

**STANDARD TRADING TERMS AND CONDITIONS OF  
SOUTH AFRICAN BULK TERMINALS (PTY) LTD**

**Interpretation**

**1 Definitions and Interpretation**

- 1.1 In these Conditions the words set out hereunder shall have the meanings assigned to them hereunder, unless the context clearly indicates the contrary:
- 1.1.1 "SABT" shall mean South African Bulk Terminals (Pty) Ltd, registration number 1994/004247/07, incorporating Rennies Bulk Terminals and Durban Bulk Shipping, and shall also include its cessionaries, assigns and / or successors in title;
- 1.1.2 "Business" shall mean all and any business undertaken, including any advice, information or Service provided, whether gratuitously or not, by SABT;
- 1.1.3 "Conditions" shall mean these standard trading terms and conditions;
- 1.1.4 "Cargo" shall mean any goods handled, transported or dealt with by or on behalf of or at the instance of the CUSTOMER or which come under the control of SABT or its agents, servants or subcontractors or an authorised third party on the instructions of the CUSTOMER, and includes any form of container or equipment used in connection with or in relation to such goods;
- 1.1.5 "CUSTOMER" shall mean any person, whether an agent or a principal, at whose request or on whose behalf SABT undertakes or renders any business, and will include their subcontractors, agents or employees;
- 1.1.6 "Owner" shall mean the owner of the Cargo and any other person who may have or who acquires any interest, financial or otherwise, therein;
- 1.1.7 "Parties" shall mean SABT and the CUSTOMER collectively, and "Party" shall mean either one of them;
- 1.1.8 "Services" shall mean the services provided or to be provided by SABT to the CUSTOMER, which services may include, but not be limited to, forwarding, clearing, consulting, information services, warehousing and/or the transport and distribution of Cargo and any services allied thereto; and
- 1.1.9 "Truck" shall mean any road or rail vehicle.
- 1.2 Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of these Conditions.
- 1.3 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Conditions.
- 1.5 In so far as the provisions of any written agreement between the Parties are inconsistent with these Conditions, the provisions of these Conditions shall prevail. In particular it is recorded that these Conditions will take precedence over any terms contained in the CUSTOMER's standard trading terms or purchase orders.
- 1.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Conditions shall not apply.
- 1.7 The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (*eiusdem generis*) shall not apply, and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.
- 1.8 These Conditions shall be interpreted and applied in accordance with South African law.

**Application and Legal Standing**

**2 Application**

- 2.1 All and any Business undertaken or provided by SABT is subject to these Conditions as updated from time to time. The use of any Services provided by SABT shall constitute agreement by the CUSTOMER to pay all charges and to be governed by these Conditions.
- 2.2 If SABT is obliged, in the execution of any of its duties and / or responsibilities to comply with any common law or legislation, SABT shall by complying therewith not be deemed to waive or abandon any of its rights in terms of these Conditions or assume any onus, obligation, responsibility or liability in favour of the CUSTOMER.

**3 Relationship**

- 3.1 The relationship between the Parties is a contract of service and does not constitute a contract of employment or partnership.

**4 Subcontracting**

- 4.1 Any Business entrusted by the CUSTOMER to SABT may, in the absolute discretion of SABT, be fulfilled by SABT itself, by its own servants performing part or all of the relevant Business, or by SABT employing, or entrusting such Business to third parties on

such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Business, or such part thereof as they may be employed to carry out.

- 4.2 Where SABT subcontracts any Business, it continues to act as Principal with regards to its obligations to the CUSTOMER.

### **Remuneration and Payment**

#### **5 Rates**

- 5.1 Any quotations or estimates given by SABT shall be valid and open for acceptance for a period of 30 days only and are based on the scope of work as detailed therein.
- 5.2 All rates are exclusive of Value Added Tax which is payable at the standard rate.
- 5.3 The parties shall negotiate in good faith on an annual basis to agree any adjustment in the rates, which adjustment will be effective on the anniversary date of the contract each year, regardless of when agreement is reached. Should the Parties not reach agreement on the adjustment by this date, the rates shall escalate by an amount equal to the official inflation rate as evidenced by the escalation in the Consumer Price Index as published by Statistics South Africa, or by any successor publisher substituted therefor, in the preceding month of the current year compared with that published in the preceding month of the previous year, plus two percent.

#### **6 Payment**

- 6.1 The CUSTOMER shall pay all sums due to SABT within 14 days of date of invoice or as otherwise agreed in writing by the Parties.
- 6.2 All payments shall be made without deduction or set-off and payments shall not be withheld or deferred because any claim or counterclaim which the CUSTOMER may allege.
- 6.3 In the absence of any written agreement to the contrary, payment of all amounts due to SABT shall be made in South African Rands at the address or into the bank account nominated by SABT.
- 6.4 The CUSTOMER shall pay SABT Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.
- 6.5 All documents, cash, cheques, bank drafts or other remittances, sent to SABT through the post or electronically transmitted shall be deemed not to have been received by SABT unless and until they are actually received by SABT. If any payment to SABT is effected electronically, then the CUSTOMER bears the risk in respect of such payment until the payment is received and cleared into SABT's bank account.
- 6.6 SABT shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.
- 6.7 The CUSTOMER acknowledges that SABT shall be entitled to provide invoices, statements and supporting documents in electronic form, and accepts electronic invoices for the purposes of claiming Value Added Tax.

#### **7 Default and Debt Collection**

- 7.1 SABT may charge interest at the maximum rate allowed by law, calculated on daily balance and compounded monthly in arrears on any amount not paid to SABT by the CUSTOMER on due date.
- 7.2 If SABT institutes legal proceedings against the CUSTOMER to recover amounts due to SABT, the CUSTOMER shall be liable for all legal costs incurred by SABT on the scale as between attorney and own client, as well as collection commission and tracing agent's fees, if any.

#### **8 Lien**

- 8.1 SABT shall have a special and general lien over all Cargo and any documents including without limitation bills of lading and permits relating thereto in its possession and such Cargo and documents shall be deemed to be pledged to SABT as security for all moneys whatsoever due to SABT by the CUSTOMER, sender, Owner, consignee, or their agents, if any, whether relating to the Cargo or not.
- 8.2 In delivering the Cargo into the custody of SABT or its agents for any purpose whatsoever, such delivery shall for the purpose hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to SABT at that time or which become payable in the future. In the event of SABT utilising the services or premises of any third party for any purposes including the transportation or storage of any Cargo, such third party shall be the agent of SABT for purposes of exercising SABT's right of retention under the said lien and/or pledge.
- 8.3 The CUSTOMER shall not be entitled to effect or allow to be effected any security in respect of the Cargo or the documents relating to the Cargo, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of SABT. The lien and pledge in favour of SABT referred to in this clause, shall operate as a first and prior charge against the Cargo and the documents relating to the Cargo and no other security shall rank prior to SABT's lien or pledge.
- 8.4 Should any amount due to SABT remain unpaid, SABT shall be entitled to immediately exercise its lien and shall advise the CUSTOMER in writing that it has done so. Should the amount remain unpaid for a further 14 days, SABT shall be entitled to sell the Cargo in accordance with clause 24.

## Liability and Insurance

### **9 Limitation of Liability**

- 9.1 SABT shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising unless such claim arises from:
- 9.1.1 a grossly negligent act or omission on the part of SABT, its employees or subcontractors; and
  - 9.1.2 in respect of loss of or damage to Cargo, at a time when the Cargo in question are in the actual care and custody of SABT, its employees or subcontractors and under their actual control.
- 9.2 Notwithstanding anything to the contrary contained in these Conditions or elsewhere, SABT shall not be liable for any indirect loss, including but not limited to: consequential, incidental or remote loss; special or speculative damages; or loss of profit, business or production.
- 9.3 No claim shall be made against any director, servant or employee of SABT in his personal capacity which imposes or attempts to impose any liability upon him in connection with the provision of the Services, and the CUSTOMER waives all and any such claims.
- 9.4 If SABT is, notwithstanding the provisions of this clause, liable to the CUSTOMER in terms of these Conditions or otherwise, in no case whatsoever shall any liability of SABT, howsoever arising, exceed the lesser of:
- 9.4.1 the actual customs or insurance declared value of the Cargo; or
  - 9.4.2 double the amount of the handling rate charged by SABT for its Services rendered in connection with the lost or damaged Cargo; and
  - 9.4.3 in any event, R 500 000 in respect of all occurrences giving rise to liability in any calendar year, regardless of the nature, number and amount of claims arising.

### **10 Claims**

- 10.1 No claim of any nature whatsoever and howsoever arising may be brought against SABT unless SABT has received written notice of the claim from the CUSTOMER specifying full details thereof within 14 days of the date of the event giving rise to the claim, or of the CUSTOMER reasonably becoming aware thereof, whichever is the later.
- 10.2 SABT shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any Service provided to the CUSTOMER or which SABT has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on SABT within 12 months after the cause of action in respect of any such alleged liability arose.

### **11 Insurance**

- 11.1 SABT shall have no obligation to procure any insurance on the Cargo.

### **12 Indemnity**

- 12.1 Without prejudice to SABT's rights under these Conditions, any agreement between the Parties and/or at law, the CUSTOMER indemnifies and holds SABT harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by SABT (unless and to the extent caused by the wilful misconduct or gross negligence of SABT) arising directly or indirectly from or in connection with:
- 12.1.1 SABT complying with the requirements or instructions of the CUSTOMER or any Authority regarding the Cargo or Services;
  - 12.1.2 any warranty given to SABT by the CUSTOMER being untrue or incorrect;
  - 12.1.3 any act or omission or breach of these Conditions by the CUSTOMER or any person, subcontractor or carrier acting on its behalf or under its instruction;
  - 12.1.4 a declaration made to SARS Customs by the agent of the CUSTOMER being made falsely, incorrectly or not at all;
  - 12.1.5 any claim made by the Owner, the consignor or consignee (if not SABT), the carrier (where SABT is the consignor or consignee), the CUSTOMER's clients or suppliers or any third party in connection with the Services or Cargo;
  - 12.1.6 the contents, quality, nature, legality, inherent vice, counterfeit nature, defect in or description of the Cargo;
  - 12.1.7 the loading, offloading, numbering, weight, measurements, non-delivery, mis-delivery or defective packaging of the Cargo unless done by SABT in terms of a written agreement between the Parties;
  - 12.1.8 the defective condition of, or overweight, containers or vehicles, unless provided by SABT in terms of a written agreement between the Parties; and / or
  - 12.1.9 death, bodily injury or damage to persons or personal property as a result of the wilful or negligent act or omission of the CUSTOMER or any person acting on its behalf.

## Rights and Obligations

### **13 Loading and Discharge**

- 13.1 The master of a vessel about to load or discharge cargo shall:
- 13.1.1 cause all hatches to be opened timeously;
  - 13.1.2 allow his vessel to be worked 7 days a week, 24 hours a day, during the entire loading or unloading period;
  - 13.1.3 provide the use of the vessel's gear to facilitate the opening and closing of the hatches and the loading and discharge of cargo or equipment and all other necessary assistance;
  - 13.1.4 take in or discharge cargo with such despatch as is reasonable in the opinion of SABT;
  - 13.1.5 make suitable provision for ventilation and the safety of men working in any enclosed space;
  - 13.1.6 remain solely responsible for the vessel's safe loading and trimming including the taking on or discharge of ballast; and
  - 13.1.7 ensure that the vessel departs from the berth forthwith on completion of loading or discharging.

- 13.2 The CUSTOMER shall:
- 13.2.1 procure that the master of any vessel about to load or discharge cargo for the CUSTOMER complies with the obligations set out in Section 1;
  - 13.2.2 insure the cargo whilst at a terminal against all risks and losses;
  - 13.2.3 be liable for the replacement of or repair to any property at a terminal damaged by the CUSTOMER's cargo (whether with or without the fault or privity of the CUSTOMER) and any damages whatsoever resulting from any loss of use thereof, whether suffered by SABT or by any other CUSTOMER;
  - 13.2.4 be entitled to require that cargo alleged to have been loaded in excess of the required tonnage be discharged at its sole risk and expense (which shall include all storage and railage cost);
  - 13.2.5 be responsible for any necessary examination or certification of cargo or the vessel's hold by a surveyor or other party immediately on arrival of the vessel at the berth;
  - 13.2.6 give provisional notice in writing as to the expected date and time of arrival of the vessel at the berth at least 14 days prior to arrival and thereafter provide three days, two days and 24 hours definite written notice of discharge or loading requirements. Written notice of any change in expected time of arrival of the vessel shall be given without delay;
  - 13.2.7 give written notice to work overtime by noon on a week day for a nightshift, and before noon on the day before any public holiday for a public holiday or on Friday for a weekend as the case may be;
  - 13.2.8 request SABT's agreement to the arrival into storage of cargo for purposes of shipment out or removal from storage by rail or other transport in writing at least 24 hours before the intended arrival or removal;
  - 13.2.9 arrange for the vessel to be removed from the berth at its expense if the cargo is contaminated or dangerous or not suitable for handling with the terminal's discharging / loading equipment;
  - 13.2.10 arrange a railing program in consultation with SABT and not despatch Trucks without SABT's prior consent. Any Truck demurrage incurred as a result of non-compliance with this clause will be for the CUSTOMER's account. SABT retains the right to rail the Trucks back to the CUSTOMER, and the CUSTOMER shall pay the railage;
  - 13.2.11 appoint a surveyor to inspect all Trucks to be loaded with cargo. If the CUSTOMER or the surveyor so appointed requires a truck to be cleaned, or if such Truck is required to be cleaned by the port or rail authorities, SABT will arrange for this to be done. The CUSTOMER shall use only such Trucks which are in the opinion of SABT suitable;
  - 13.2.12 notify SABT in writing if fumigation of the cargo in storage is required, the cost of such fumigation to be agreed with SABT;
  - 13.2.13 be liable for payment of extra time charges, any consequential loss and costs of moving the vessel from the berth, or failing to do so, however caused;
  - 13.2.14 when a vessel has caused damage to any of the property of SABT, be liable for replacement of or repair to such property and any damages whatsoever resulting from any loss of use thereof. The fact that at the time the damage was caused the vessel was under compulsory pilotage in terms of the Rules and Regulations of the port authorities shall not afford the CUSTOMER any excuse for avoiding such liability;
  - 13.2.15 comply with these Conditions and be liable for all damages suffered by SABT should it fail to do so.
- 13.3 SABT shall:
- 13.3.1 commence handling a vessel within a reasonable time after receipt of final notice of readiness;
  - 13.3.2 establish the mass of any quantity of cargo loaded or discharged from or into a terminal, notwithstanding any mass so reflected on any other document or established by any other means, and mass established by SABT shall for all purposes be binding on the CUSTOMER;
  - 13.3.3 make no warranty regarding the quantity of cargo loaded and SABT acts as agent only in this regard on behalf of the CUSTOMER. SABT will use its best endeavours to load in accordance with the quantity or weight of the cargo it is instructed to load, and which is delivered to a terminal for that purpose;
  - 13.3.4 be entitled to refuse to accept any vessel at the berth or to load or unload any vessel which because of the nature of such vessel or of its cargo, in the sole opinion of SABT, cannot be handled at a satisfactory rate of loading or unloading. SABT may, with the agreement of the CUSTOMER, load or unload such vessel or cargo at a special charge;
  - 13.3.5 be entitled to order any such vessel which is not ready to load or unload or is not satisfactorily cleaned or prepared or is not immediately surveyed or examined off the berth;
  - 13.3.6 be entitled to request the port authorities on its behalf to remove a vessel from the berth at the cost and risk of the CUSTOMER;
  - 13.3.7 load or discharge cargo from vessels in order of their arrival and load readiness (the condition in which a vessel or Truck is in all respects ready to load or discharge Cargo), as far as is practicable; however, SABT shall be entitled in its sole opinion to handle vessels in any other order;
  - 13.3.8 allow vessels onto the berth for discharge only when suitable storage for cargo is available;
  - 13.3.9 be entitled to order a vessel off the berth if the cargo being discharged is found to be contaminated or infested or not suitable for handling with the terminal's discharging / loading equipment;
  - 13.3.10 be entitled to order a vessel off the berth when the cargo in storage is exhausted or when the loading of such cargo in storage is reduced to speeds which in the sole opinion of SABT are unsatisfactory. Such vessel shall not be re-berthed until the next vessel waiting to berth has been fully loaded or unloaded and then only if the total tonnage remaining to be loaded has been received into storage;
  - 13.3.11 charge for work performed outside the normal operating hours of the terminal as overtime, but shall not be obliged to perform such work unless timeous application for permission so to work has been made in writing in terms of 2.7;
  - 13.3.12 be entitled to move a vessel off the berth or to an alternative berth at the risk of the CUSTOMER for any reason whatsoever, including failure of the master to load or discharge cargo with reasonable despatch and at the sole opinion of SABT the cost or a portion of the cost of such a move may be assumed by SABT where it deems fit;
  - 13.3.13 be entitled to load any vessel at any other berth using normal National Ports Authority facilities and shall be entitled notwithstanding such fact to raise its normal charges, save that SABT shall bear the costs of so discharging or loading the vessel at such other berth;
  - 13.3.14 be entitled to refuse to receive any cargo into storage if storage allocated to the CUSTOMER is insufficient or the CUSTOMER has failed to clear other cargo in storage timeously;
  - 13.3.15 be entitled at its cost to recycle cargo in storage to alternative storage without reference to the CUSTOMER. If such recycling is requested by the CUSTOMER, all costs incurred shall be for the CUSTOMER's account. The cost of recycling cargo that is heating will be for the account of the CUSTOMER;

- 13.3.16 not be obliged to receive into a terminal any cargo which in its sole opinion is not satisfactory for handling at such terminal;
- 13.3.17 assume that all Trucks delivered empty to a terminal are clean and fit for carriage of cargo and shall be entitled to clean, scale or caulk any Trucks at the cost of the CUSTOMER without reference to the CUSTOMER and to reject any Trucks which are unsuitable;
- 13.3.18 take all steps which it deems reasonable to ensure that all silos, bins, conveyors, housing, elevators and hoppers are reasonably free from contamination and infestation;
- 13.3.19 be entitled to clean bins and silos before first receipt of cargo and between different grades of cargo. The cost of any other cleaning or fumigation will be for the CUSTOMER's account;
- 13.3.20 fumigate the cargo if required by government inspector or if necessary, in SABT's opinion at the cost of the CUSTOMER;
- 13.3.21 take reasonable steps to collect and return empty bags to the CUSTOMER;
- 13.3.22 be entitled to, at its sole discretion, move any cargo to an alternative storage facility at the expense and risk to the CUSTOMER, should the cargo compromise SABT's ability to handle other cargo due to it being stored for an unreasonable extended period;
- 13.3.23 notify the CUSTOMER within two working days of any cargo movement in or out of a terminal and provide a monthly summary of tonnage of cargo on hand and throughput. Such notification will be deemed to be correct subject to any subsequent adjustment by SABT, unless notice in writing is received by SABT within seven days;
- 13.3.24 reserve the right to refuse to handle or store any commodity which in its opinion is unsuitable, unacceptable or dangerous for storage or handling at a terminal or for which official approval has not been received;
- 13.3.25 determine in SABT's opinion which vessels are suitable for loading or unloading at a terminal and only regular bulk vessels with unrestricted hatch access shall be worked there.

#### **14 Storage**

- 14.1 Every undertaking to warehouse Cargo is subject to the condition that SABT has available storage space at the appropriate time.

#### **15 Instructions**

- 15.1 The CUSTOMER's instructions to SABT shall be precise, clear, comprehensive and in writing. Oral instructions, standing or general instructions or instructions given late, even if received by SABT without comment, shall not in any way be binding upon SABT, but SABT may act thereupon in the exercise of its absolute discretion.
- 15.2 Notwithstanding anything to the contrary herein contained, if at any time SABT should reasonably consider it to be in the CUSTOMER's interests or for the public good to depart from any of the CUSTOMER's instructions, SABT shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 15.3 If events or circumstances come to the attention of SABT, its agents, servants, or subcontractors which, in the opinion of SABT, make it in whole or in part, impossible or impracticable for SABT to comply with a CUSTOMER's instructions SABT shall take reasonable steps to inform such CUSTOMER of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by SABT in writing, SABT shall, in its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Cargo concerned at the risk and expense of the CUSTOMER.

#### **16 CUSTOMER's Undertakings**

- 16.1 The CUSTOMER undertakes to supply to SABT all information relating to its business and/or the Cargo that is relevant to the provision by SABT of the Services. The CUSTOMER shall be deemed to have reasonable knowledge of all matters directly or indirectly relating to its business and Cargo.
- 16.2 In respect of SARS Customs and other legal requirements, the CUSTOMER:
  - 16.2.1 must duly clear all cargo through Customs and must ensure that all other legal requirements in respect of such cargo have been complied with in full;
  - 16.2.2 must ensure that all cargo entered and removed from any bonded facilities at SABT is cleared timeously and that the necessary proof of acquittal is provided to SABT within the prescribed time periods;
  - 16.2.3 must ensure that all cargo is moved out of the warehouse within the time periods prescribed;
  - 16.2.4 consents to SABT, at the cost of the CUSTOMER, clearing such cargo, that is at risk of exceeding the time permissible for storage in bond, from the warehouse or alternatively abandoning such cargo to Customs; and
  - 16.2.5 indemnifies and agrees to hold SABT harmless against any claims arising from a breach of their obligations to Customs or the storage of the cargo in bond, including legal costs on the scale as between attorney and own client, all fines, penalties, expenses and forfeiture, or the cost of any proceedings.
- 16.3 The CUSTOMER warrants that:
  - 16.3.1 it is either the Owner or the authorised agent of the Owner of any Cargo in respect of which the CUSTOMER instructs SABT and that each such person is bound by these Conditions;
  - 16.3.2 in authorising the CUSTOMER to enter into any contract with SABT, the Owner, sender or consignee is bound by these Conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that SABT shall have the right to enforce against them jointly and severally any liability of the CUSTOMER under these Conditions and/or to recover from them any sums to be paid by the CUSTOMER which upon proper demand have not been paid;
  - 16.3.3 all information and instructions supplied or to be supplied by it or its agent to SABT is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the CUSTOMER shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to SABT for customs, consular and other purposes, and the CUSTOMER warrants that it will not withhold any necessary or pertinent information.

- 16.4 The CUSTOMER undertakes:
- 16.4.1 that no claim shall be made by it against any servant, agent or subcontractor of SABT (where SABT acts as principal) which imposes or attempts to impose upon him or her any liability in connection with the Cargo or the rendering of any Services and the CUSTOMER hereby waives all and any such claims, which claims should be made directly against SABT in terms of these Conditions; and
- 16.4.2 to ensure that any contracts relating to the Cargo concluded by the Customer with third parties shall include a provision that SABT, its servants, agents and subcontractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Customer in respect of the Cargo as if such provisions were expressly for their benefit.
- 16.5 SABT stipulates in favour of each of its servants, agents and subcontractors, existing and future, that the CUSTOMER gives the undertakings, waivers and indemnities in this clause to them, which stipulation is open for acceptance by the said servants, agents and subcontractors for an indefinite period.

### Cargo

#### **17 Landed Cargo**

- 17.1 Where it is necessary for an examination to be held or other action to be taken by SABT in respect of any discrepancy in the Cargo which are landed or discharged from any vehicle or other transport unit, no responsibility or liability shall attach to SABT for any failure to hold such examination or to take any other action unless SABT has been timeously advised by the landing or discharge agent that such Cargo has been landed and that such a discrepancy exists.

#### **18 Sale of Cargo**

- 18.1 Without limiting or affecting any of SABT's other rights under these Conditions, SABT may, in its sole discretion, dispose of or sell, by private treaty or public auction or otherwise, all or part of the Cargo in the care, custody or control of SABT, if:
- 18.1.1 such Cargo has begun to deteriorate or are likely to deteriorate;
- 18.1.2 such Cargo is insufficiently addressed or marked;
- 18.1.3 the CUSTOMER cannot be identified;
- 24.1.4 the Cargo has not been collected or accepted by the CUSTOMER or any other person;
- provided that, if SABT has an address for the CUSTOMER, then such sale or disposal shall be effected only after the expiration of 21 days from SABT posting a notice to the CUSTOMER at that address to collect or accept such Cargo and/or pay all outstanding amounts.
- 18.2 The CUSTOMER hereby authorises SABT to effect such a sale by either public auction or private treaty, on reasonable notice not exceeding 14 days. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by SABT, shall be applied in reduction or discharge as the case may be, of the CUSTOMER's obligations to SABT in respect of such Cargo without prejudice to SABT's rights to recover from the CUSTOMER any balance which may remain owing to SABT after the exercise of such rights. Should the total amount collected by SABT, after deducting therefrom all costs, charges and expenses incurred by SABT in respect thereof, exceed the full amount of the CUSTOMER's obligations to SABT in respect of such Cargo, SABT shall be obliged to refund such excess to the CUSTOMER.

### General

#### **19 Compliance with Legislation**

- 19.1 If SABT is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment of any nature whatsoever, then SABT by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these Conditions; or to have assumed any onus, obligation, responsibility or liability in favour of the CUSTOMER.
- 19.2 The CUSTOMER agrees to abide by SABT's Safety, Health and Environmental Rules when on any of SABT's sites.
- 19.3 SABT will retain all records in relation to the Services for the period required by the applicable laws and regulations.
- 19.4 SABT and the CUSTOMER, as well as their agents, servants, subcontractors and intermediaries, must comply with any anti-corruption legislation applicable to either or both Party. This includes not giving or offering to give, receiving or offering to receive any bribe, facilitation payment, political contribution, gift or other advantage which violates this anti-corruption legislation.
- 19.5 SABT and the CUSTOMER, as well as their agents, servants, subcontractors and intermediaries, hereby warrant that they have not and will not engage in any anti-competitive behaviour in relation to these Conditions or any contract between the Parties. Anti-competitive behaviour means any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means, whether formal, informal, contractual, non-contractual, written or verbal) or other form of co-ordination or co-operation with any competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition laws.

#### **20 Confidentiality, Personal Information and Intellectual Property**

- 20.1 Each Party agrees to treat as strictly confidential the operations, business and affairs of the other Party and not to divulge any information relating thereto to any third party, agent or employee, save as required by law, in respect of the execution of these Conditions or agreement between them, whether prior to, during or after the currency of these Conditions or the said agreement.
- 20.2 All documentation furnished by one Party to the other Party pursuant to these Conditions or any agreement between them will remain the property of that Party and upon the request of that Party will be returned to it.

- 20.3 Each Party acknowledges that all right, title and interest in and to any information which the other Party has an interest in being kept confidential vests in that Party and that neither Party has any claim of any nature in and to the confidential information of the other Party.
- 20.4 The Parties shall only process each other's personal information or that of their employees in accordance with the requirements of the Protection of Personal Information Act, 4 of 2013 and / or the *EU General Data Protection Regulation* as applicable.
- 20.5 All intellectual property rights of any nature whatsoever whether capable of registration or not (and whether registered or not) in either Party's name including but not limited to either Party's trademarks, logos and images shall remain the sole property of that Party. The other Party shall not acquire any rights in relation thereto and shall not make any use thereof without formal written consent.

## **21 Breach and Termination**

- 21.1 SABT shall be entitled to terminate the provision of Services to the CUSTOMER on 30 days' written notice at any time should it become uneconomical or impractical for SABT to continue.
- 21.2 Without prejudice to its rights under these Conditions, any agreement between the Parties and/or at law, either Party shall be entitled to cancel any agreement between it and the other Party by written notice if:
- 21.2.1 the other Party commits any breach of its obligations under these Conditions or the said agreement and fails to remedy that breach within 14 days of its being given written notice to do so;
  - 21.2.2 the other Party commits any act of insolvency in terms of any applicable insolvency legislation;
  - 21.2.3 the other Party commences business rescue proceedings;
  - 21.2.4 the other Party is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
  - 21.2.5 the other Party compromises or attempts to compromise with its creditors;
  - 21.2.6 any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management of the other Party, or any equivalent order is made in terms of any applicable law regarding the status of the other Party;
  - 21.2.7 the other Party fails to satisfy any default or other judgement granted against it, within 10 days.

## **22 Force Majeure**

- 22.1 A Party shall not be liable for a failure to perform any of its obligations hereunder due to a *force majeure* event (which includes but is not limited to war, civil war, civil violence, riots, revolutions, acts of piracy, acts of sabotage, terrorism, sabotage, natural disasters, destruction by lightning, explosions, fires, destruction of installations, industrial action or strike, changes of law, acts of Authority, whether lawful or unlawful) that is beyond its reasonable control and that it could not reasonably be expected to have taken into account at the time of the conclusion of these Conditions or any agreement between the Parties, provided that the Party subject to the *force majeure* event shall give prompt notice to the other Party of its nature and estimated duration.
- 22.2 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the *force majeure* event relied upon and shall terminate upon the date which such event ceases to exist.
- 22.3 The Parties hereto shall co-operate and collaborate and use all reasonable efforts to overcome the *force majeure* event concerned and/or nullify its effect.
- 22.4 If the *force majeure* event substantially or permanently prevents the continued performance by either Party of its obligations in terms of these Conditions or any agreement between them for a period exceeding 30 consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the said agreement with effect from 7 days after giving of such notice.

## **23 Notices and domicilia**

- 23.1 Each Party chooses as its *domicilium citandi et executandi* for all purposes under these Conditions and any agreement between them, the physical address most recently provided by it to the other in writing.
- 23.2 Either Party shall be entitled to change its *domicilium* by way of written notice to the other specifying its new *domicilium* provided that such new address shall be a street address within the Republic of South Africa.
- 23.3 All notices by one Party to the other shall be delivered, to the chosen *domicilium citandi et executandi* of the addressee and shall be deemed to have been received on the date of delivery or dispatch unless the contrary is proved.
- 23.4 Copies of all notices shall in addition be emailed on the email address most recently provided.

## **24 Electronic Data**

- 24.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, SABT shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.

## **25 Licences**

- 25.1 SABT shall be excused from performing Services in terms of any agreement between it and the CUSTOMER if any licence, permit or similar authorisation lawfully required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever.

## **26 Dispute Resolution**

- 26.1 The Parties shall negotiate in good faith with a view to settling any dispute arising out of or relating to this agreement. For the purposes of this clause, a dispute will not include an unpaid account where there is no valid reason therefor.
- 26.2 If the dispute cannot be resolved, it will be referred to the managing director or chief executive officer (or such other director as designated by the foregoing) of each Party for determination, who will meet within 14 days of the referral.
- 26.3 If the dispute cannot be resolved within 14 days of this meeting, it may be referred for resolution by arbitration in accordance with the rules (domestic or international, as the case may be) of the Arbitration Foundation of Southern Africa (“AFSA”).
- 26.4 The arbitration shall take place in Durban, South Africa.
- 26.5 The arbitration will be heard by three arbitrators: one arbitrator appointed by agreement between the Parties, or failing such agreement, by the AFSA; one appointed by SABT and one appointed by the CUSTOMER.
- 26.6 The decision of the Arbitrator is final and binding on the Parties and may be made an order of court at the instance of any party to the arbitration.
- 26.7 This clause is a separate, divisible agreement from the rest of these Conditions and shall remain in effect even if these Conditions are nullified or cancelled for whatsoever reason or cause.
- 26.8 Nothing herein contained shall be deemed to prevent or prohibit the Parties from seeking interim or urgent relief in a court of competent jurisdiction.

## **27 General**

- 27.1 Notwithstanding the Electronic Communications and Transactions Act, 2002, no amendment or variation of these Conditions or any agreement between the Parties shall be of any force or effect unless reduced to writing and physically signed by a duly authorised director of SABT. Whilst correspondence for operational reasons may occur via email, no formal amendment or variation may be concluded via email.
- 27.2 No failure, refusal or neglect by a Party to exercise any rights under these Conditions or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party’s obligations under these Conditions or such agreement, shall constitute a waiver of the provisions of these Conditions or such agreement or of any of that Party’s rights. A Party may at any time require strict compliance with the provisions of these Conditions or any agreement between the Parties and shall not be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.
- 27.3 Each of the provisions of these Conditions and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these Conditions or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these Conditions or any agreement between the Parties.
- 27.4 Neither Party may cede or assign any of its interest in, or its rights and obligations deriving from, these Conditions or any agreement to any third party without the other party’s prior written consent, except for a cession or assignment made as part of an internal reorganization of either party, which will not affect their shareholding.
- 27.5 SABT makes no warranties and representations to the CUSTOMER save as may be specifically provided herein or as notified in writing by SABT to the CUSTOMER.