

**STANDARD TRADING TERMS AND CONDITIONS OF THE RO-RO, BREAK-BULK AND AGRICULTURAL TERMINALS, BULK TERMINALS AND RO-RO AUTOMOTIVE TERMINALS OF TRANSNET PORT TERMINALS, AN OPERATING DIVISION OF TRANSNET SOC Ltd (REGISTRATION NO: 1990/000900/30).**

**1. DEFINITIONS**

1.1. Unless the contrary intention appears from the context, the following terms have the meanings assigned to them below:

1.1.1. "Bulk Terminal" means an area especially set aside primarily for the handling of bulk cargo by specialised equipment at the following Bulk Terminals:

- Richards Bay
- Maydon Wharf
- East London
- Port Elizabeth
- Saldanha;

1.1.2. "Business Day/Working Day" means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

1.1.3. "Cargo" means the Customer's cargo in respect of which the Services are to be rendered in terms of these Standard Trading Terms and Conditions;

1.1.4. "Customer" means the Party to whom the Services are provided at the relevant Terminal;

1.1.5. "IMDG" means the International Maritime Dangerous Goods (IMDG) Code which is a uniform international code for the transport of dangerous goods by sea and/or the SANS (South African National Standard) 10228;

1.1.6. "Parties" means collectively the Customer and TPT, and "Party" means either of them as the context dictates;

1.1.7. "Port" means any of the ports where the Terminals are located;

1.1.8. "Representatives" means any person duly authorised to represent that respective Party including its employees, agents and contractors;

1.1.9. "Ro-Ro, Break-bulk and Agricultural Terminal" means an area set aside primarily for the handling of general break-bulk cargo, bulk cargo, containers and vehicles by standard port equipment at the following Ro-Ro, Break-bulk and Agricultural Terminals:

- Richards Bay
- Cape Town

- Saldanha
- Port Elizabeth
- Durban and Maydon Wharf
- East London;

1.1.10. “Ro-Ro Automotive Terminal” means an area especially set aside primarily for the handling of vehicles at the following Ro-Ro Automotive Terminals:

- Durban
- East London
- Port Elizabeth;

1.1.11. “SDR” means Special Drawing Rights and serves as the unit of account of the International Monetary Fund as referred to in The Hague Visby Rules;

1.1.12. “Services” means those services rendered by TPT to the Customer in terms of these Standard Trading Terms and Conditions;

1.1.13. “SOLAS” means International Convention for the Safety of Life at Sea, enforced in South Africa via Merchant Shipping Act (No. 57 of 1951);

1.1.14. “Standard Trading Terms and Conditions” means these Standard Trading Terms and Conditions of the Ro-Ro, Break-bulk and Agricultural, Bulk and Ro-Ro Automotive Terminals;

1.1.15. “Tariff Book” means the tariff book issued by TPT which applies from time to time, the current tariff book being applicable from 1<sup>st</sup> April 2018 until 31 March 2019;

1.1.16. “Terminals” means the Ro-Ro, Break-bulk and Agricultural, Bulk and Ro-Ro Automotive Terminals collectively and “Terminal” refers to any one of them as the context indicates;

1.1.17. “TPT” means Transnet Port Terminals, an operating division of Transnet SOC Ltd alternatively referred to as the “Terminal Operator”.

## **2. INTERPRETATION**

2.1. These Standard Trading Terms and Conditions are in all respects governed by the law of the Republic of South Africa and any claim by any Party against the other which in any manner arises out of or pertains to these Standard Trading Terms and Conditions, whether based in contract or delict or on any other cause of action whatsoever, is to be determined in accordance with the law of the Republic of South Africa.

2.2. These Standard Trading Terms and Conditions must, where applicable, be read in conjunction with TPT’s Tariff Book, the Terminal Operating Guidelines and the Standard Terms and Conditions for all Visitors to the Terminal Operator’s Ro-Ro, Break-bulk and Agricultural, Bulk and Ro-Ro Automotive Terminals, subject to any supplements and amendments thereto (“the other documents”), all of which constitute the entire agreement between the Parties with regard to any aspect, matter or thing referred to herein or which arises out of or relates to such matters

as are referred to. The other documents can be found on TPT's website at [www.transnet-tpt.net](http://www.transnet-tpt.net)  
➤ TPT documents.

- 2.3. The headings and sub-headings in these Standard Trading Terms and Conditions are inserted for convenience only and are not relevant for the purpose of interpretation and where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.4. Subject to Clause 4.2 below, no addition to, subtraction from, amendment of or variation to these Standard Trading Terms and Conditions is of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

### **3. INTRODUCTION**

- 3.1. The Customer imports and/or exports the Cargo and appoints TPT to store and handle the Cargo and to provide handling and related services ("the Services") on the terms and conditions of these Standard Trading Terms and Conditions.
- 3.2. These Standard Trading Terms and Conditions apply to all contracts entered into between TPT and the Customer in respect of the Services provided by TPT's Terminals unless a separate written agreement has been concluded and signed by the Parties which specifically excludes the application of all or some of the provisions of these Standard Trading Terms and Conditions.

### **4. TERMS AND APPLICATION OF STANDARD TERMS AND CONDITIONS**

- 4.1. These Standard Trading Terms and Conditions are effective from 01 April 2018 until 31 March 2019.
- 4.2. Notwithstanding the provisions of Clause 2.4 above, TPT reserves the right to amend these Standard Trading Terms and Conditions during the period in Clause 4.1 above, as and when required in its sole and absolute discretion, by giving written notice of such amendment to the Customer.
- 4.3. These Standard Trading Terms and Conditions apply to all Services rendered at the Terminals.

### **5. REMUNERATION AND PAYMENT**

- 5.1. TPT must be remunerated by the Customer at the rates as quoted by TPT to the Customer and within the timeframes set out herein unless otherwise specifically agreed to in writing by TPT.
- 5.2. All tax invoices of TPT for the Customer's account for any particular month must be paid by the Customer on or before the twentieth (20<sup>th</sup>) day of the following month.
- 5.3. Any amount falling due for payment by the Customer pursuant to the Services rendered in terms of these Standard Trading Terms and Conditions and which is not paid timeously shall bear interest against the Customer and in favour of TPT at one percent (1 %) above the prime-lending rate levied by TPT's bank at any given time, compounded monthly in arrears. In the case of a dispute as to the rate of interest, a certificate in writing by a manager or accountant of the said bankers shall be *prima facie* proof thereof.

- 5.4. All amounts payable in terms of these Standard Trading Terms and Conditions must be paid on the due date for payment thereof, free of exchange and without demand, set-off or deduction. Without limiting the generality of this Clause 5.4, the Customer may not withhold any due payment for any reason whatsoever.

## **6. IMDG GOODS**

- 6.1. In addition to any lawful instructions provided by TPT, the Customer must ensure compliance with all applicable international and national legislation and any applicable Harbour Master's written instructions and IMDG circulars in respect of IMDG, dangerous and noxious goods.
- 6.2. The Customer must ensure all Cargo which is IMDG, dangerous or noxious is clearly marked with approved IMDG labels / placards in accordance with international and national legislation.
- 6.3. If IMDG (dangerous) Cargo is handed over to TPT without being marked, labelled, packaged or documented in accordance with the relevant law and if, when TPT takes possession of such Cargo, TPT does not know of its IMDG, dangerous or noxious character or nature, TPT is entitled but not obliged to:
- 6.3.1. take all precautions the circumstances may require, including, when the Cargo poses an imminent danger to any person or property, destroying the Cargo, rendering it innocuous, or disposing of it by any other lawful means, without liability for payment of compensation for damage to or destruction of the Cargo resulting from TPT taking such precautions; and
  - 6.3.2. receive reimbursement from the Customer for all costs incurred by TPT in taking the measures referred to in Clause 6.3.1 above.
- 6.4. TPT has the right to refuse to handle Cargo when the safe handling or storage of that particular Cargo could expose people or property to a risk of injury or damage.

## **7. OVERLOADING OF CONTAINER ROAD HAULAGE VEHICLE ("CRHV") / ROAD HAULAGE VEHICLE ("RHV")**

- 7.1. For purposes of this Clause 7, TPT shall be deemed to be the consignee for the purpose of export cargo handling services and as the consignor for the purpose of import cargo handling services.
- 7.2. The Customer and/or its agent or the Customer's Representative shall inform TPT of the weight of the Container(s) to be loaded onto the CRHV/RHV and this information should be forwarded to the Terminal not more than one (1) hour before Estimated Time of Arrival of the CRHV/RHV at the Terminal. Such submission shall be sent as a written submission with a clear declaration as to the payload of such CRHV/RHV and/or the distribution of such Container(s) on a CRHV/RHV.
- 7.3. The Customer, its agents and Customer's Representatives undertake to ensure that all weight requirements of Containers and vehicles entering and leaving the respective Terminal meet the weight requirements in line with the Regulations 330A to 330D of the National Road Traffic Act (No. 93 of 1996), as amended, in addition thereto:
- 7.3.1. the Customer agrees that it may be required by TPT to weigh its Container(s);

- 7.3.2. TPT reserves the right to establish the mass of a CRHV/RHV and any axle or axle unit of such vehicle that is accurate as to ensure that such CRHV/RHV is not overloaded as provided by Regulation 330 B of the aforesaid National Road Traffic Act (No. 93 of 1996) (as amended);
- 7.4. The Customer is bound by the determinations made under this Clause 7 and the records of those determinations, such determination shall remain in the absolute discretion of TPT in the absence of manifest error.
- 7.5. TPT reserves the right to refuse entry to any Containers and/or CRHV/RHV that are in excess of the weight regulations of the aforesaid National Road Traffic Act (No. 93 of 1996) and TPT shall not be liable for any penalties, fines, penal costs, convictions, costs of administration, legal fees, incurred in respect of such overloaded vehicles.
- 7.6. A schedule of insurance must always be in the possession of the CRHV/RHV driver as contemplated in regulation 330D of the aforesaid National Roads Traffic Act (No. 93 of 1996) and must be produced at the Terminal upon request.
- 7.7. The schedule referred to in Clause 7.6 above, must contain proof of valid insurance for the vehicle and liability that may arise from the transportation of the goods. This would be comprehensive vehicle insurance and Goods-in-transit policy.

## **8. LIMITATION OF LIABILITIES**

- 8.1. Notwithstanding anything to the contrary contained in these Standard Trading Terms and Conditions and without prejudice to any other limitation permitted by law and subject to Clause 8.2 below, the liability of TPT arising out of or in connection with the terms and/or the subject matter of these Standard Trading Terms and Conditions and/or in respect of any claim for loss or damages arising out of the handling and storage of the Cargo is limited to three million United States Dollars (US\$ 3,000,000.00) in respect of any one incident or series of incidents arising from the same cause regardless of how such claim arises and damage is caused and irrespective of whether by the negligence, gross negligence, reckless or wilful acts or omissions on the part of TPT or its representatives, This limitation also specifically includes all claims for damage to vessels, cranes and any other property which does not belong to the Terminal Operator.
- 8.2. Subject to Clause 8.1 above, notwithstanding anything to the contrary stated elsewhere in these Standard Trading Terms, TPT will not in any event be or become liable, whether by way of indemnity to the Customer or otherwise, for any loss of or damage to the Cargo handled and/or stored for the Customer and/or any property whatsoever of the Customer or third party in the care and custody of TPT, or under TPT's control, exceeding the equivalent of 666.67 SDR per package or unit or two (2) SDR per kilogram or gross weight of the Cargo lost or damaged whichever is higher. The terms "SDR", "package" and "unit" shall have the meaning ascribed under the Carriage of Goods by Sea Act (No. 1 of 1986) incorporating the Hague-Visby Rules.
- 8.3. In respect of all claims for Cargo carried in containers, the Customer cannot make any claim against the Terminal Operator for an amount less than ZAR 10, 000 (Ten Thousand South African Rands), except for damage to the container itself, in which case the Customer cannot make any claim against the Terminal Operator for an amount less than ZAR 5,000 (five

thousand South African Rand). Claims for the loss of or damage to reefer container (refrigerated) power cables are specifically excluded from the application of this provision.

- 8.4. The Customer hereby indemnifies TPT against any claim brought by any third party in respect of loss of or damage to the Cargo which is handled, transported or otherwise dealt with or intended to be dealt with by the Customer and/or TPT in terms of these Standard Trading Terms and Conditions where, and to the extent that, such claim exceeds the amounts set out in Clauses 8.1 and 8.2 above.
- 8.5. Where a claim is lodged against TPT in respect of the same incident or series of incidents arising from the same cause by the Customer and any third party, then the limit of liability referred to in Clauses 8.1 and 8.2 above will be reduced by an amount which TPT is obliged to pay the Customer any third party pursuant to a judgment or award obtained by the Customer and any third party.
- 8.6. TPT is exempt from liability for damage to the Cargo or the packaging of the contents thereof caused by the Customer and/or its representatives.

#### **8.7. Prescription for Legal Actions**

- 8.7.1. All claims relating to charges raised by TPT and all payments made to TPT by the Customer (for example, for a refund or an adjustment in charges) will, for prescription purposes, be dealt with strictly in terms of the Prescription Act (No. 68 of 1969).
- 8.7.2. Without prejudice to any of the other rights and remedies which TPT may have or may acquire under these Standard Trading Terms and Conditions and/or any other applicable laws or contractual provisions, TPT is discharged from all liability in respect of any claim, howsoever arising including but not limited to: vessel damage, loss of or damage to the Cargo handled or intended to be handled by TPT, unless suit (the institution of formal legal process) against TPT is brought and legal process in respect thereof is lawfully served on TPT within four hundred and twenty (420) days from the date upon which the event occurred which gave rise to such claim. For the purposes of this clause, a day means a day as depicted on the calendar, and includes every day of each week, whether such day be a Saturday, Sunday or Public Holiday in South Africa.

### **9. DAMAGE TO CARGO (INCLUDING CONTAINERS) AND THE REPORTING AND THE RECORDING OF INCIDENTS**

#### **9.1. Damage to Cargo (including Containers)**

The Customer undertakes and will procure that its Representatives will undertake that:

- 9.1.1. all Cargo delivered to TPT, or received by TPT must be free of damage or defects of a nature which could render the Cargo unsafe for transportation;
- 9.1.2. any damage to any Cargo will forthwith be reported to TPT's Operations Supervisor at the Terminal, before such Cargo enters or leaves the premises of the Terminal, and if damage is not reported as intended in this Clause 9.1.2, removal of allegedly

damaged Cargo from the Terminal premises will be deemed to constitute delivery of the Cargo as described in the Bill of Lading;

- 9.1.3. where Cargo which has been imported is found to be damaged upon delivery, such Cargo will not be removed from the premises of the Terminal, unless the landing and shipping order has been signed and endorsed or the EDI electronic has been confirmed by a TPT's Claims Examiner, certifying that the Cargo was delivered to the Customer or its duly authorised representative in a damaged condition;
  - 9.1.4. unless the Customer alleges patent damage to Cargo on receipt thereof, it is deemed to have been received in good order and condition and the onus is on the Customer to prove the contrary;
  - 9.1.5. unless TPT is advised of patent damage to Cargo on delivery thereof from TPT to the Customer or its agent it is deemed to have been received by the Customer in good order and condition.
  - 9.1.6. All truck drivers and or trucking companies are required to be in possession of all relevant documentation (including a date and time of escort) before access will be granted.
  - 9.1.7. TPT reserves the right to capture the details and biometric data of all truck drivers entering TPT terminals.
- 9.2. Where a container which is to be exported is damaged, and upon inspection, is found to be leaking, the TPT will contact the Customer in order to request instruction as to whether the damaged container can still be loaded for shipping or should be left in the damaged container stacking area. Should the Customer fail to provide the TPT with their instruction within a reasonable time, or in any case no later than 8 (eight) hours prior to the vessel sailing, the TPT may exercise its discretion in making a decision as to what to do with the damaged container.
- 9.2.1. In the event of a damaged container being loaded on the vessel either upon the express instruction of the Customer, or upon the discretion of the TPT where the Customer has failed to provide instruction within a reasonable time, the Customer agrees to indemnify the TPT against any claims arising as a result of such action.
  - 9.2.2. Unless containers have been damaged by the TPT any costs associated with the clean-up and/or remediation of the Terminal and/or marine environment due to pollution caused by a leaking container, will be borne by the Customer.

### 9.3. Reporting and Recording of Incidents

The Customer will ensure, and undertakes to procure that its Representatives must ensure that it or they:

- 9.3.1. immediately, and before the Customer and/or its Representative, whether by motor vehicle or otherwise, exit the Terminal, report to TPT's Operations Supervisor any incident at the Terminal giving rise to death of or injury to any person, or loss of or damage to property of any nature.
- 9.3.2. do not leave the premises of the Terminal unless and until the relevant notice of damage report has been properly completed and signed by the Customer or its duly authorised representative as well as by TPT's Operations Supervisor;

- 9.3.3. immediately report to TPT's Operations Supervisor any injuries sustained by any person while the Customer and its duly authorised representative are on the premises of TPT, and ensure that the relevant statutory authority prescribed in the Compensation for Occupational Injuries and Diseases Act (No. 130 1993), the Road Accident Fund Act (No. 56 of 1996); the Occupational Health and Safety Act (No. 85 of 1993) or any other Laws, Ordinances or Bylaws governing the reporting and investigation of accidents are notified immediately;

#### 9.4. Claims

- 9.4.1. The Customer must submit all claims in respect of losses allegedly suffered by the Customer, together with full supporting documentation to the relevant Terminal either by way of pre-paid registered post or electronic mail, within sixty (60) days from date of the incident, failing which no liability will attach to TPT, unless the Customer can demonstrate that it was not possible to make the claim within this period but that the claim was made as soon as reasonably practicable subject to Clause 8.7.2 above.
- 9.4.2. In the case of damage to a vessel, the Customer must submit written notice of such damage to TPT's Operations Supervisor prior to the sailing of the vessel and TPT must be afforded an opportunity to inspect such damage, failing which no liability will attach to TPT.
- 9.4.3. All claims are subject to the mitigation rule which requires that a claimant must take reasonable steps to mitigate its losses such as but not limited to salvaging any damaged cargo or container to reduce the claim made against TPT.
- 9.4.4. All claims will have to be investigated and be deliberated and decided by the Terminal Claims Committee, which meets monthly. In the event of the Customer not accepting any decision of the Terminal Claims Committee the Customer has the option to elevate the claim to the Appeals Claims Committee.

### 10. INDIRECT OR CONSEQUENTIAL DAMAGES

Neither Party shall be liable for any consequential damages suffered by the other for any reason whatsoever. For purposes of these Standard Trading Terms and Conditions, consequential damages shall mean indirect damages or special damages (whether within the contemplation of the Parties at the time of entering into the contract or not), which terms shall include, without limitation, any loss of profit, loss of business or trade, loss of production, loss of use, loss of contract, loss of opportunity or wasted overheads or loss of business reputation or business opportunities suffered by the other Party.

### 11. FORCE MAJEURE EVENTS

- 11.1. For the purposes of these Standard Trading Terms and Conditions, the expression "**Force Majeure Event**" means, in respect of either Party, any event or circumstance, or combination of events or circumstances occurring during the operation of these Standard Trading Terms and Conditions, the occurrence of which is beyond the reasonable control (directly or indirectly) of,



and could not have been avoided by steps which might reasonably be expected to have been taken by, such Party acting as a reasonable and prudent commercial entity.

- 11.2. Without limiting the generality of Clause 11.1, such events or circumstances may include any one or more of the following:
- 11.2.1. an act of God, act of public enemy, act or threat of terrorism, war, invasion, embargo, military *coup* or armed conflict, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, piracy, act of vandalism, explosions, lightning, fire, flood, storm, strong winds, drought or earthquake;
  - 11.2.2. unforeseen major breakdown of essential machinery or equipment used in carrying out the Services which was not caused by the negligence of TPT or its Representatives, and which occurs notwithstanding adequate maintenance in accordance with manufacturer's specifications;
  - 11.2.3. power failures or electricity interruptions of any nature whatsoever;
  - 11.2.4. nuclear explosion, radioactive or chemical contamination or ionising radiation;
  - 11.2.5. pressure waves caused by aircraft or other aerial devices;
  - 11.2.6. meteorites;
  - 11.2.7. epidemic, plague or quarantine;
  - 11.2.8. blockade or closure of the Port;
  - 11.2.9. strikes or other industrial action;
  - 11.2.10. curfews in or restrictions on travel within the Magisterial areas in which the Terminal is located.
- 11.3. An event or circumstance which results in non-performance by a Party, caused by the usual and natural consequences of external forces will not be regarded as a Force Majeure Event if such event or circumstance is reasonably foreseeable notwithstanding that its occurrence may be beyond the direct or indirect control of the non-performing Party.
- 11.4. To enable the other Party to assess the validity, nature and extent of any claim of the occurrence of a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred is required to disclose to the other Party all supporting documentation and information reasonably requested by the other Party to enable the other Party to undertake its own investigation into the alleged Force Majeure Event.
- 11.5. If either Party is prevented from, or delayed in performing any of its obligations under these Standard Trading Terms and Conditions as a consequence of a Force Majeure Event, such Party shall, to the extent so prevented or delayed by the Force Majeure Event, be relieved of the liability for the delay or failure to perform its obligations under these Standard Trading Terms and Conditions and the consequences of such delay or failure, provided that, if a Party is delayed in performing its obligations by a Force Majeure Event, it must immediately perform the relevant obligation as soon as it is able to do so and the other Party has accepted that such a Force Majeure Event has prevented them from performing their obligations.
- 11.6. If a Force Majeure Event occurs, the Party affected by the Force Majeure Event must take all reasonable steps to remedy the Force Majeure Event and to minimise the effect of such

circumstances upon the performance of its obligations under these Standard Trading Terms and Conditions.

- 11.7. In the event that the period of the Force Majeure Event prevails longer than a period of one (1) month from date of commencement of the Force Majeure Event, then, provided that the Parties have consulted with one another to evaluate any practical means of overcoming the effect of the Force Majeure Event and what effect this may have on any tariff payable hereunder, and have failed to reach written agreement on such matters prior to the expiry of the one (1) month period mentioned above, these Standard Trading Terms and Conditions will terminate upon written notice from any one Party to the other.

## 12. NOTICES

- 12.1. The Parties choose the addresses set out on TPT's quotation to the Customer as their *domicilium citandi et executandi* ("*domicilium*") for the service of all notices and legal process for all purposes of and in connection with these Standard Trading Terms and Conditions. The onus is on the Customer to make this available to the TPT upon commencement of the agreement between the Parties, and failure by the Customer to select a *domicilium* as directed in this Clause 12.1, will absolve the Terminal Operator from giving the Customer any notice which might be required in terms of these Conditions of Trade.
- 12.2. Either Party is entitled to change its *domicilium* from time to time by notice in writing to the other on the condition that such new *domicilium* address is:
- 12.2.1. a physical address, within the Republic of South Africa and not a post office box or *poste restante* or an international address;
  - 12.2.2. accompanied by a telephone number and a telefax number, within the Republic of South Africa; and such new *domicilium* address replaces the address then stipulated in the quotation.
- 12.3. All notices, demands, communications or payments intended for either Party must be made or given at such Party's *domicilium*.
- 12.4. A notice sent by either Party to the other Party at their chosen *domicilium* is deemed to be received:
- 12.4.1. on the same day, if delivered by hand (provided that a receipt or confirmation of receipt is obtained);
  - 12.4.2. on the fourth (4<sup>th</sup>) day after posting (provided that it is dispatched by pre-paid registered post); or
  - 12.4.3. on the next Business Day after the date of dispatch, if dispatched by telefax (provided that the correct telefax number of the addressee has been used).
- 12.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party is an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium*. However, the Party seeking to rely on it bears the onus of proving delivery thereof.

### 13. BREACH AND TERMINATION

- 13.1. If any Party commits a breach of any provision or term of these Standard Trading Terms and Conditions and fails to remedy such breach within thirty (30) days of receipt of written notice from the Party requiring such breach to be remedied, the aggrieved Party shall be entitled (but not obliged) without further notice, in addition to any other remedy it may have at law or under these Standard Trading Terms and Conditions, to cancel the agreement between the Parties or to claim specific performance of any obligation, in either event without prejudice to the aggrieved Party's right to claim damages.
- 13.2. Either Party may cancel this Agreement with immediate effect on written notice to the other Party ("the defaulting Party") in the event that:
- 13.2.1. an order is made by a court of competent jurisdiction for the winding-up of the defaulting Party, or a resolution is passed by the shareholders of the defaulting Party for its winding up in such manner that the consequence is that some third party assumes the obligations imposed upon the defaulting Party by this Agreement;
  - 13.2.2. the board of directors or shareholders of the defaulting Party resolve that such defaulting Party be wound up and/or be placed under a business rescue plan or a court of competent jurisdiction makes an order placing the defaulting Party under supervision and commencing business rescue proceedings;
  - 13.2.3. an order is made by a court of competent jurisdiction, whether provisionally or finally, placing the defaulting Party in liquidation and a liquidator is appointed to deal with any of the assets or undertakings of the defaulting Party;
  - 13.2.4. the defaulting Party is deemed to be unable to pay its debts in accordance with the provisions of the company laws of the Republic of South Africa;
  - 13.2.5. the defaulting Party enters into a compromise, composition or arrangement with all or any of its creditors, or attempts to do so.
- 13.3. TPT will render the Services pursuant to licences issued to it in terms of the National Ports Act (No. 12 of 2005) ("the Act"). If the Act is amended or abolished and/or TPT's licence is withdrawn (through no fault or misconduct on TPT's part) and this renders it impossible for TPT to continue to provide the Services, then the agreement between the Parties will be terminated forthwith and neither Party shall have any claim whatsoever against the other arising out of these Standard Trading Terms and Conditions, or the termination of the agreement.
- 13.4. Nothing in this Clause 13 is to be construed as limiting a Party's right to, cancel the agreement between the Parties by the giving of thirty (30) days' written notice to the other at their *domicilium*.

### 14. CONFIDENTIALITY

- 14.1. Save to the extent that they may be required to provide information by operation of law, the Parties undertake that all information which each has or obtains at any time relating to the other arising out of the conclusion and implementation of these Standard Trading Terms and Conditions, including but not limited to technical and commercial information, which is not available to the general public:

- 14.1.1. must be kept confidential and must not be disclosed by such Party and its contractors, or by their officers, employees and agents, to any third party;
- 14.1.2. must not directly or indirectly be used by such Party and its contractors, or by their officers, employees and agents for their own benefit or the benefit of any third party.
- 14.2. Either Party must on demand to it by the other Party use its best endeavours to obtain secrecy undertakings in the form reasonably specified by the other from any one or more of the persons specified in Clauses 14.1.1 and 14.1.2.
- 14.3. The Parties agree not to use the name of the other or any of the other's brand names or trademarks in publicity releases or advertising or for other promotional purposes, without the prior written consent of the other Party.
- 14.4. The provisions of this confidentiality clause survive the cancellation or termination of the agreement between the Parties for any reason, and remain binding on the Parties for a period of three (3) years after termination of the agreement between the Parties for any reason whatsoever.

## **15. COMPLIANCE WITH THE LAWS AND POLICIES**

### **15.1. The Customer must at all times:**

- 15.1.1. comply with all applicable international codes and conventions, national legislation, regulations and/or any applicable statutory and/or regulatory directives, laws and bylaws including but not limited to the provisions of SOLAS, the International Ship and Port Facility Security Code (ISPS Code), codes, conventions, laws and regulations concerning the protection of the environment, transportation, labour and social responsibility such as they may be applicable to these Standard Trading Terms and Conditions;
- 15.1.2. ensure that it is in possession of and that it observes the terms and conditions of all relevant permits, licenses and approvals of public authorities in relation to the activities carried out by it in terms of these Standard Trading Terms and Conditions;
- 15.1.3. observe the provisions of any written collective agreement that may become binding on either of the Parties and its respective employees and any registered trade union;
- 15.1.4. act in accordance with TPT's ISO 14001 Environmental Management System (EMS System) and ISO 9001 Quality Management System (QMS) and OHSAS 18001 System (OHS);
- 15.1.5. ensure compliance with SOLAS Chapter VI and the relevant IMO guidelines relating to the mandatory verification of the gross weight of containers prior to loading same on vessels; effective as of 00h01, 01 July 2016; and
- 15.1.6. ensure compliance with the National Ports Act (No. 12 of 2005) ("the Act"), Port Rules and Harbour Master's Written Instructions issued in terms of Section 80 (2) and 74 (3) respectively of the Act. In the event of any conflict arising between the interpretation of the Act, such Port Rules and the Harbour Master's Written Instructions and these Standard Trading Terms and Conditions then the Act, Port Rules and Harbour Master's Instructions must prevail.

## **16. CESSION**

Neither Party shall, without the prior written consent of the other, cede or assign any of its rights or obligations in terms of these Standard Trading Terms and Conditions to any third party. The Party wishing to cede or assign its rights or obligations to any third party shall, if so required by the other Party, be obliged to bind itself as surety and co-principal debtor with the third party for all its obligations in terms of these Standard Trading Terms and Conditions.

## **17. PROTECTION OF TPT'S RIGHTS**

If the Customer fails to comply with any obligation imposed upon it by these Standard Trading Terms and Conditions, TPT shall, without prejudice to any other rights it may have, be entitled but not obliged to effect such compliance at the risk and expense of the Customer and to recover the fair and reasonable costs and expenses of doing so from the Customer.

## **18. DISPUTE RESOLUTION**

- 18.1. In the event that either of the Parties wishes to assert, by recourse to legal action, any right claimed by such Party as arising from or under this Agreement, such Party is entitled to elect to proceed by way of litigation or arbitration. Should such Party elect to proceed by way of litigation, the provisions of Clauses 18.2 herein below apply, and should it elect to proceed by way of arbitration, the provisions of Clauses 18.3 to 18.10 (inclusive) below apply.
- 18.2. In the event of dispute resolution by litigation the Customer hereby consents and submits to the exclusive jurisdiction of the Kwazulu-Natal High Court, Durban in respect of any claim by either Party against the other which in any manner arises out of or pertains to this Agreement.
- 18.3. A Party electing to proceed by way of arbitration is not barred by such election from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 18.4. In the event of dispute resolution by arbitration, the arbitration in respect of any claim by either Party against the other which in any manner arises out of or pertains to this Agreement must take place:
  - 18.4.1. in Durban;
  - 18.4.2. as soon as is reasonably practicable in the circumstances and with a view to it being completed within sixty (60) Business Days after it is demanded;
  - 18.4.3. with only the Parties to the dispute and their legal and other representatives present thereat; and
  - 18.4.4. in terms of the Rules of the Arbitration Foundation of Southern Africa (AFSA) or its successors in title from time to time, it being the intention that the arbitration must be held and completed within the period set out in Clause 18.4.2.
- 18.5. The arbitrator is to be selected by agreement between the parties. Should the Parties fail to agree on an arbitrator within seven (7) days of the aggrieved Party notifying the other Party of

the dispute, the arbitrator is to be appointed at the request of either Party to the dispute by the AFSA Secretariat, or its successor in title.

- 18.6. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence submitted or heard during the arbitration confidential and not to disclose it to anyone except for the purposes of an order to be made as set out below.
- 18.7. The provisions of this clause –
- 18.7.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party is entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
  - 18.7.2. are severable from the rest of this Agreement and remain in effect despite the termination of or invalidity for any reason of this Agreement.
- 18.8. The arbitrator will have all the powers of the arbitrator in terms of the AFSA Rules.
- 18.9. The Parties irrevocably agree that the decision of the arbitrator may be subject to one (1) right of appeal to the AFSA appeal tribunal, which appeal is also to be conducted in terms of the Rules of AFSA.
- 18.10. The Parties agree that the award of the AFSA appeal tribunal will be final and binding on them and capable of being made an order of any court of competent jurisdiction.

## **19. SEVERABILITY**

Each and every undertaking contained herein is capable of independent enforcement, thus enabling any court or other competent tribunal to enforce the remainder of these Standard Trading Terms and Conditions should it adjudge any particular undertaking/s or portions thereof to be invalid.

## **20. INDULGENCE OR EXTENSION**

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other (indulgent Party) in respect of the performance of any obligation or the enforcement of any right arising from these Standard Trading Terms and Conditions, may be construed to be an implied consent by the indulgent Party or to operate as a waiver or a novation of, or otherwise affect, any of that indulgent Party's rights in terms of or arising from these Standard Trading Terms and Conditions or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision hereof by the defaulting Party.

## **21. SUPERSESSION**

These Standard Trading Terms and Conditions supersede any prior arrangements or understandings of any nature whatsoever which may exist between the Parties which arise out of or relate to such matters as are referred to herein.

## **22. GOOD FAITH**

The Parties undertake to observe good faith in dealing with each other and in implementing the provisions of these Standard Trading Terms and Conditions.

### **23. MISCELLANEOUS LEGAL PROVISIONS**

- 23.1. In the absence of specific instructions given timeously in writing by the Customer to TPT, TPT may in its sole discretion decide when to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer.
- 23.2. Neither Party is bound by any representation, express nor implied terms, warranty, promises or the like not recorded herein or reduced to writing and signed by the Parties or their Representatives.
- 23.3. TPT has the right to enforce a right of retention it may have over the Customer's Cargo or equipment on the premises of TPT.
- 23.4. Where the Parties have entered into a separate commercial agreement, then unless indicated otherwise in such agreement, the terms of that agreement shall supersede the terms of these Conditions of Trade in respect of matters which are dealt with therein in the event of conflict between the two documents. In respect of all other matters which are not specifically dealt with in such separate commercial agreement, then the terms of these Conditions of Trade shall supplement the terms of that commercial agreement.