



**STANDARD TRADING TERMS AND CONDITIONS OF THE RORO, BREAK-BULK, AGRICULTURAL, BULK, RO-RO AUTOMOTIVE AND INLAND TERMINALS OF TRANSNET PORT TERMINALS, AN OPERATING DIVISION OF TRANSNET SOC LIMITED (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”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

1.1.3. **“Care and Custody”** means the legal authority of the Terminal Operator upon delivery of a Customer’s Cargo or container, either from land or sea, and to supervise or otherwise be responsible therefor until such time that same is loaded onto an appointed vessel, road or rail transportation out of a the Terminal Operator Terminal;

1.1.4. **“Cargo”** means the Customer’s commodity/ies in respect of which the Services are to be rendered in terms of these Standard Trading Terms and Conditions and/or as more fully described in any separate commercial agreement concluded between the Terminal Operator and the Customer;

1.1.5. **“Consequential/Indirect Damages”** means those damages that although caused by the breach of contract, are ordinarily regarded in law as being too remote to be recoverable unless, in the special circumstances attending the conclusion of the contract, the Parties actually or presumptively contemplated that they would probably result from the breach;

1.1.6. **“Customer”** means any natural or juristic person to whom or on behalf of whom the Services are provided at the relevant Terminals;

1.1.7. **“IMDG Code”** 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;

- 1.1.8. **“Inland Terminals”** means an area especially set aside primarily for the handling of bulk cargo by specialised equipment at the following Inland Terminals: -
- Newcon located in Newcastle, Kwazulu-Natal;
  - Pendoring located in Brits, North West Province; and
  - Lohattha located in the Northern Cape.
- 1.1.9. **“Parties”** means collectively the Customer and the Terminal Operator, and **“Party”** means either of them as the context dictates;
- 1.1.10. **“Port”** means any of the commercial ports as defined in the National Ports Act 12 of 2005 where the Terminals are located which include Durban, Cape Town, Ngqura, Port Elizabeth, East London, Saldanha, and Richards Bay;
- 1.1.11. **“Representatives”** means any person duly authorised to represent that respective Party including its employees, agents and contractors;
- 1.1.12. **“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; and
  - East London;
- 1.1.13. **“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; and
  - Port Elizabeth;
- 1.1.14. **“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;
- 1.1.15. **“Services”** means those cargo handling services rendered by the Terminal Operator to the Customer in terms of these Standard Trading Terms and Conditions and/or as more fully set out in any separate commercial agreement concluded between the Terminal Operator and the Customer;
- 1.1.16. **“SOLAS”** means International Convention for the Safety of Life at Sea, enforced in South Africa via Merchant Shipping Act (No. 57 of 1951);

- 1.1.17. “**Standard Trading Terms and Conditions**” means these Standard Trading Terms and Conditions of the Ro-Ro, Break-bulk, Agricultural, Bulk, Ro-Ro Automotive and Inland Terminals;
- 1.1.18. “**Tariff Book**” means the tariff book issued annually by the Terminal Operator which applies to all TPT customers making use of TPT services, the current tariff book being applicable from 1 April 2021 until 31 March 2022;
- 1.1.19. “**Terminals**” means the Roro, Break-Bulk, Agricultural, Bulk, Ro-Ro Automotive and Inland Terminals collectively and “**Terminal**” refers to any one of them as the context indicates;
- 1.1.20. “**Terminal Operator**” means Transnet Port Terminals, an operating division of Transnet SOC Ltd, Registration No. 1990/000900/30;
- 1.1.21. “**Time Bar**” means the period in which a claim, once reported to the Terminal Operator, must be finally decided upon in terms of the Terminal Operator's internal claims procedures, which time bar period is a period of 420 (four hundred and twenty) days from the time that the Customer places the Terminal Operator on notice in respect of a damages claim.

## 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 shall be based on these Standard Trading Terms and Conditions, unless these Standard Trading Terms and Conditions do not deal with the particular claim, which must then be determined in accordance with the law of the Republic of South Africa and by the courts of the Republic of South Africa.
- 2.2. Subject to Clause 26.4, these Standard Trading Terms and Conditions must, where applicable, be read in conjunction with the Terminal Operator'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, Agricultural, Bulk, Ro-Ro Automotive and Inland Terminals, subject to any supplements and amendments thereto (“the other documents”), as well as any separate commercial agreement concluded between the Parties, all of which, shall 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 the Terminal Operator's website at [www.transnet-tpt.net](http://www.transnet-tpt.net) >the 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.
- 2.5. The *contra proferentem* rule shall not apply in the interpretation hereof.

## 3. INTRODUCTION

- 3.1. The Terminal Operator is responsible for the operation and management of the Terminals as indicated herein.
- 3.2. The Customer imports and/or exports the Cargo and appoints the Terminal Operator 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 and the Terminal Operator accepts such appointment.

- 3.3. These Standard Trading Terms and Conditions apply to any Services undertaken by TPT for a Customer, including any agreements entered into between the Terminal Operator and the Customer in respect of the Services provided by the Terminal Operator's Terminals whether oral or reduced to writing 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 2021 until 31 March 2022.
- 4.2. Notwithstanding the provisions of Clause 2.4 above, the Terminal Operator reserves the right to amend these Standard Trading Terms and Conditions during the period in Clause 4.1 above, based on a risk adjusted approach, as and when required in its sole and absolute discretion, by giving written notice of such amendment to the Customer which amended terms and conditions shall be binding from the date of such notice.
- 4.3. These Standard Trading Terms and Conditions apply to all Services rendered by the Terminal Operator to the Customer at the Terminals.
- 4.4. All shipping lines, their agents, intermediaries, carriers, other contracting parties or other third party affiliates are bound by these Standard Trading Terms and Conditions and all shipping lines', agents, intermediaries and or other contracting/affiliated parties shall be taken to be bound by these Standard Trading Terms and Conditions and the shipping line is obliged to make all their agents, intermediaries, carriers, other contracting parties or other third party affiliates aware of these Standard Trading Terms and Conditions.

#### **5. STANDARD TERMS FOR ALL VISITORS TO THE TERMINAL OPERATORS TERMINALS**

- 5.1. Access to and within the Terminals for any Customer, its' Representatives, intermediaries, carriers and/or Visitors (as defined in Annexure A) is regulated by the terms and conditions for visitors as contained in Annexure "A" hereto.
- 5.2. The Customer, its' Representatives, third party affiliates, and/or its intermediaries (including transporters), undertake to observe the contents of Annexure "A" as well as to procure that they will be observed by its Visitors.
- 5.3. The Customer, its' Representatives and Visitors are jointly and severally liable to the Terminal Operator for all claims and/or damages sustained by the Terminal Operator as a consequence of the wrongful acts and/or omissions of the Customer and/or its Representatives, intermediaries or Visitors.
- 5.4. Whilst the Terminal Operator will use reasonable endeavours to enforce strict controls to prevent unauthorised access to the Container Terminals, as well as to all vessels berthed at the Container Terminals, the Terminal Operator will not bear any responsibility nor incur any liability for: -
- 5.4.1. any damages suffered by the Customer, its' Representatives, intermediaries, and/or third party affiliates as a consequence of unauthorised access and/or fraudulent access to the Terminal, or any acts committed during such access; or
- 5.4.2. any physical damage caused to the Customer's vessels from the quay other than that unlawfully caused by the Terminal Operator, its servants, independent contractors and agents, but subject always to Clause 8.1 to 8.4 below.

- 5.5. The Terminal Operator will refuse entry to a truck or any other transporter that has caused damage to property and a driver who fails to adhere to the Terminal Operator's conditions of entry until such time as the invoice for the damage to property has been paid.
- 5.6. The Terminal Operator has the right to refuse any truck or trucking company or driver access to any of the Terminal Operator's Terminals in the event that the Terminal Operator is aware of any risk to its operation, or where such trucking company, its representatives, agents, officials or any driver has not complied with any security measures that have been put in place by the Terminal Operator.
- 5.7. 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.
- 5.8. The Terminal Operator reserves the right to request and capture the details and biometric data of all truck drivers and Visitors entering the Terminal Operator's Terminals subject to compliance with the Protection of Personal Information Act No 4 of 2013 and Occupational Health and Safety Act 85 of 1993.
- 5.9. All and any entrants to the Terminal Operator's Terminals shall be bound by the Terminal Operators policies and procedures, which will include but not be limited to, conditions of entry, privacy policies, and safety and security policies.
- 5.10. For the avoidance of any doubt all and any entrants, Visitors, Customers or any other third party entering the Terminal Operator's Terminals shall do so at their own risk and hereby indemnifies the Terminal Operator against loss or damage or injury sustained whilst in or at any Terminal Operator Terminal.

## 6. OPERATIONS

- 6.1. The Terminal Operator shall be responsible for Customer Cargo –
  - 6.1.1. From the time it has taken it in charge:
    - 6.1.1.1. in the case of the Ro-Ro Terminal from the time that the vehicle passes through the light tunnel, this shall be as follows:
      - 6.1.1.1.1. if the Cargo is off-loaded using the vessel's equipment, from the time that the Cargo is safely discharged on the quay or is placed on terminal handling equipment; and
      - 6.1.1.1.2. if the Cargo is offloaded using the Terminal Operator's equipment, from the time that the Cargo is lifted off the vessel's deck; and
    - 6.1.2. Until such time that the Terminal has loaded the Cargo or handed over the Cargo to the person whom the Customer has authorised the Cargo to be handed to. This shall be regarded as the point in time at which the Cargo is loaded onto the relevant Container Road Haulage Vehicle.
- 6.2. Any employee or agent nominated by the Customer (for the purposes of this clause referred to as a "Customer Representative"), or any person instructed, requested and/or authorised by the Customer to uplift from or deliver the Cargo to the Terminal, and every employee, agent or functionary of such carrier is deemed to be a duly appointed agent of the Customer and all information provided by such Customer Representative, carrier or any employee, agent or functionary of such carrier, is deemed to be information provided by the Customer.
- 6.3. The Customer shall at all times remain responsible for any person instructed, requested and/or authorised by the Customer to uplift from or deliver Cargo to the Terminal. In line herewith the

Terminal Operator shall in no way be liable for the upliftment of Cargo where the Customer's appointed carrier has violated any of the Terminal Operator's terms and conditions, security measures and/or policies and procedures regarding conditions of entry to any of the Terminal Operator's Terminals.

- 6.4. The Terminal Operator is not liable for any claim in connection with or arising from any incorrect information submitted by the Customer's Representative, or carrier and its employees, agents or functionaries on behalf of the Customer in terms of Clause 5.7.
- 6.5. Except as otherwise indicated herein, the Terminal Operator will only release Cargo discharged from the Customer's vessels on the formal written instructions of the Customer or its agent whether it be the Customer Representative, carrier or otherwise. Any Cargo released in terms of this clause is deemed to have been released to the Customer.
- 6.6. Where bulk Cargo is loaded into containers by the Customer, the Terminal Operator reserves the right to refuse entry to and/or handle any containers that are in excess of the declared weight of the container by the Customer and the Customer indemnifies the Terminal Operator in respect of any damage to its equipment or any claims which may arise as a result of any damage to the under-declared container/s, including vessel damage or any claims which may arise as a result of such refusal.

## **7. REMUNERATION AND PAYMENT**

- 7.1. Unless otherwise specifically agreed to through the conclusion of a separate written tariff agreement with the Customer, the Terminal Operator will be remunerated by the Customer at the rates as quoted by the Terminal Operator based on volume or falling which the base rate as per the applicable Tariff Book will be applicable.
- 7.2. All tax invoices submitted by the Terminal Operator in respect of Services rendered are due and payable by the Customer and must be paid by the Customer, without deduction or set-off, on or before the 20th (twentieth) day of the following calendar month.
- 7.3. 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 the Terminal Operator at one percent (1%) above the prime-lending rate levied by the Terminal Operator'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.
- 7.4. 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 7.4, the Customer may not withhold any due payment for any reason whatsoever.

## **8. IMDG GOODS**

- 8.1. In addition to any lawful instructions provided by the Terminal Operator, 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 goods.
- 8.2. The Customer must ensure all Cargo which is IMDG/dangerous goods is clearly marked with approved IMDG labels and/or placards in accordance with international and national legislation.
- 8.3. The Customer shall fully indemnify the Terminal Operator against any and all loss or damage suffered by the Terminal Operator or any other third party due to the negligence of the Customer in not

identifying the Cargo as IMDG/dangerous cargo. If, and in the event that the Terminal Operator takes possession of such Cargo, the Terminal Operator is entitled but not obliged to:

- 8.3.1. take all precautions the circumstances may require, including but not limited to, 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 the Terminal Operator taking such precautions; and
  - 8.3.2. receive reimbursement from the Customer for all costs incurred by the Terminal Operator in taking the measures referred to in Clause 8.3.1 above.
- 8.4. The Terminal Operator has the right to refuse to handle any Cargo when the safe handling or storage of that particular Cargo could expose people and/or property and/or the environment to a risk of injury and/or damage.
- 8.5. The Customer will be liable to the Terminal Operator for all and any damage to property and/or the environment and/or for injury to any person in the event that the IMDG/dangerous Cargo is handled and not correctly marked and/or packaged and all costs associated therewith, including clean up costs and legal costs on an attorney and own client scale.
- 8.6. The Terminal Operator does not support the storage of hazardous Cargo in its Terminal/s. It is incumbent upon the Customer to ensure that hazardous Cargo be evacuated from the Terminal as soon as possible by the Customer nominated transporter, and in accordance with the dwell time directives issued by the Terminal Operator or the National Ports Authority. In the event that no transportation instruction is received from the Customer, the IMDG/dangerous Cargo will not be off-loaded from the vessel and the Terminal Operator will under no circumstances be held liable for any costs associated with the IMDG/dangerous Cargo having not been so off-loaded.

## **9. OVERLOADING OF CONTAINER ROAD HAULAGE VEHICLE (“CRHV”) / ROAD HAULAGE VEHICLE (“RHV”)**

- 9.1. Where bulk Cargo is loaded into containers, the Terminal Operator 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.
- 9.2. The Customer and/or its agent or the Customer’s Representative shall inform the Terminal Operator of the accurate weight of the Container(s) to be loaded onto the CRHV/RHV and this information must be forwarded to the Terminal at least one (1) hour before the 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.
- 9.3. The Customer, its agents and the 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, and in addition thereto:
- 9.3.1. the Customer agrees that it may be required by the Terminal Operator to weigh its Container(s);
  - 9.3.2. the Terminal Operator reserves the right to establish the mass of a CRHV/RHV and any axle or axle unit of such vehicle that is accurate so 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;

- 9.4. The Customer is bound by the determinations made under this Clause 9 and the records of those determinations, which determination shall remain in the absolute sole discretion of the Terminal Operator in the absence of manifest error.
- 9.5. The Terminal Operator 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 the Terminal Operator shall not be liable for any penalties, fines, penal costs, convictions, costs of administration, legal fees, incurred in respect of such overloaded vehicles.
- 9.6. 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.
- 9.7. The schedule referred to in Clause 9.6 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.

## **10. LIMITATION OF LIABILITIES**

- 10.1. 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 10.2 below, the liability of the Terminal Operator 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/or storage of the Cargo is limited to USD 1,000,000 (one million united states dollars) 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 the Terminal Operator 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.
- 10.2. Subject to Clause 10.1 above, notwithstanding anything to the contrary stated elsewhere in these Standard Trading Terms and Conditions, the Terminal Operator 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 the Terminal Operator, or under the Terminal Operator'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. In the event that this amount exceeds the limit of liability stated in Clause 10.1 the lesser of the two shall be applicable. 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. However, the total SDR shall not exceed the limitation prescribed in Clause 10.1.
- 10.3. 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 15,001.00 (fifteen thousand and one South African Rand), 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 6,500.00 (six thousand five hundred South African Rand). Where a claim exceeds the applicable Rand amounts set out in this Clause 10.3 (referred to as "the minimum container threshold"), the Terminal Operator shall not be liable for any amount which falls below the minimum container claim threshold. Claims for the loss of or damage to reefer container/s (refrigerated) power cables are specifically excluded from the application of the provisions of this Clause 10.3, and for the avoidance of any doubt the Terminal Operator shall not be liable for either the theft of or damage to reefer container power cables.
- 10.4. In respect of all claims for any vehicle handled in the Ro-Ro and Ro-Ro Automotive Terminals, Automotive Terminals, the Customer cannot make any claim against the Terminal Operator for an



amount less than ZAR 2,000.00 (two thousand South African Rand), the Customer cannot make any claim against the Terminal Operator for an amount in excess of ZAR 1 000 000.00 (one million South African Rand) (referred to as the maximum claimable amount). Where a claim exceeds the applicable Rand amounts set out in this Clause 10.4 (referred to as “the minimum vehicle claim threshold”), the Terminal Operator shall not be liable for any amount which falls below the minimum vehicle claim threshold or any amount above the maximum claimable amount. The Terminal Operator shall not be liable for excessive repair quotes by Customers in respect of minor vehicle damages including but not limited to minor scratches, dents and paint chips, just to bypass the threshold amounts. The Claims Committee shall have a discretion in this regard.

10.5. The Customer hereby indemnifies the Terminal Operator against any claim brought by any third party in respect of loss of or damage to the Cargo or any third party commodity or property which is handled, transported or otherwise dealt with or intended to be dealt with by the Customer and/or the Terminal Operator in terms of these Standard Trading Terms and Conditions where, and to the extent that, such claim exceeds the amounts set out in Clauses 10.1 to 10.4 above.

10.6. The Terminal Operator is exempt from liability for damage to the Cargo or the packaging of the contents thereof caused by the Customer and/or its representatives or where the Customer has not packaged its Cargo correctly given the weight and value of the Cargo.

#### 10.7. The Customer Indemnities

10.7.1. The Customer hereby indemnifies and keeps the Terminal Operator indemnified in respect of any loss or damage incurred by the Terminal Operator as a consequence of any breach of these Standard Trading Terms and Conditions by the Customer or any act or omission of the Customer and/or its Representatives constituting negligence, gross negligence or wilful misconduct or any defect in the performance by the Customer of its obligations in terms of these Standard Trading Terms and Conditions or inaccuracy of any information provided by the Customer to the Terminal Operator.

10.7.2. The Customer must incorporate in its bills of lading or other contracts of carriage to be issued in respect of Cargo carried on any of the Customer’s vessels a clause providing that the Terminal Operator, its stevedores and Representatives have the benefit of the provisions of the bill of lading or other contract of carriage, and of any limitation of liability provided for therein. The Terminal Operator on its own behalf and on behalf of its stevedores and Representatives hereby accepts such benefit. The incorporation in such bills of lading of a clause as intended in this Clause 10.7.2 must not be construed as in any way derogating from the provisions of and limitations contained in Clause 10.1 to 10.4 above nor will it in any way prejudice the Terminal Operator in asserting the limitations provided for in Clauses 10.1, 10.2, 10.3 and 10.4 above.

#### 10.8. Prescription for Legal Actions

10.8.1. All claims relating to charges raised by the Terminal Operator and all payments made to the Terminal Operator 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).

10.8.2. Without prejudice to any of the other rights and remedies which the Terminal Operator may have or may acquire under these Standard Trading Terms and Conditions and/or any other applicable laws or contractual provisions, the Terminal Operator 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 the Terminal Operator, unless suit (the institution of formal legal proceedings) against the Terminal Operator is brought and legal process in respect thereof is lawfully served on the Terminal

Operator within four hundred and twenty (420) days from the date upon which the event occurred which gave rise to such claim (“the Time Bar period”). 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.

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

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

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

- 11.1.1. all Cargo delivered to the Terminal Operator, or received by the Terminal Operator must be in such a condition that is free of damage and/or defects so as not to render the Cargo unsafe for handling and/or transportation;
- 11.1.2. any damage and/or defect to any Cargo will forthwith be reported to the Terminal Operator’s Operations Supervisor that is on shift at the time, and recorded either on the Navis system or in writing on the designated form which is to be signed by both Parties, that the Cargo is to be handled by the Terminal Operator at the Terminal, before such Cargo enters or is taken charge of by the Terminal Operator, or delivered to the Customer (or its Representative, transporter or carrier) or leaves the premises of the Terminal, and if the damage and/or defect is not reported as intended in this Clause 11.1.2, no liability for such damage and/or defect can or will be attributed to the Terminal Operator. Removal of allegedly damaged and/or defective Cargo from the Terminal premises, either via truck or vessel, will be deemed to constitute delivery of the Cargo as described in the Bill of Lading;
- 11.1.3. any damage to any vessel will forthwith be reported to the Terminal Operator Operations Supervisor that is on shift at the time the damage occurs or is discovered in accordance with the relevant reporting form, and the shift vessel Master shall be responsible to report such damage prior to the vessel leaving the port, failing which the Terminal Operator shall not be held liable under any circumstances for such damage once the vessel leaves the port without reporting the alleged / said damage.
- 11.1.4. the vessel Master ensures that all containers are correctly and safely lashed and stowed within at least two (2) hours of operation completion and in the event that the lashing and/or stowage has not been safely or properly completed, that same is reported to the Terminal Operator’s Operations Supervisor or other senior representative on the relevant shift and not on any other shift (as same could not be verified), prior to the vessel departing the Terminal, failing which, the Terminal Operator shall not be held liable under any circumstances for any occurrence thereafter.
- 11.1.5. where Cargo which has been imported is found to be damaged and/or defective 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 Electronic Data Interchange (“EDI”) electronic release has been confirmed by the Terminal Operator’s Claims Examiner, certifying that the Cargo was delivered to the Customer or its duly authorised representative in a damaged and/or defective condition. The Terminal Operator shall remain indemnified at all times in respect hereof by the Customer;
- 11.1.6. unless the Customer alleges, notifies the Terminal Operator thereof and can prove patent damage to Cargo upon receipt thereof, such Cargo is deemed to have been received into the Customers custody in good order and condition and the onus is on the Customer to prove the contrary;

- 11.1.7. unless the Terminal Operator is advised and/or notified of patent damage to Cargo on delivery thereof from the Terminal Operator to the Customer or its Representative or transporter and prior to it leaving the Terminal, it is deemed to have been received by the Customer in good order and condition.
  - 11.1.8. 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 to the Terminal Operator's Terminal will be granted.
  - 11.1.9. the Terminal Operator reserves the right to capture the details and biometric data of all truck drivers entering the Terminal Operator's Terminals and shall have the right to refuse entry of any Customer appointed truck driver, at the discretion of the Terminal Operator's officials, to any of the Terminal Operator's Terminals for any justifiable reason.
- 11.2. Where a container which is to be exported is damaged and/or defective, and upon inspection, is found to be leaking, the Terminal Operator will contact the Customer in order to request instruction as to whether the damaged and/or defective container can still be loaded for shipping or should be left in the damaged container stacking area. Should the Customer fail to provide the Terminal Operator with their instruction within a reasonable time, or in any case within eight (8) hours prior to the vessel sailing, the Terminal Operator may exercise its sole discretion in making a decision as to what should be done with the damaged and/or defective container.
- 11.2.1. In the event of a damaged and/or defective container being loaded on the vessel, either upon the express instruction of the Customer or at the discretion of the Terminal Operator where the Customer has failed to provide an instruction within a reasonable time, the Customer agrees to indemnify the Terminal Operator against any and all claims arising as a result of such action.
  - 11.2.2. Unless containers have been damaged and/or rendered defective by the Terminal Operator, 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.
  - 11.2.3. In the event that a Customer makes a request to discharge a container at the Terminal Operator's Terminal within a port for which it was not destined and the Terminal Operator accedes to same, the Customer shall be liable for the full storage charges and/or all other costs associated with the handling of such Cargo.

### 11.3. Reporting and Recording of Incidents

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

- 11.3.1. immediately, and before the Customer and/or its Representatives leave or exit the Terminal, report to the Terminal Operator's Operations Supervisor on shift and not any time thereafter, any incident at the Terminal giving rise to death of or injury to any person, and/or loss of and/or damage to property of any nature;
- 11.3.2. 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 the Terminal Operator's Operations Supervisor on the shift on which the loss, injury and/or damage occurred;
- 11.3.3. immediately report to the Terminal Operator's Operations Supervisor on shift any injuries sustained by any person while the Customer and its duly authorised Representative are on or in the premises of the Terminal Operator, 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;

#### 11.4. Claims

- 11.4.1. Subject to Clause 11.3 above, the Customer must notify the Terminal Operator of any claim arising from any incident which is required to be reported in accordance with Clause 10.3, within twenty one (21) days of the incident occurring, failing which no liability will attach to the Terminal Operator, especially if the incident is of such a serious nature, so as to allow the Terminal Operator to properly investigate the matter.
- 11.4.2. The Customer must submit all claims in respect of losses allegedly suffered by the Customer arising from an incident, together with full supporting documentation to the relevant Terminal, either by way of pre-paid registered post or electronic mail, within ninety (90) days from date of the incident, failing which no liability will attach to the Terminal Operator, 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 10.7.2 above. In order for the Terminal Operator to consider the late filing of the supporting documentation the Customer is to seek condonation for the late filing of the supporting documentation which shall be accompanied by reasons for such late filing.
- 11.4.3. In the case of damage to a vessel or alleged wrong stowage, the Customer or vessel Master must submit notice thereof immediately of such damage or bad stowage, prior to the vessel leaving the port, to the Terminal Operator's Operations Supervisor on shift and the Terminal Operator's Operations Supervisor must be afforded an opportunity to inspect such damage or bad stowage, as well as given an opportunity to correct same, failing which no liability will attach to the Terminal Operator. Only Customer damage reports that are stamped and signed by the Terminal Operator's Supervisor on the shift on which the incident took place will be regarded as valid by the Terminal Operator and investigated as an incident.
- 11.4.4. A signature obtained by a the Terminal Operator Supervisor on the shift after the incident took place shall not be regarded as binding upon the Terminal Operator as the damage could not be substantiated and any such claim arising will be automatically repudiated as no liability will attach to the Terminal Operator in respect thereof.
- 11.4.5. 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 the Terminal Operator, however, the Terminal Operator's liability in respect of total damage to Cargo will be limited to its depreciated book/market value based on reasonable costs according to South African Standard.
- 11.4.6. All claims in respect of incidents that are not covered by any of the Terminal Operator's insurance portfolios will be investigated by, and deliberated and decided upon 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 within fourteen (14) calendar days from the date of the outcome communicated by the Terminal Claims Committee, failing which an application for condonation will need to be made to the Terminal Operator Appeal Committee Chairperson, in the prescribed format that can be obtained from the Legal Department.

## 12. 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 losses or special damages, resulting from the act or omission, which terms shall include, without limitation, any loss of profit, demurrage or any damages or loss incurred relating to such delay, loss of business or trade, loss of production, loss of use, loss of contract, loss of opportunity or wasted overheads (which will include but not necessarily be limited to cargo dues, storage charges, documentation costs, sea freight charges, insurance costs) or loss of business reputation or business opportunities suffered by the other Party as a consequence of the damage suffered by that Party.

## 13. FORCE MAJEURE EVENTS

13.1. 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.

13.2. Without limiting the generality of Clause 13.1, such events or circumstances may include any one or more of the following:

13.2.1. 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;

13.2.2. unforeseen major breakdown of essential machinery or equipment used in carrying out the Services which was not caused by the negligence of the Terminal Operator or its Representatives, and which occurs notwithstanding adequate maintenance in accordance with manufacturer’s specifications;

13.2.3. power failures or electricity interruptions of any nature whatsoever;

13.2.4. nuclear explosion, radioactive or chemical contamination or ionising radiation;

13.2.5. pressure waves caused by aircraft or other aerial devices;

13.2.6. meteorites;

13.2.7. epidemic, pandemic, plague or quarantine;

13.2.8. blockade or closure of the Port;

13.2.9. strikes, lockouts or other industrial action; or

13.2.10. curfews in or restrictions on travel within the Magisterial areas in which the Terminal is located.

13.3. In the event of a Force Majeure Event arising which results in non-performance by a Party of its obligations in terms hereof, such party shall be required to declare such Force Majeure Event within twelve (12) hours of the Force Majeure Event arising to the other Party and provide the supporting documentation and/or information reasonably necessary to assess whether in fact the event claimed is to be regarded as a Force Majeure Event. The Party claiming the occurrence of a Force Majeure

Event must further indicate to the other what reasonable steps it has taken or aims to take in order 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.

- 13.4. An event or circumstance which results in non-performance by a Party, caused by the usual 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.
- 13.5. 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.
- 13.6. 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.
- 13.7. 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.
- 13.8. 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, the relevant commercial agreement/s concluded between the Parties shall terminate with immediate effect upon written notice from any one Party to the other, in light of the impossibility of performance of its obligations.

#### **14. INSURANCE**

- 14.1. The Customer must take out and maintain with insurers of international standing, including, All Risk Asset insurance, Protection & Indemnity Clubs, all such third party liability insurance and any other insurance against such risks and for such sums as would normally be taken out by a prudent vessel operator and in any event to a level of cover not less than US\$ 5 000 000.00 (five million United States Dollars) in respect of any one incident or series of incidents from the same cause, including, without derogating from the generality of the foregoing, insurance to cover all claims by the Customer in terms of these Standard Trading Terms and Conditions. Customers shall be required to furnish such insurance policy upon the written request of the Terminal Operator to do so.
- 14.2. The Customer must provide proof to the Terminal Operator of such insurance when requested to do so.

#### **15. NOTICES**

- 15.1. The Parties choose the addresses set out on the Terminal Operator'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 Terminal Operator upon commencement of the commercial agreement between the Parties.

- 15.2. 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:
- 15.2.1. a physical address, within the Republic of South Africa and not a post office box or *poste restante* or an international address;
  - 15.2.2. accompanied by a telephone number, a telefax number and an email address, within the Republic of South Africa; and such new *domicilium* address replaces the address then stipulated in the quotation.
- 15.3. All notices, demands, communications or payments intended for either Party must be made or given at such Party's *domicilium*.
- 15.4. A notice sent by either Party to the other Party at their chosen *domicilium* is deemed to be received:
- 15.4.1. on the same day, if delivered by hand (provided that a receipt or confirmation of receipt is obtained);
  - 15.4.2. on the fourth (4<sup>th</sup>) day after posting (provided that it is dispatched by pre-paid registered post); or
  - 15.4.3. on the next Business Day after the date of dispatch, if dispatched by telefax or by email (provided that the correct telefax number or email address of the addressee has been used).
- 15.5. 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.

## 16. BREACH AND TERMINATION

- 16.1. 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.
- 16.2. Either Party may cancel these Standard Trading Terms and Conditions with immediate effect on written notice to the other Party ("the defaulting Party") in the event that:
- 16.2.1. 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 these Standard Trading Terms and Conditions;
  - 16.2.2. 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;

- 16.2.3. 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;
  - 16.2.4. 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;
  - 16.2.5. the defaulting Party enters into a compromise, composition or arrangement with all or any of its creditors, or attempts to do so.
- 16.3. the Terminal Operator 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 the Terminal Operator's licence is withdrawn (through no fault or misconduct on the Terminal Operator's part) and this renders it impossible for the Terminal Operator to continue to provide the Services, then these Standard Trading Terms and Conditions and any commercial 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 commercial agreement.
- 16.4. Nothing in this Clause 16 is to be construed as limiting a Party's right to, cancel the commercial agreement between the Parties by the giving of thirty (30) days' written notice to the other at their *domicilium*.

## 17. CONFIDENTIALITY

- 17.1. Save to the extent that the Parties 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:
- 17.1.1. 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;
  - 17.1.2. 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.
- 17.2. 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 17.1.1 and 17.1.2.
- 17.3. 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 whatsoever without the prior written consent of the other Party, failing which will be regarded as a material breach of this Standard Trading Terms and Conditions
- 17.4. No provision of these Standard Trading Terms and Conditions shall be construed in such a way that the Terminal Operator is deemed to have granted its consent to the Customer or parties contemplated in Clause 17.1.1 to disclose the whole or any part of the confidential information in the event that the Customer or the parties contemplated in Clause 17.1.1 receives a request for the whole or any part of the confidential information in terms of the provisions of the Promotion of Access to Information Act, No.2 of 2000, as may be amended from time to time ("the Act").
- 17.5. Subject to the provisions of Clause 17.6 below, the disclosure of confidential information by the Customer or the parties contemplated in Clause 17.1.1 otherwise than in accordance with the provisions of these Standard Trading Terms and Conditions will entitle the Terminal Operator to



institute action for breach of confidence against the Customer or parties contemplated in Clause 17.1.1, as envisaged by Section 65 of Act No.2 of 2000.

- 17.6. The Customer or the parties contemplated in Clause 17.1.1 acknowledge that the provisions of Clause 17.5 above shall not be construed in such a manner as to exclude the applicability of any other grounds of refusal contained in Act No.2 of 2000 which may be applicable in the event that the Customer or parties contemplated in Clause 17.1.1 receive a request for the whole or any part of the confidential information in terms of Act No.2 of 2000.
- 17.7. The provisions of this confidentiality clause survive the cancellation or termination of the commercial agreement between the Parties for any reason, and remain binding on the Parties for a period of three (3) years after termination of the commercial agreement between the Parties for any reason whatsoever.

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

18.1. The Customer must at all times:

- 18.1.1. 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;
- 18.1.2. remain responsible for any person instructed, requested and/or authorised by the Customer to uplift from or deliver to the Terminals any container. In line herewith the Terminal Operator shall in no way be liable for the upliftment of containers where the Customer's appointed Carrier has violated any of the Terminal Operator's security measures and/or policies and procedures regarding conditions of entry to any of the Terminal Operator's Terminals;
- 18.1.3. 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;
- 18.1.4. 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;
- 18.1.5. act in accordance with the Terminal Operator's ISO 14001 Environmental Management System (EMS System) and ISO 9001 Quality Management System (QMS) and OHSAS 18001 System (OHS);
- 18.1.6. 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
- 18.1.7. 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, the provisions of the Act (and the Regulations thereto) shall take precedence and then the Port Rules and the Harbour Master's Written Instructions must prevail.

## **19. 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.

## 20. PROTECTION OF THE TERMINAL OPERATOR'S RIGHTS

If the Customer fails to comply with any obligation imposed upon it by these Standard Trading Terms and Conditions, the Terminal Operator 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.

## 21. DISPUTE RESOLUTION

21.1. 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 these Standard Trading Terms and Conditions, 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 Clause 21.2 herein below apply, and should it elect to proceed by way of arbitration, the provisions of Clauses 21.3 to 21.10 (inclusive) below apply.

21.2. 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 these Standard Trading Terms and Conditions.

21.3. 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.

21.4. 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 these Standard Trading Terms and Conditions must take place:

21.4.1. in Durban;

21.4.2. 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;

21.4.3. with only the Parties to the dispute and their legal and other representatives present thereat; and

21.4.4. 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 21.4.2.

21.5. The Party electing such arbitration shall be liable for the costs thereof which shall include the venue and the arbitrator unless the Parties mutually agree in writing to arbitration in which case the Parties shall be liable in equal shares for the costs of the arbitration venue and of the arbitrator.

21.6. The arbitrator is to be selected by written 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.

21.7. 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.

21.8. The provisions of this clause –

21.8.1. 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

21.8.2. are severable from the rest of these Standard Trading Terms and Conditions and remain in effect despite the termination of or invalidity for any reason of these Standard Trading Terms and Conditions.

21.9. The arbitrator will have all the powers of the arbitrator in terms of the AFSA Rules.

21.10. 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.

21.11. 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.

## **22. 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.

## **23. 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.

## **24. SUPERSESION**

These Standard Trading Terms and Conditions supersede any prior Standard Trading Terms and Conditions, arrangements or understandings of any nature whatsoever which may exist between the Parties.

## **25. 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.

## **26. MISCELLANEOUS LEGAL PROVISIONS**

26.1. In the absence of specific instructions given timeously in writing by the Customer to the Terminal Operator, the Terminal Operator 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.

26.2. Neither Party is bound by any representation, any express or implied terms, warranty, promises or the like, not recorded herein or reduced to writing and signed by the Parties or their Representatives.

- 26.3. The Terminal Operator has the right to enforce a right of retention it may have over the Customer's Cargo or equipment on the premises of the Terminal Operator.
- 26.4. Where the Parties have entered into a separate written commercial agreement, then unless indicated otherwise in such agreement, the terms of that agreement shall supersede the terms of these Standard Trading Terms and Conditions 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 Standard Trading Terms and Conditions shall take precedence and shall be taken to supplement the terms of that commercial agreement.



## Annexure "A"

**STANDARD TERMS AND CONDITIONS FOR ALL VISITORS (AS DEFINED) TO TRANSNET PORT TERMINALS' RO-RO, BREAK-BULK AND AGRICULTURAL, BULK, RO-RO AUTOMOTIVE TERMINALS AND INLAND TERMINALS. TRANSNET PORT TERMINALS IS AN OPERATING DIVISION OF TRANSNET SOC LTD (REGISTRATION NUMBER: 1990/000900/30).**

### 1. STANDARD TERMS AND CONDITIONS

*The terms and conditions contained in this document shall apply without exception to all Visitors as defined in clause 2 below within the Terminal Operator's Ro-Ro, Break-Bulk, Agricultural, Bulk, Ro-Ro Automotive and Inland Terminals.*

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. *Unless indicated otherwise by the context, words signifying one gender include the other genders, words signifying the singular include the plural, and words signifying natural persons include artificial persons, and vice versa in each instance.*
- 2.2. *Headings of clauses are inserted for the purpose of 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.*
- 2.3. *If any definition in clause 2.4 is a provision conferring rights upon the Terminal Operator and imposing obligations upon the Customer (as defined) or Visitor (as defined), then notwithstanding that it appears only in clause 2.4, effect shall be given to it as if it were a substantive provision of these standard terms and conditions.*
- 2.4. *The following words and phrases shall have the meaning set out opposite them below:*

|                   |  |
|-------------------|--|
| "AMV"             | <i>any authorised motor vehicle which is a motor vehicle, trailer or truck tractor, as defined in the National Road Traffic Act (No. 93 of 1996) and which is designed and used for the transportation of equipment and/or goods other than Containers or Cargo;</i>   |
| "Cargo"           | <i>all non-containerised goods handled by the Terminal;</i>  |
| "Check office"    | <i>the control office at the Terminal;</i>   |
| "Close Proximity" | <i>the position of any equipment used to handle containers or cargo, when it is approaching, moving over, loading, off-loading or moving off or away from the RHV, irrespective of whether the equipment is stationary or in motion;</i>   |
| "Containers"      | <i>any container, reefer container, controlled atmosphere container, integral reefer container, transportable tank or flat rack container that conforms to the International Standards Organisation (ISO) standard container type designations and shall include a skiptainer;</i>   |
| "CRHV"            | <i>in relation to clause 4 means, any container road haulage vehicle, which is a motor vehicle, trailer or truck tractor as defined in the National Road Traffic Act (No. 93 of 1996) and which is designed and used for the transportation of containers;</i>   |
| "CTO"             | <i>either the container terminal order which is the hard copy document required for the removal of any container from the Terminal, or for the delivery of any container to the Terminal for export or the release EDI message required for the removal of any container from the Terminal, or pre-announcement EDI message required for the delivery of any container to the Terminal for export. With the exception of OOG and IMDG containers, the CTO is not required for export containers;</i> |

|                           |   |
|---------------------------|---|
| "Customer"                | <i>any person or entity to whom the Terminal Operator renders a service at one or more of the terminals operated by the Terminal Operator and every reference to Customer herein is deemed, the context permitting, to include any Visitor whose visit to the Terminal is in any way connected with or arises from the business of the Customer who is in possession of a valid entry permit;</i>   |
| "Delivery"                | <i>the delivery of a Container or Cargo by the Terminal into the care and custody of the Customer, its representative or its Visitor, which is deemed to occur when the Cargo or Container has been loaded onto a RHV;</i>  |
| "Entry Permit"            | <i>the process followed or document which is issued by the Terminal Operator or its designated agent, to the Visitor at the request of the Terminal;</i>  |
| "Equipment"               | <i>all machinery, plant, tools, cradles, mobile and stationary lifting gear that are used by stevedores, the Terminal, Terminal sub-contractors, the vessels and the contractors of the vessels;</i>  |
| "Identification Card"     | <i>the document referred to in 5.3 below which must be displayed on the person of each Visitor;</i>   |
| "IMDG"                    | <i>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;</i>   |
| "ISPS Code"               | <i>the International Ship and Port Facility Security Code, as mentioned in Chapter XI – 2 of the Amended SOLAS Convention 5/34, and as incorporated in the Merchant Shipping Act, (No. 57 of 1951), Merchant Shipping (Maritime Security) Regulations, 2004;</i>  |
| "LSO"                     | <i>means the landing and shipping order document required, by the Terminal, for the removal of any Cargo from the Terminal by road; or for the delivery of any Cargo to the Terminal for export; in each instance by road;</i>  |
| "Operational Areas"       | <i>those areas of the Terminal where Containers or Cargo are handled, stored, stacked or moved;</i>   |
| "Pre-Advice"              | <i>in relation to export containers, means the communication by the Customer or its Visitor, using the pre-advice procedure, of the following information to the Terminal:</i> <ul style="list-style-type: none"> <li><input type="checkbox"/> Booking reference;</li> <li><input type="checkbox"/> Container number;</li> <li><input type="checkbox"/> Seal number;</li> <li><input type="checkbox"/> Verified Container weight/Verified gross mass; and</li> <li><input type="checkbox"/> Voyage information pre-populated by virtue of the booking reference;</li> </ul> |
| "Receipt"                 | <i>the receipt of Containers or Cargo by the Terminal from the care and custody of the Customer, its representative or its Visitor, when Containers or Cargo has moved clear of the RHV;</i>  |
| "RHV"                     | <i>any road haulage vehicle which is a motor vehicle, trailer or truck tractor, as defined in the National Road Traffic Act, (No. 93 of 1996, and which is designed and used for the transportation of Containers or Cargo;</i>   |
| "SOLAS"                   | <i>International Convention for the Safety of Life at Sea, enforced in South Africa via Merchant Shipping Act (No. 57 of 1951);</i>   |
| "Terminal" or "Terminals" | <i>all dedicated Automotive, Bulk, Multi-purpose and Inland Terminals that are managed and controlled by the Terminal Operator;</i>   |
| "the Terminal Operator"   | <i>Transnet Port Terminals, an operating division of Transnet SOC Ltd;</i>  |

|                      |  |
|----------------------|--|
| <i>"Visitor"</i>     | <i>any Customer, its duly authorised servant, invitee, affiliate, agent or contractor, the driver, his assistant or crew and/or any passenger on an AMV or CRHV, any person representing a Customer or deemed to represent a Customer, vessels' contractors, stevedores, terminal sub-contractors, vessels' crew, carrier and any persons who are authorised to enter or be in or at the Terminal, each of whom must have prominently displayed on his/her person an Identification Card issued by the Customer, and which must contain the information stipulated in 5.3 below;</i> |
| <i>"Waste"</i>       | <i>any material generated during activities on the premises of the Terminal, rendering it no longer usable in its original form and which is to be discarded at a landfill site;</i>   |
| <i>"Work Permit"</i> | <i>an authorisation issued by the Transnet National Ports Authority ("TNPA") or the Terminal Operator.</i>   |

### **3. ACCESS TO AND FROM THE TERMINAL**

- 3.1. *The Terminal Operator has the right to restrict all entry to and control all exit and movement within the Terminal without affording any reason therefor.*
- 3.2. *Only a Visitor, an AMV carrying equipment or RHV will be allowed access to the Terminal, provided the Visitor concerned has been issued with an Entry Permit.*
- 3.3. *No Visitor, AMV or RHV may enter or leave the premises of the Terminal, except through the designated entrance and exit points designated for such purpose at the Terminal.*
- 3.4. *Minors or any medically or physically unfit person shall not be allowed into the Terminal, unless the Security Manager at the Terminal or Terminal Manager in the absence of the security manager has issued prior written consent. In the event such consent is granted such persons shall indemnify the Terminal Operator against any liability for any incident occurring in the terminal howsoever arising.*
- 3.5. *All Visitors entering any terminal shall be taken to indemnify the Terminal Operator in respect of any loss, damage or injury suffered or howsoever arising while coming into, while in, or on exiting the terminal and in addition and be required to sign an indemnity in a format determined by the Terminal Operator.*
- 3.6. *Animals are not allowed into the Terminal, except for the purposes of being exported from or imported into the Republic of South Africa or for the purpose of performing stowaway and /or contraband searches on board the vessel. Prior written consent must be obtained from the Terminal for any other animals which require entry into the Terminal for any purpose other than as specifically mentioned herein.*
- 3.7. *Motor cycles and bicycles are not permitted within the Terminals save as Cargo.*
- 3.8. *No Visitor, AMV or RHV may enter the Terminal, or be on the premises of the Terminal, unless:*
  - 3.8.1. *the Visitor is in possession of an Entry Permit authorising access to or exit from the Terminal; and*
  - 3.8.2. *prior to the desired or intended entry, the Customer has established and verified, to the satisfaction of the authorised representative of the Terminal, that the Visitor is in possession of:*
    - 3.8.2.1. *a written job card from the Master of the vessel instructing him to perform work on board the vessel; and /or*
    - 3.8.2.2. *a delivery note or collection order note from the Master of the Vessel and;/ or*
    - 3.8.2.3. *the Visitor's name is included in the list of the crew of the vessel as has been furnished by the Master of the vessel to the Terminal; and /or*
    - 3.8.2.4. *a valid current Work Permit from the TNPA or the Terminal Operator; and/or*
    - 3.8.2.5. *Truck Card (RFID card) required for entry via the Terminal auto gate system.*
- 3.9. *No AMV or RHV may enter the Terminal, or be allowed to be on the premises of the Terminal unless:*
  - 3.9.1. *the Visitor in control of such AMV or RHV is in possession of a CTO or a LSO authorising the Delivery to or Receipt from the Terminal of Container(s) or Cargo; and*
  - 3.9.2. *prior to the desired or intended entry, the Customer has established and verified, to the satisfaction of the authorised representative of the Terminal:*

3.9.2.1. *that any import container(s) or cargo to be uplifted has been discharged from the vessel carrying it and the import container(s) or cargo is available for collection; and*

3.9.2.2. *that any delivery of exports:*

3.9.2.2.1. *for container(s), is undertaken within the confirmed stack opening and closing dates and times for such vessel or may otherwise be as agreed upon between the Customer and the Terminal Operator; or*

3.9.2.2.2. *for cargo is undertaken with the confirmed cartage booking system or the road haulage booking system and times for such vessel or may otherwise be as agreed upon between the Customer and the Terminal Operator.*

3.9.2.2.3. *The RHV must observe the requirements of the Terminals' mandatory truck booking appointment system (where applicable).*

- 3.10. *No AMV or RHV is permitted access into the Terminal unless the roof of the cab of the AMV or RHV prominently displays the registration number of the AMV or RHV or a series of numbers as provided by the Terminal. The BAT number on the cab roof must be permanent i.e. stencilled in indelible paint and must not be temporary i.e. written on paper, transfer affixed by masking and/or duct tape. The precise information and dimensions thereof as agreed between the Parties and failing agreement, as may be stipulated by the Terminal Operator in its sole discretion. Failing which the AMV or CRHV shall be denied access to the Terminal.*
- 3.11. *The Customer and its Visitor must comply with the requirements of any mandatory truck booking system in operation at the Terminal (where applicable).*
- 3.12. *AMVs and CRHVs are strictly prohibited from hooting and/or unnecessarily revving both inside, and within the vicinity of the Terminal, except in cases of emergency. Emergency in this case refers to situations of imminent danger to the life of any person or loss of property.*
- 3.13. *The Customer or its Visitor is required to Pre-Advice the Durban Ro-Ro and Maydon Wharf Terminals of its export containers prior to the arrival of the road truck at the Terminal's entrance gate. For this specific purpose, the Customer or its Visitor is referred to clause 9 of the Standard Operating Procedures for Container Terminals.*
- 3.14. *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.*
- 3.15. *The Terminal Operator will refuse entry to a truck that has caused damage to property and a driver who fails to adhere to the Terminal Operator's conditions of entry until such time as the invoice for the damage to property has been paid.*
- 3.16. *The Terminal Operator reserves the right to capture the details and biometric data of all truck drivers entering the Terminal Operator's terminals.*
- 3.17. *No AMV or CRHV shall be permitted access into the Terminal unless the AMV or CRHV displays a clearly visible licence plate. Any licence plate that has been attached to the vehicle bumper by means of cable ties and/or string/rope as a temporary measure will be prohibited from coming into the Terminal.*
- 3.18. *No Customer, its servants, agents or contractors or Visitor will be permitted to engage the Pre-gate Help Desk to request a pre-gate ticket before the AMV or CRHV has arrived at Terminal pre gate. Should a Customer, its servants, agents or contractors or Visitor be found to have attempted to access the Terminal in this manner will have all their trucks prohibited from accessing the Terminal.*
- 3.19. *Similarly, no Customer, its servants, agents or contractors or Visitor is permitted to obtain an 'Express' pre-gate ticket from the Pre-gate Help Desk unless they have pre-arranged and have an 'appointment number'. Any Customer, its servants, agents or contractors or Visitor is found to have obtained an 'Express' pre-gate ticket, inappropriately will have all their trucks prohibited from accessing the Terminal.*

#### **4. OVERLOADING OF CRHV/RHV**

- 4.1. *For purposes of this clause 4, the Terminal Operator 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.*
- 4.2. *The Customer and/or its agent or the Customer's Representative shall inform the Terminal Operator of the accurate weight of the Container(s) to be loaded onto the CRHV/RHV and this information must be forwarded to the Terminal at least one*



(1) hour before the 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 RHV and/or the distribution of such Container(s) on a CRHV/RHV.

- 4.3. The Customer, its agents and the Customer's Representatives undertake to ensure that all weight requirements of Containers and vehicles entering and leaving the 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), and in addition thereto:
- 4.3.1. the Customer agrees that it may be required by the Terminal Operator to weigh its Container(s);
- 4.3.2. The Terminal Operator reserves the right to establish the mass of a CRHV/RHV and any axle or axle unit of such vehicle that is accurate so as to ensure that such CRHV/RHV is not overloaded as provided by Regulation 330 B of the National Road Traffic Act (No. 93 of 1996) (as amended);
- 4.4. The Customer is bound by the determinations made under this Clause 4 and the records of those determinations, which determinations shall remain in the absolute sole discretion of the Terminal Operator in the absence of manifest error.
- 4.5. The Terminal Operator reserves the right to refuse entry to any Containers and/or CRHV/RHV(s) that are in excess of the weight regulations of the National Road Traffic Act (No. 93 of 1996) and the Terminal Operator shall not be liable for any penalties, fines, penal costs, convictions, costs of administration, legal fees, incurred in respect of such overloaded vehicles.
- 4.6. A schedule of insurance must always be in the possession of the CRHV/RHV driver as contemplated in regulation 330D of the National Roads Traffic Act (No. 93 of 1996) and must be produced to the Terminal upon request.
- 4.7. The schedule referred to in clause 4.6 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.

## 5. COMPLIANCE WITH ISPS CODE

The Customer and its Visitors must comply in every respect with the ISPS Code. Without limiting the generality of the foregoing, the Customer and its Visitors must ensure that:

- 5.1. prior to entering the Terminal, a valid entry permit has been issued by or on behalf of the Terminal Operator and is prominently displayed on the cab of each AMV or RHV requiring access to the Terminal;
- 5.2. the cab of each AMV or RHV is fitted or marked with identification particulars which are prominently and conspicuously displayed on such AMV or RHV, clearly indicating the name, current physical address and telephone number of the Customer which must not be displayed as a temporary measure i.e. written on paper, transfer affixed by masking and/or duct tape The precise information and dimensions thereof are as prescribed by the Terminal and as agreed to between the Parties and failing agreement, as may be stipulated by the Terminal Operator in its sole discretion. Failing which the AMV or CRHV shall be denied access to the terminal;
- 5.3. whenever an AMV or CRHV licence disc is renewed in accordance with the requirements of the National Road Traffic Act (No. 93 of 1996), a certified copy of such renewed disc must be submitted to the relevant Terminal for the purposes of enabling it to update information on the NAVIS system. It is the responsibility of the Customer to ensure that all AMV or CRHV licence discs have been submitted to the Terminal and the Terminal accepts no responsibility for any loss or damage which eventuates as a result of a failure on the part of the Customer to ensure compliance with this Clause 5. No AMV or CRHV will be permitted into the terminal without a valid licence disc displayed clearly on its windscreen; and
- 5.4. each of its employees, drivers, agents or representatives who desires access to the Terminal, and thus to qualify as a Visitor, is issued with an Identification Card, which contains the following:
- 5.3.1. a recent and legible photograph of such employee, agent or representative;
- 5.3.2. his full name and identification number;
- 5.3.3. the name, current physical address and telephone number of the Customer; and
- 5.3.4. the signature and name (printed in capital letters) of the person who issued the Identification Card on behalf of the Customer.
- 5.5. Failure to comply with any of the ISPS code will result in the Terminal prohibiting entry of the AMV or CRHV and the driver from accessing the Terminal.

## 6. SECURITY

- 6.1. *No firearms or ammunition of any nature (as defined in the Firearms Control Act (No. 60 of 2000) are allowed in the Terminal, under any circumstance.*
- 6.2. *The Terminal has the right in its unfettered discretion through its authorised employee(s) to search any Visitor and / or AMV and/or RHV entering or leaving the Terminal in terms of the Control and Access to Public Premises and Vehicles Act (No. 53 of 1985).*
- 6.3. *Any Visitor who refuses to submit to a search as is referred to in clause 6.2, will not be allowed to enter or depart from the Terminal.*
- 6.4. *Should any AMV or RHV enter or attempt to enter the Terminal with false registration numbers, alternatively with registration numbers on the registration plates that do not correspond with the registration numbers set out in the licence disc on the AMV or RHV, then the Customer's Entry Permit will be suspended immediately by the Terminal for a period of 6 (six) months and the Customer will thereafter not be allowed access to the Terminal or be allowed to be on the premises of the Terminal. After the expiry of the 6 (six) month period, the Terminal Operator may at the request of the Terminal, on good cause shown by the Customer, lift the suspension of the Entry Permit.*
- 6.5. *No cameras, photographic equipment or cellphone cameras of any nature whatsoever shall be used, within the Terminal without the prior written consent of TNPA on recommendation from the Terminal Operator.*
- 6.6. *Each incident described in clause 6.4 must be reported to the South African Police Service ("SAPS") by the Terminal for further investigation. The Customer and/or Visitor must co-operate with the SAPS in such investigation.*
- 6.7. *Every AMV or HRV is required to come to a complete stop at the access control gate at the Terminal and its engine must be switched off before the security official conducts any required inspection. No Visitor may move off unless and until they have been given a signal to so proceed by the security official conducting the inspection.*
- 6.8. *Where a Visitor misconducts himself/herself by intimidating the Terminal Operator's employees or third parties, by use of physical violence, sexual harassment or verbal abuse, the Visitor may be removed from the Terminal irrespective of whether such Visitor has completed the loading or unloading of their Cargo. The Terminal Operator will not be liable for any costs or damages arising as a result of such removal.*
- 6.9. *A Visitor may not interfere with the security official in the execution of his/her duties and that no pranks/horseplay will be tolerated.*
- 6.10. *The Terminal Operator reserves the right to remove from and/or ban from further entry into the Terminal, any Visitor who causes damage to the Terminal's property.*
- 6.11. *Where a Customer uses sub-contractor trucks instead of their trucks, details of every single truck must be disclosed to the Terminal Operator with the following details - sub-contractor company name, company registration number, truck registration number and vin number, license number, license expiry date, make and model of truck, road worthy certificate. For the sub-contractor driver clause 5.4 above must be applied.*
- 6.12. *All RFID (Radio Frequency Identification) cards not used within 30 (thirty) days shall be deemed to be invalid and will be deactivated by the Terminal Operator. The Terminal Operator shall not be obligated to inform or advise the Customer or Visitor of such deactivation so as to ensure safety and security of the terminal.*
- 6.13. *A RFID card issued to a Customer's specific truck cannot be used for any other truck.*
- 6.14. *The Customer or its appointed agent shall be responsible for the security and safe handling of the RFID cards issued to them by the Terminal Operator. The Customer shall at all times be responsible for the fraudulent use of such cards and no liability shall accrue to the Terminal Operator for any loss, theft, or damage sustained by the Customer, its agents, affiliates or cargo owners in the event that the Customer failed to fulfil its obligation in this regard.*
- 6.15. *If the issued RFID cards to the Customer have been lost or misplaced or stolen, the Customer, its agent or its appointed transporter shall notify the Terminal Operator in writing, within 12 (twelve) hours of becoming aware thereof to the relevant central email address provided to the Customer by the relevant Terminal Operator representative, and the Terminal Operator will de-activate the card, failing which same shall be regarded as a material breach of these Standard Terms and Conditions.*
- 6.16. *Should the CRHV to which an RFID card is issued, experience a mechanical breakdown which will result in the vehicle not being used for more than 5 (five) days, the Customer, its agent or transporter must inform the Terminal Operator of such and the Terminal Operator will de-activate the card until advised by the Customer that the CRHV has been repaired.*

## 7. RESTRICTED ZONES

The Customer is vicariously liable and responsible for all acts of any Visitor whose presence in the Terminal in any way arises from or is connected with the business of the Customer and must ensure that no such Visitor under any circumstances:

- 7.1. enters the Operational Areas save for a purpose related to the Customer's operations; or
- 7.2. stands, sits or walks under or near any suspended load.
- 7.3. The provisions of clause 6.4 shall apply to any breach of the provisions of this clause 7, mutatis mutandis, but clause 6.6 will not apply.

## 8. ROAD TRAFFIC MANAGEMENT SYSTEM

- 8.1. No AMV or RHV may enter or drive along the quayside at the Terminal, unless duly authorised to do so in advance by the Terminal Operator Operations Supervisor.
- 8.2. The movement of each AMV or RHV is restricted to the approved area and that all road traffic signs and markings (including the speed limit of 30 km/h) on the premises of the Terminal must strictly adhered to at all times.
- 8.3. Parking areas and "keep clear" areas within the Terminal, as designated by road traffic signs and/or markings and all traffic directions must be strictly observed.
- 8.4. Vehicular traffic on the premises of the Terminal is confined to the demarcated roadways only.
- 8.5. A look-out must be kept for cranes and equipment, including vehicular traffic, and that way is given to them at all times.

## 9. RHV

The Customer shall be responsible for ensuring that and undertakes that:

- 9.1. each RHV calling at the Terminal is in a roadworthy condition and that it complies with all statutory requirements governing the roadworthiness of RHV's;
- 9.2. each RHV in respect of containers is equipped with sufficient twist locks which are in good working condition, so as to ensure that each container loaded onto the RHV is capable of being securely fastened to such RHV by a minimum of (4) four twist locks;
- 9.3. all headboards, sideboards, tailboards and/or stanchions fitted to each RHV will be removed by it from each RHV prior to any RHV entering the premises of the Terminal failing which the Terminal Operator shall not be held liable for any damage to containers as a result of colliding with any of the RHV's headboards, sideboards, tailboards and/or stanchions on loading and off-loading by the Terminal Operator;
- 9.4. all plant, machinery, equipment and/or breakbulk cargo will be removed by it from each RHV prior to any RHV entering the premises of the Terminal;
- 9.5. should any RHV break down, for any reason whatsoever, whilst on the premises of the Terminal, it must be removed by the Customer from the premises of the Terminal immediately, failing which, if deemed appropriate by Terminal, the Terminal will be entitled to remove such RHV at the Customer's cost and sole risk; and
- 9.6. no repairs to a RHV, of any nature whatsoever, may be effected on the premises of the Terminal because this is strictly prohibited.

## 10. CONTAINERS AND CARGO EXCHANGE YARD, WAREHOUSE AND QUAYSIDE

The Customer and its Visitors must ensure that whenever and wherever in the Terminal equipment is in operation, it and every Visitor will:

- 10.1. first report to the control office before entering the Container or Cargo exchange yard, warehouse or quayside;
- 10.2. ensure that the Cargo securing equipment or twistlocks of each container are released or opened before the RHV is positioned for the delivery or receipt of Containers or Cargo;

- 10.3. *be solely responsible for ensuring that the RHV is driven or reversed into the cargo or container exchange area, warehouse or quayside as allocated by the Terminal Official at the control office;*
- 10.4. *strictly observe the general rule of the Terminal that waiting, sitting or standing in the container or cargo exchange area, warehouse or quayside is strictly prohibited;*
- 10.5. *alight from the RHV immediately after parking the RHV in the allocated area and wait with the assistant in the designated area (the exact position, area and dimensions of which shall be as stipulated by the Terminal from time to time), until the loading/off-loading of Containers or Cargo has been effected and the equipment for handling the Cargo or Containers has moved out of that particular area;*
- 10.6. *ensure the RHV proceeds to the exit gate of the Terminal without delay as soon as the container(s) or cargo has /have been off-loaded from, or loaded onto, the RHV, as the case may be; and*
- 10.7. *not remain on the premises of the Terminal after the Container(s) or Cargo has or have been off loaded from and/or loaded onto the RHV, as the case may be.*

## **11. CONTAINER TERMINAL ORDERS OR SHIPPING AND LANDING ORDERS**

- 11.1. *The Customer shall ensure that the name of the trucking company and the registration details of the truck that will be used and that is authorised to collect Containers or Cargo from the Terminal is clearly and conspicuously endorsed on each CTO or LSO used for the import of containers or cargo.*
- 11.2. *The Terminal will not accept any amendments or changes to any CTO or LSO used for the import of Containers or Cargo. Only amendments to the container prefix, container number or check digit shall be permitted on a CTO or pre-announcement EDI message needed for the export of containers, provided that a stamp by the Shipping Line/Packing Station appears on the said CTO or pre-announcement EDI message alongside any amendment, which is signed by an authorised employee and approves each department.*
- 11.3. *The Customer is solely responsible for the safekeeping of each CTO or LSO in its possession, or in the possession of its servants, agents, sub-contractors or Visitor.*
- 11.4. *A CTO or LSO may not under any circumstances be ceded, transferred or assigned.*
- 11.5. *No hand written document will be accepted and any Customer, its servants, agents or contractors who written document will not be allowed access to the Terminal. Terminal Security will be advised and the matter investigated before the truck is allowed to leave the Terminal present a hand.*

## **12. IMDG (DANGEROUS) GOODS**

*The Customer must ensure that:*

- 12.1. *no IMDG (Dangerous) goods, as defined in the International Maritime Dangerous Goods Code and/or the SANS 10228 Dangerous Goods Schedule referred to in the regulations of the National Road Traffic Act, (No. 93 of 1996), is delivered to the Terminal unless the Visitor is in possession of a dangerous goods declaration in respect of the IMDG (dangerous) goods. The dangerous goods declaration must be submitted to the Terminal at the check office at the same time that the administration/check-in is done thereof;*
- 12.2. *no IMDG (dangerous) goods, as defined in the International Maritime Dangerous Goods Code and/or the SANS 10228 Dangerous Goods Schedule referred to in the regulations of the National Road Traffic Act, (No. 93 of 1996), are delivered to the Terminal where the contents of such hazardous goods are, or appear to be, leaking or in any way escaping from the packaging of the goods;*
- 12.3. *no flammable liquids and substances are delivered to or uplifted from the Terminal unless the driver of the AMV or RHV is in possession of a valid certificate of registration for that particular AMV or RHV, as prescribed in the Fire Prevention and Flammable Liquids and Substances Bylaws as may be prescribed from time to time by the applicable Municipality;*
- 12.4. *no IMDG (dangerous) goods as defined in the International Maritime Dangerous Goods Code and/or the SANS 10228 Dangerous Goods Schedule referred to in the regulations of the National Road Traffic Act (No. 93 of 1996), are delivered to the Terminal unless such IMDG goods are properly marked, as is prescribed in the International Maritime Dangerous Goods Code and Statutes of the Republic of South Africa;*
- 12.5. *the provisions contained in the National Road Traffic Act, (No. 93 of 1996) and Regulations are strictly observed and adhered as far as the transportation of dangerous goods and substances by road are concerned.*
- 12.6. *comply with the Harbour Master's Written Instructions and IMDG circulars in respect of IMDG (dangerous) goods.*

- 12.7. *A breach of any of these provisions by the Customer shall be regarded as a material breach of these Standard Terms and Conditions and the Customer shall be liable to the Terminal Operator in respect of any loss or damage suffered by the Terminal in respect of non-compliance herewith*

### **13. CONTAINER PREFIX AND CONTAINER NUMBER**

- 13.1. *The Customer undertakes that its Visitor will:*

- 13.1.1. *ensure that the container prefix, number and check digit on each container loaded onto the RHV corresponds with the container prefix, number and check digit reflected on the particular CTO applicable to such containers before entering or leaving the premises of the Terminal, as the case may be;*
- 13.1.2. *ensure that where the container prefix, container number or check digit on the container does not correspond with the container prefix, container number or check digit reflected on the particular CTO relating to such container, such discrepancy is immediately brought by him to the attention of the relevant Terminal Official at the document processing office, to enable the Terminal to investigate such discrepancy; and take whatever steps the Terminal deems appropriate to rectify such discrepancy;*
- 13.1.3. *not attempt to bring into or remove from the premises of the Terminal any containers in respect of which the container prefix, container number and check digit does not correspond with the container prefix, container number or check digit reflected on the relevant CTO i.e. where the situation in clause 13.1.2 applies;*
- 13.1.4. *ensure that it operates, loads and carries containers on a CRHV in strict compliance with the mass requirements as prescribed in the National Road Traffic Regulations 2000.*

- 13.2. *The Terminal Operator will not handle any overgaged container without the proper instructions being indicated on the CTO and will hold no liability for any damage to an overgaged container or the contents thereof where the appropriate mass and handling instructions based on such mass is not accurately declared on the CTO by the Customer, its agents or contractors.*

### **14. CONTAINER SEAL**

- 14.1. *The Customer and/or its Visitors must ensure that:*

- 14.1.1. *all export Containers whether (full or empty) are securely and properly sealed;*
- 14.1.2. *all Container seal numbers are verified, checked or captured by it and/or its agents;*
- 14.1.3. *Container seals are placed on the inner (bottom) locking bar of the overlapping door;*
- 14.1.4. *every Container is loaded onto the rear of the RHV in such a manner that the doors of such container are on the rear end of the RHV;*
- 14.1.5. *the particulars of the seal on the Container correspond to the particulars of the seal on the CTO or EDI release message;*
- 14.1.6. *the seal on the Container is always readily accessible;*
- 14.1.7. *where the particulars of a seal on a Container which is being imported does not correspond to the particulars of the seal contained in the CTO, such Container must be moved to a pre-determined inspection area, jointly inspected in the presence of customer representative and two (2) of the Terminal Operator's representatives, one of whom is the Operations Supervisor on the shift on which the discovery of the compromise in the particulars of the seal takes place. The container is to be re-sealed by the Customer representative and the CTO must be endorsed with the particulars of the new seal before the Container is removed from the premises of the Terminal; Customs / SARS representative must also be present at the inspection. In addition an investigation report is to be completed out by the Terminal Operator claims officer and signed by the Customer representative before the container is removed from the premises of the Terminal;*
- 14.1.8. *no seal is to be removed or otherwise breached or attached to a Container by the Customer and/or by any Visitor, whilst such Container is in the possession of the Customer or its agents or Visitor or under its control on the premises of the Terminal without a proper investigation report being completed and signed as indicated in clause 14.1.7;*
- 14.1.9. *Containers that are to be imported must be loaded onto the rear of the RHV within the Terminal in such a manner that the doors of each container face the rear of the RHV. An exception applies in respect of containers whose mass exceeds 26 (twenty-six) tons, which may be accepted with their doors facing the front of the CRHV.*

- 14.2. *The Terminal Operator is not liable and cannot under any circumstances be held liable for any failure by the Customer, its agents, or contractors in respect of any of events listed in paragraph 14.1 above.*

## 15. REEFER CONTAINERS

*The Customer and/or its Visitor must ensure that:*

- 15.1. *all reefer containers (both full and empty) are accurately pre-tripped by the container depot; and*
- 15.2. *the pre-trip sticker is affixed to the reefer container, is clearly visible and shall contain the following information:*
- 15.2.1. *the name, current physical address and telephone number of the container depot that pre-tripped the container;*
- 15.2.2. *the name and identification number of the technician that pre-tripped the container;*
- 15.2.3. *the date the container was pre-tripped;*
- 15.2.4. *the set point temperature; and*
- 15.2.5. *the name of the vessel to which the reefer container is destined.*
- 15.3. *The Terminal Operator shall not be liable for ensuring the reefer container has been set to correct temperature and the Customer undertakes to indemnify and keep the Terminal Operator indemnified in respect thereof.*

## 16. DAMAGE TO CONTAINER(S) OR CARGO

*The Customer and/or its Visitors undertake that:*

- 16.1. *every container or cargo to be delivered by it to, or received by it from, the Terminal will be free of damage or defects or contamination, of such nature as might render the containers or cargo unsafe for transportation;*
- 16.2. *a Visitor will immediately report any damage to any container or cargo to the Terminal Operator's Operations Supervisor that is on shift at the time, at the exit/entry gate of the Terminal, and ensure that this is recorded either on the Navis system or in writing on the designated form which is to be signed by both Parties, before such containers or cargo enters or leaves the premises of the Terminal, and if damage is not reported as intended in this clause 16.2 the removal of an allegedly damaged container from the Terminal premises will be deemed to have constituted delivery of the container and its cargo, in good order and sound condition, as described in the Bill of Lading;*
- 16.3. *where a container or cargo which has been imported is found to be damaged or defective upon delivery, such container or cargo will not be removed by it from the premises of the Terminal, unless the CTO, EDI release message or LSO has been signed and endorsed by a Terminal Claims Examiner, certifying that the containers or cargo was delivered to the Customer (or its Visitor) in a damaged or defective condition and where the procedure prescribed in this clause 16.3 has not been followed in respect of any allegedly damaged or defective container or cargo, such container and its cargo will be deemed to have been in good order and in sound condition;*
- 16.4. *where a container which is being exported is found to be damaged or defective upon delivery, such container will not be accepted into the premises of the Terminal, unless written notification from the Customer or its agent has been received in writing. In the absence of such notification, once the vessels sails and no damages or defects had been reported to the Terminal Operator before sailing, the Terminal Operator will not be liable for any damages or defects subsequently reported to the container or cargo, and the container and its cargo will be deemed to have been in good order and in sound condition; and/or*
- 16.5. *where a container which is to be exported is damaged and/or defective, and upon inspection, is found to be leaking, the Terminal Operator will contact the Customer in order to request instruction as to whether the damaged and/or defective container can still be loaded for shipping or should be left in the damaged container stacking area. Should the Customer fail to provide the Terminal Operator with their instruction within a reasonable time, or in any case within eight (8) hours prior to the vessel sailing, the Terminal Operator may exercise its sole discretion in making a decision as to what should be done with the damaged and/or defective container and the Terminal Operator will not accept any risk or liability in respect thereof.*

## 17. AMV

- 17.1. *Each AMV calling at the Terminal shall be in a roadworthy condition and comply with all statutory requirements governing the roadworthiness and use thereof.*

- 17.2. *Each AMV calling at the Terminal shall be fitted with a flashing amber revolving light in a prominent position, which shall be switched on and be in good working order and condition at all times.*
- 17.3. *A closed top AMV shall be used to transport persons within the confines of the Terminal, provided it has been duly authorised by the Terminal in writing to do so and all Visitors not using an AMV shall use the shuttle service, if provided by the Terminal, within the premises of the Terminal.*
- 17.4. *Should any AMV break down while on the premises of the Terminal, it shall be removed by the Customer or Visitor's from the premises of the Terminal immediately, failing which, if deemed appropriate by Terminal, the Terminal shall be entitled to remove such AMV at the Customer's or Visitor's sole cost and risk.*
- 17.5. *No repairs to an AMV, of any nature whatsoever, may be effected on the premises of the Terminal.*
- 17.6. *AMV's shall be positioned so as not to obstruct any crane or protrude in any way onto rail tracks or roadways so as to constitute a hazard to the safe movement of cranes or equipment, persons or vehicular traffic.*
- 17.7. *The driver shall remain in attendance at his AMV and shall move the AMV immediately when instructed to do so by a representative of the Terminal.*

#### **18. WORK PERMIT / JOB CARD / DELIVERY NOTE OR COLLECTION ORDER**

- 18.1. *The Customer shall ensure that the name of the Customer which has authorised access to and from the Terminal is clearly and conspicuously endorsed on each Work Permit, Job Card and/or other Delivery Note or Collection order.*
- 18.2. *The Terminal shall not accept any amendments or changes to any Work Permit, Job Card and/or other Delivery Note or Collection order and none may be made without the Terminal's prior written consent.*
- 18.3. *The Customer is solely responsible for the safekeeping of each Work Permit, Job Card and/or other Delivery Note or collection order in its possession, or in the possession of a Visitor.*
- 18.4. *A Work Permit, Job Card and/or other Delivery Note or collection order is not transferable, under any circumstances.*
- 18.5. *The provisions of clause 18.1 shall apply to each Customer, its servants, agents, sub-contractors or Visitor mutatis mutandis.*

#### **19. WITHIN TERMINAL PREMISES**

*The Customer undertakes that, whenever the Terminal equipment and Cranes are in operation, it and every Visitor whose presence in the Terminal in any way arises from or is connected with the business of the Customer shall:*

- 19.1. *first report to the security control room before entering the premises of the Terminal;*
- 19.2. *strictly observe the general rule of the Terminal that:*
  - 19.2.1. *waiting, sitting or standing in the straddle carrier/vehicle interchange Grid Slot, warehouses, quaysides, any operational area, any cargo or container stacking area or construction area; and*
  - 19.2.2. *climbing onto, standing, sitting, using or operating cranes or equipment owned or leased by the Terminal or in the care and custody of the Terminal,*

*is strictly prohibited, unless prior written approval has been obtained by the Customer or such Visitor from the Terminal Operations Supervisor;*
- 19.3. *at all times, keep to pavements and designated walkways within the Terminal;*
- 19.4. *not use the cargo or container stacking areas as a thoroughfare so as to gain access from one section of the Terminal to the other;*
- 19.5. *ensure that any and all AMV's and RHV's, cranes or equipment are positioned in a manner so that they do not obstruct any crane or rail tracks or roadways or constitute a hazard to cranes, equipment, persons or vehicular traffic;*
- 19.6. *ensure that all lifting gear has a valid current inspection certificate which complies with all applicable legislation and such lifting gear is fitted with a cradle that is approved by the Terminal, in writing;*
- 19.7. *ensure that under no circumstances will the maximum safe working load of the cradle be exceeded at any given time;*
- 19.8. *ensure that safety harnesses are worn when persons are raised, lowered or moved by means of a cradle which safety harnesses shall be provided at the cost of the Customer;*

- 19.9. *not dispose of, drop or throw any equipment, cargo, containers, Waste or any other material and/or substance of any nature whatsoever onto the quayside or into the waters of the Port from the quayside or any vessel berthed at the Terminal;*
- 19.10. *ensure that all equipment or cranes are removed from wharfs, quays, jetties and other work places in the Terminal without delay after work operations are completed, or within such extended time as the Terminal Operator may determine in its sole discretion;*
- 19.11. *ensure that all equipment or cranes will at all times be in proper working order and condition and that (without limitation) all equipment, cranes, AMV's and RHV's will be inspected by the Customer regularly for oil leaks and/or oil or other spills which the Customer undertakes to clean up immediately and to dispose of the Waste at an appropriate landfill site in accordance with all the relevant and appropriate environmental legislation, the Customer hereby indemnifies and holds the Terminal Operator harmless against all claims of whatsoever nature and howsoever arising which may be made against it by any environmental authority as a result of the breach by the Customer or a Visitor of the provisions of this clause 19.11;*
- 19.12. *ensure that all reasonable measures are taken to prevent the spillage of cargo, containers or any other material and / or substance of any nature whatsoever into the waters of the Port, the Terminal or onto the quayside and the Customer undertakes to clean up all or any spills immediately and dispose of the spillage at an appropriate landfill site in accordance with all the relevant and appropriate environmental legislation and accepts liability for the cost of any recovery of any containers, cargo, Waste or any other material and/or substance, and/or the costs of clean-up of any spillage made into the waters of the Port, the Terminal or quayside which shall be for the account of the Customer which hereby indemnifies the Terminal Operator against all costs, charges and claims of whatsoever nature and howsoever arising which may be made against it by any person arising out of a breach by it or any Visitor of the provisions of this clause 19.12.*
- 19.13. *ensure the AMV or RHV proceeds to the exit of the Terminal on completion of the work without delay;*
- 19.14. *not remain on the premises of the Terminal after the work has been performed.*

## **20. PERSONAL PROTECTIVE EQUIPMENT AND FACILITIES**

*The Customer and its servants, agents, sub-contractors or Visitors must ensure that they:*

- 20.1. *wear high visibility garments and personal protective equipment (such as day-glow vests, safety boots, hard hats, safety harnesses, overalls and any other requisite safety gear) as may be agreed upon between the Terminal and the Customer (and failing agreement, as may be prescribed by the Terminal) at all times whilst on the premises of the Terminal, all of which shall be provided by the Customer at its own cost. Should the Customer, its servants, agents, sub-contractors or Visitor not wear the PPE stipulates in this clause 20.1 the Terminal reserves the right to restrict access to the Customer, its servants, agents, sub-contractors or Visitor*
- 20.2. *are aware that they are prohibited from using any dining rooms, change-rooms and shower facilities provided for the employees of the Terminal; and*
- 20.3. *may only use toilet and ablution facilities set aside designated and provided by the Terminal Operator.*

## **21. INTERFERENCE WITH, DAMAGE TO OR MISUSE OF ITEMS**

*The Customer undertakes to ensure that neither it nor any Visitor wilfully, recklessly, intentionally or negligently, directly or indirectly, interferes with, damages or misuses any movable or immovable property provided by the Terminal in the interests of the health and safety of persons, protection of the environment, or the efficient and smooth working of the Terminal. The Customer indemnifies the Terminal Operator against any loss or damage which it may suffer as a result of the breach by the Customer and/or any of its Visitor(s) of the provisions of this clause 21.*

## **22. REPORTING AND RECORDING OF INCIDENTS**

- 22.1. *Notwithstanding any other provisions to the contrary, any claim which a Customer believes it may have against the Terminal in connection with or arising out of any incident which occurred within the Terminal shall lapse and become extinguished unless:*
- 22.1.1. *the Customer has placed the Terminal Operator on notice for the loss or damage, subject at all times to the limitations contained in these Standard Trading Terms and Conditions as well as the time limits contained herein, and submitted a valid priced submit all claim/s in respect of losses or damage 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, in accordance with the time periods set out in section 11 of the Standard Trading Terms and Conditions .

22.1.2 within twenty one (21) days of the happening of the event that could give rise to the claim, the Customer gives written notice thereof to the Terminal, which notice must contain all material facts on which the claim is based, and thereafter, irrespective of whether or not the claim is repudiated by the Terminal;

22.1.2. within 420 (four hundred and twenty) days of such claim arising, the Customer institutes legal proceedings against the Terminal in respect of the claim by service on the Terminal of legal process issued by it in a court of competent jurisdiction and having such summons served on the Terminal at the following address:

**TRANSNET PORT TERMINALS**  
**KINGSMEAD OFFICE PARK**  
**STALWART SIMELANE STREET**  
**DURBAN**  
**4001**

22.2. If an incident or accident occurs in the Terminal which gives, or which may give, rise to the death or injury of any person, or loss of or damage to property of any nature whatsoever, the Customer must ensure that it and each Visitor for which it is vicariously liable:

22.2.1. report each incident giving rise to death, injury to any person, or damage to property of any nature, that occurred at the Terminal, to the Terminal Operator's Operations Supervisor on the shift on which the incident took place without delay after the occurrence of the incident and before the Visitor and the particular AMV or RHV exits the Terminal; and provided the provisions of clause 22.1.2 have been complied with;

22.2.2. complete a "Road Haulage Vehicle Notice of Damage Report" immediately after the incident. Under no circumstances, may the Visitor, AMV or the RHV leave the premises of the Terminal unless the "Road Haulage Vehicle Notice of Damage Report" has been properly completed and signed by the Customer or such Visitor, and the Terminal Operator's Operations Supervisor on the shift on which the incident took place in order to verify the accurate details of such incident. No Road Haulage Vehicle Notice of Damage Report will be considered to validly signed by the Terminal Operator by a Supervisor or official on a different shift and the Terminal Operator will remain indemnified in respect of any loss or damage arising out of such incident and its rights strictly reserved in respect thereof; and

22.2.3. apart from an incident as contemplated in clause 22.1.1, immediately report to the Terminal Operator's Operations Supervisor on the shift on which the injury took place, any injuries sustained whilst the Customer and/or any Visitor whilst on the premises of the Terminal and also undertakes that the relevant statutory departments [as may be prescribed in the Compensation for Occupational Injuries and Diseases Act (No. 130 of 1993), Road Accident Fund Act (No. 56 of 1996); Occupational Health and Safety Act (No. 181 of 1993) or any other legislation (Acts, Ordinances or Bylaws) governing the reporting and investigation of accidents (incidents)], are notified thereof by the Customer without delay thereafter.

22.2.4. submit all claims in respect of losses allegedly suffered by the Customer, together with full supporting documentation to the relevant Terminal by pre-paid registered post. In the case of damage to a vessel, the Customer must forthwith submit notice of such damage to the Terminal Operator's Operations Supervisor that is on shift at the time that the damage occurs or is discovered, prior to the sailing of the vessel and the Terminal Operator must be afforded an opportunity to inspect such damage and an investigation report completed and signed by the Terminal Operator's Operations Supervisor and the vessel master prior to the vessel leaving the Terminal, failing which the Terminal Operator shall not be held liable under any circumstances for such damage once the vessel leaves the port without reporting the alleged / said damage.

22.3. All claims in respect of losses allegedly suffered by the Customer, together with full supporting documentation, must be submitted to the Terminal by email, fax, hand delivery and pre-paid registered post.

22.4. If an incident or accident occurs in the Terminal which gives, or which may give rise to the serious injury or death of any person or causes major damage to the Terminal Operator's assets, then the Terminal Operator will constitute a Board of Inquiry. The purpose of this Board of Inquiry will be to enquire into, take evidence and report upon all and any facts and circumstances relevant to and connected with the injury or death of the individual(s) concerned or the damage to the Terminal Operator's assets. The Customer must ensure and procure that it and each Visitor co-operate fully with

any request from the Terminal Operator's Board of Inquiry, failing which, the Terminal in its sole discretion may revoke such Customer and/or Visitor's Entry Permit and/or deny them access to the Terminal in future.

### **23. INTOXICATION**

- 23.1. No Visitor or Customer is permitted access to or allowed to remain on the premises of the Terminal, if he/she is, or appears to be, under the influence of alcohol, drugs or any other similar substance causing intoxication of such person/s..
- 23.2. No alcohol, drugs or similar substances are allowed onto the premises of the Terminal. The Customer/ any Visitor may not partake in the consumption of, or offer any other person, alcohol, drugs or similar substance on the premises of the Terminal.
- 23.3. The Terminal reserves the right to conduct random searches and tests on any Visitor on the premises of the Terminal with the view of determining whether such Visitor is in possession of or has consumed alcohol, drugs or similar substances.
- 23.4. Should it be established that any Customer or Visitor is in possession of or has consumed alcohol, drugs or a similar substance or offered such substances to any other person, and if the Visitor is the driver of an AMV or RHV, the Terminal in its sole and unfettered discretion has the right to prevent that Visitor from driving his AMV or RHV and to take such steps as are contemplated in clause 6.4 above.

### **24. COMPLIANCE WITH INSTRUCTIONS**

- 24.1. Every Visitor must immediately comply with any reasonable instruction given to him by any Terminal Operator Operations Supervisor, whilst on the premises of the Terminal.
- 24.2. The Terminal reserves the right to refuse the Customer and any Visitor and any AMV or RHV access to the Terminal in the event of:
- 24.2.1. the Customer or a Visitor failing, neglecting or refusing to comply with these standard terms and conditions, all applicable legislation, statutory requirements of the Health, Safety and Environmental Protection, as may be applicable to the Terminal; or to the Terminal's Operational, Security, Health, Safety and Environmental Policies and procedures, as amended from time to time by the Terminal Operator in its sole discretion; or
- 24.2.2. the Customer or a Visitor failing, neglecting or refusing to co-operate with the safe, efficient and smooth working of the Terminal, to and from the Terminal; or
- 24.2.3. the Customer or Visitor failing, neglecting or refusing to comply with any laws, statutory enactments and /or regulations that are applicable to him in any way whatsoever, whether directly or indirectly; and
- 24.2.4. the Customer or Visitor breaching the ISPS Code or the Port Rules in any way.

### **25. DISCLAIMER**

- 25.1. Entry into the Terminal is at the sole risk of the Customer and/or Visitor(s).
- 25.2. Neither the Terminal Operator nor any of its employees or agents, are liable for any death, injury, loss or damage of whatever nature and howsoever arising, whether direct, indirect, consequential or otherwise (including any loss of profit) suffered by the Customer or the Customer's officers, employees, agents or Visitor(s), or any third parties, arising from any incident which occurred within the Terminal as a result of the wilful misconduct, acts, omissions, delicts, negligence of any degree on the part of, or breach of contract by, the Customer or the Customer's officers, employees, agents or Visitor(s), and/or any third party claiming through them.
- 25.3. Neither the Terminal Operator nor any of its employees or agents are liable for any loss or damage of whatsoever nature and howsoever arising, whether directly, indirectly, consequentially or otherwise suffered by the Customer or the Customer's officers, employees and agents or any third parties arising from or which may be attributable to the use or the input of incorrect data into or inability to use Electronic Data Interchange (EDI) messages and/or the NAVIS Terminal Operating System or arising from or attributable to reliance upon any information, links or services provided in respect thereof.
- 25.4. Without limiting the generality of this disclaimer, the Terminal Operator will not be liable for any interruption, malfunction or downtime relating to EDI messages and/or the NAVIS Terminal Operating System and any loss or damage to the Customer's data caused by power failures.

**26. INDEMNITY**

- 26.1. *The Customer indemnifies the Terminal Operator, and holds them harmless against any claim of whatsoever nature, whether for loss or damage, and whether direct, indirect, consequential or otherwise, including any loss of profit, suffered and or instituted against the Terminal and / or the Terminal Operator by a third party or by any Visitor as a result of any incident which occurred on the premises of the Terminal, whether or not such claim, loss or damage is attributable to any wilful misconduct, breach of contract, delict, negligence of any degree or any other cause, without limitation, on the part of the Customer or the Customer's officers, employees, agents or Visitor.*

**27. BREACH**

- 27.1. *Should any Visitor fail to comply with any of the provisions contained in clauses, 6.1, 6.5, 6.6, 7, 8, 10, 20, 21, 22, 23 and 24 such Visitor must immediately upon request by the Terminal leave the premises of the Terminal, and should he/she refuse to do so, he/she may immediately be removed from the Terminal by its authorised employees and will not be allowed access into the Terminal thereafter.*
- 27.2. *Should the Customer fail to rectify any breach of these Standard Terms and Conditions to the satisfaction of the Terminal within five (5) days of receipt of written notice from the Terminal to do so, the Customer is deemed to be in material breach of these Standard Terms and Conditions. 27.3. Should the Customer fail to comply with any of the provisions contained in clauses 5, 12, 14, 15, 16, 22, 23 and 24 or the statutory requirements of Health, Safety and Environmental Protection that are applicable to the Terminal, the Customer is deemed to be in material breach of these standard terms and conditions.*
- 27.4. *Should the Customer breach these standard terms and conditions more than once during any 12 (twelve) month period, or be in material breach of these Standard Terms and Conditions, the Terminal Operator is entitled, summarily and without notice to the Customer, to withdraw the Customer's Entry Permit for a period of six (6) months, in which event neither the Customer, nor its Visitor(s) nor AMV's and CRHV's, are allowed access to the Terminal. After expiry of such six (6) month period, the Terminal Operator may, on good cause shown, re-instate the entry permit, but has the unfettered right to refuse to do so without assigning any reason therefor.*
- 27.5. *Should the Customer have its Entry Permit suspended for a period of 6 (six) months more than once in any 3 (three) year period, the Terminal is entitled to withdraw the Customer's Entry permit, (as referred to in clause 3.1) and not to approve the granting of an Entry Permit to the Customer thereafter.*

**28. GENERAL**

*No agreement varying, adding to, deleting from or cancelling any of these Standard Terms and Conditions and no waiver of any of these Standard Terms and Conditions is of any effect unless it is agreed to in writing and signed by a representative of the Terminal Operator who has been specifically authorised to do so.*

- 28.1. *No indulgence of any nature granted by the Terminal at any time to the Customer and/or Visitor will constitute a waiver of any of the Terminal's rights or preclude it from strictly enforcing such rights thereafter.*
- 28.2. *All persons on the premises of the Terminal will be subject to 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 which shall be deemed to form an integral part of these Standard Terms and Conditions.*
- 28.3. *If the Terminal Operator refers any claim against the Customer and/or Visitor to its attorneys to enforce or protect its rights, the Terminal will be entitled to recover from the Customer and/or Visitor all legal costs incurred on the attorney and own client scale.*
- 28.4. *A certificate signed by the Finance Manager of the Terminal (whose authorisation and appointment as such need not be proved) certifying the amount owing by the Customer to the Terminal together with details of the incident constitutes prima facie proof thereof and of the Customer's indebtedness to the Terminal in such amount.*
- 28.5. *If any one of these Standard Terms and Conditions is or becomes unenforceable, it will be severable from the remainder of these Standard Terms and Conditions which will continue to be binding upon the Customer and/or Visitor.*
- 28.6. *These Standard Terms and Conditions must be interpreted and implemented in accordance with the law of the Republic of South Africa.*

**29. COMPLIANCE WITH LAWS AND POLICIES**

29.1. *The Customer must at all times:*

- 29.1.1. *comply with all international codes and conventions, national legislation, regulations and / or any other statutory or regulatory directives, laws and bylaws including but not limited to the ISPS Code, SOLAS, codes, conventions, laws and regulations concerning the protection of the environment, transportation, labour and social responsibility;*
- 29.1.2. *ensure that it is in possession of and that it observes the terms and conditions of all relevant permits, licences and approvals of public authorities in relation to the activities carried out by it under this Agreement;*
- 29.1.3. *observe the provisions of any written Collective Agreement that may become binding on either of the Parties, its respective employees and a registered trade union;*
- 29.1.4. *act in accordance with the Terminal Operator's Policies and Procedures and the Terminal Operator's ISO 14001 Environmental Management System (EMS) and ISO 9001 Quality Management System (QMS) and OHSAS 18001 System (OHS);*
- 29.1.5. *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;*
- 29.1.6. *ensure compliance with the National Ports 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 this Agreement then the Act, Port Rules and Harbour Master's Written Instructions shall prevail; and*
- 29.1.7. *adhere strictly to the provisions of any legislation and/or regulation and/or any other statutory requirement or directive which may be applicable to the activities regulated by this Agreement.*