 17.5. This clause is severable and shall remain valid and binding on the Parties notwithstanding any termination of any contract.

18. DOMICILIA CITANDI ET EXECUTANDI

- 18.1. The Parties choose as their domicilium citandi et executandi, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) to be the addresses as provided.
- 18.2. Any notice or communication required or permitted to be given in terms of any contract shall be valid and effective only if in writing. It shall be competent to give such notice by email or facsimile, if applicable.
- 18.3. Either Party may give notice to the other Party to change the physical address chosen as its domicilium citandi et executandi to another physical address in South Africa, provided that such change shall become effective on the 7th (seventh) day from the deemed receipt of the notice by the other Party.
- 18.4. Any notice sent by email or facsimile to the email address or facsimile number stipulated in the domicilium citandi et executandi, shall be deemed to have been received on the date of dispatch (unless the contrary is proved). Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the domicilium citandi et executandi, shall be deemed to have been received on the 7th (seventh) Business Day after posting, unless the contrary is proved.
- 18.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an

adequate written notice or communication to it notwithstanding that it was not sent to or delivered to the address chosen as the domicilium citandi et executandi.

19. ANTI BRIBERY

- 19.1. The Vendor and its subsidiaries confirm that they are in compliance with the Anti-Corruption and Bribery Laws to which BTT and its subsidiaries are subject and in the jurisdictions in which the Vendor and its subsidiaries are operating. Neither the Vendor nor any of its subsidiaries has received any written communication that alleges that the Vendor, its subsidiary or any agent thereof is, or may be, in violation of, or has, or may have, any liability under, the Anti-Bribery Laws.
- 19.2. The Vendor confirms that it has not and will not engage in any communication, agreement or other form of co-ordination or co-operation with any competitor that is unlawful or otherwise restricted or prohibited in its dealings with BTT.
- 19.3. In their dealings with each other, the Parties commit to observe the highest standards of ethical business practices and to ensure that their employees do likewise. Each Party shall comply with all applicable laws dealing with improper or illegal payments, gifts or gratuities. The Parties agree not to pay, promise to pay, or authorize payments of any money or anything of value, directly or indirectly to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with any contract. This does not affect the lawful payment of reasonable and bona fide expenditures, such as travel and lodging expenses, which are directly related to the promotion, demonstration or explanation of products or services, or the execution or performance of a contract. The Vendor is encouraged to report any unethical practices to BTT management or to the **Bidvest Ethics hotline toll free 0800-506090** (all approaches to this line will remain anonymous and confidential).

20. PROTECTION OF PERSONAL INFORMATION

- 20.1. Each Party shall comply with the provisions of all Data Protection Legislation, that apply in relation to any personal information processed in connection with any contract and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other Party, including, but not limited to, the provision of information regarding the existence, applicability and extent of application of Data Protection Laws to personal information.
- 20.2. If either Party (as Responsible Party), its agents, subcontractors or employees (as operators) are permitted access to any personal information held by the other Party (as Data Subject) for any reason connected with any contract or are supplied with or otherwise provided with personal information by the Data Subject or on its behalf, or are supplied with or otherwise provided with personal information relating to any employee, Data Subject or subcontractors, it shall procure in the case of its employees, Data Subjects or subcontractors, and a Responsible Party itself shall:
- 20.2.1. not retain a record of the personal information of the Data Subject any longer than is necessary for achieving the purpose for which the information was collected or processed, unless required by law, reasonably requires the record for lawful purposes related to its functions or activities, retention of the record is required by a contract between the Parties thereto, or for reasons of historical, statistical or research purposes provided a Responsible Party has established appropriate safeguards against the records being used for any other purpose;
- 20.2.2. without prejudice to the generality of the foregoing, ensure that appropriate technical and organisational measures shall be taken by it against the unauthorised or unlawful processing of such personal information and against the accidental loss or disclosure or destruction of, or damage to, such personal information;
- 20.2.3. not (and shall procure that its agents and subcontractors shall not) process or transfer any personal information outside the Republic of South Africa without the prior written consent, of the Data Subject, which consent will not be unreasonably withheld.

21. GENERAL

- 21.1. Each of these terms and conditions shall be considered as separate terms and conditions and in the event that they are affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, than any such provisions shall be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.
- 21.2. Each Party shall be liable for its own costs in respect of, and incidental to, the negotiation and execution of any contract.
- 21.3. These terms and conditions constitute the entire agreement between the Parties regarding the matters dealt with herein and no

BTT Conditions of Purchase (Vendors)

representations, terms, conditions or warranties not contained herein shall be binding on the Parties.

- 21.4. No agreement varying, adding to, or deleting from or cancelling these terms and conditions will be effective unless reduced to writing and signed by or on behalf of the Parties.
- 21.5. No indulgences granted by BTT shall constitute a waiver of any of its rights. Accordingly, BTT will not be precluded as a consequence of having granted such indulgence, from exercising any rights against the Vendor which may have arisen in the past or which may arise in the future.
- 21.6. The Vendor shall not be entitled to cede and assign its rights and obligations without the written consent of BTT. Consent granted in terms of this clause above shall not create a relationship between BTT and the sub-contractor. The Vendor shall remain expected to deliver the services as if the work has not been subcontracted.
- 21.7. All prices and other currency amounts used shall be in South African Rand ("**ZAR**") unless expressly stated to the contrary.
- 21.8. These terms and conditions have been drafted and executed in the English language. They may be translated into any other language, but only this English language version shall be deemed the original document. If any conflict arises between the English version and any version in any other language, the English language version shall have the controlling authority.