



1. **INTERPRETATION**

1.1 In these Conditions:

1.1.1 The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;

1.1.2 Unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;

1.1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely:

1.1.3.1 "The Act" The Customs and Excise Act No. 91 of 1964, Regulations made under the said Act and any amendments thereto or replacements thereof;

1.1.3.2 "Bimco" The Baltic and International Maritime Council;

1.1.3.3 "Carrier" Any carrier of Goods whether by rail, road, sea or air;

1.1.3.4 "Conditions" These general trading conditions as amended or supplemented from time to time;

1.1.3.5 "Container" Any container, transportable tank, bolster or flat rack, used to transport goods and constructed to ISO standards or recommendations or those of a similar recognised classification society;

1.1.3.6 "Container Operator" A Container Operator as defined by the Act, or any person who carries on the business of transporting containerised goods, or any Ship Owner, Charterer, Ship Operator, Carrier, Ship's Agent, Shipbroker, Freight Forwarder, non-Vessel Owning Common Carrier, Clearing and Forwarding Agent, International Transport Operator and Combined Transport Operator, from, on whose behalf, or at whose request or instruction SACD receives and containerises export goods and delivers such containerised goods or from whom or at whose instance or instruction SACD receives containerised import goods. Whenever there is a reference in these Conditions to a Container Operator or to the obligation of a Container Operator, such reference shall be deemed to be a

		reference to the Container Operator from or on whose behalf SACD receives any Goods or for, or on whose behalf, it performs any service;
1.1.3.7	"Container Trailer"	A trailer constructed for the purpose of carrying containers;
1.1.3.8	"Customer"	means any Person at whose request or on whose behalf SACD undertakes any business or provides any advice, information or service and shall be deemed to include the Owner, consignee or consignor of the Goods as hereinafter defined and any other Person claiming any right to or in respect of any such Goods;
1.1.3.9	"Day"	the 24 hour period from midnight to midnight;
1.1.3.10	"Dangerous Goods"	Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in SACD's sole opinion to endanger the lives or the health of persons or any property including but not restricted to Containers, ships, rolling stock, vehicles, buildings and lifting equipment, as well as all Goods defined as dangerous in the IMCO regulations or any statute, statutory instrument or order, any regulations made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods;
1.1.3.11	"DRO"	a Delivery Release Order being a document issued by or on behalf of a Container Operator in respect of LCL or FCL Goods, or in respect of a FCL Container, authorising in each case the release of Import Goods (or the Container as the case may be) identified thereon and bearing the name and purporting to be signed by or bearing the stamp of the Container Operator, or, as the case may be, the consignee;
1.1.3.12	"Depot"	A Container Depot operated by SACD as a Depot Operator, or as defined in Section 1 of the Act;
1.1.3.13	"Export Goods"	Goods delivered to SACD for containerisation;

1.1.3.14	"FCL"	Full Container Load, that is a Container containing Import or Export Goods for one consignee or which is shipped under one ocean bill of lading;
1.1.3.15	"FCL Goods"	Goods contained in an FCL container;
1.1.3.16	"Goods"	means any cargo handled, transported or dealt with by or on behalf of or at the instance of SACD or under the control of SACD or its agents, employees, contractors, or subcontractors on the instructions of the Customer and includes any package or any other form of covering, packaging used in connection with or in relation to such goods, and shall also include Containers;
1.1.3.17	"IMCO"	Intergovernmental Maritime Consultative Organisation;
1.1.3.18	"Import Goods"	Containerised Goods delivered to a Depot by or on behalf of a Container Operator;
1.1.3.19	"ISO"	International Organisation for Standards, Geneva, Switzerland;
1.1.3.20	"loss"	means physical loss, whether actual or constructive and includes loss arising out of damage, theft or any other cause whatsoever;
1.1.3.21	"LCL Container"	any Container other than an FCL container, excluding empty and cabotage containers;
1.1.3.22	"LCL Goods"	Goods contained in an LCL container;
1.1.3.23	"Market Value"	The market value at the date of the loss of or damage to any items as determined in the case of an item other than Goods, at the place where such loss or damage occurred, or in the case of Goods at the place where SACD handled or packed the Goods in question;
1.1.3.24	"Obnoxious Goods"	Any of the following kinds of Goods which are not included in the definition of Dangerous Goods, namely, goods defined as obnoxious in the IMCO Regulations or any statute, statutory instrument or order, regulation made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods, and including any other Goods which in the sole

opinion of SACD are possessed of inherent vice, likely to affect other Goods adversely or to cause physical discomfort or injury to personnel handling them or to present any other special difficulties in handling or transport;

- 1.1.3.25 "Out of Gauge" Goods which extend beyond the confines of a Container;
- 1.1.3.26 "Owner" The legal owner of the Goods;
- 1.1.3.27 "Person" Natural person, statutory body, company incorporated in terms of the law in force at the place at which the company is incorporated, a firm, partnership, close corporation, trust or association;
- 1.1.3.28 "SACD" South African Container Depots (Proprietary) Limited including its employees, agents, contractors and sub-contractors acting within the course and scope of their employment by SACD;
- 1.1.3.29 "Services" means those services specified in paragraph 3.1;
- 1.1.3.30 "the Group" means SACD and any company which is a holding company or subsidiary of SACD or a subsidiary of the Bidvest Group Limited, including any company in which any such company has a shareholding of more than 20% of the issued shares, which may render services to the Customer;
- 1.1.3.31 "the Service Charge Schedule" The Service Charge Schedule published by SACD as amended and in force from time to time, or any alternative Service Charge Schedule published by SACD in writing. Copies of the Service Charge Schedule are available from SACD upon request;
- 1.1.3.32 "Valuable Goods" Goods of high value or requiring special care including, without limiting the generality of the above, bullion, coins, money, precious metals and stones, electronic equipment, jewellery, antiques, pictures, paintings, works of art, and similar Goods or merchandise;
- 1.1.3.33 "Warehousing Services" Those services performed by SACD as described in clause 3.1 of the Conditions.

## 2. **THE APPLICABILITY OF THESE CONDITIONS AND THE SERVICE CHARGE SCHEDULE**

2.1 These Conditions and the Service Charge Schedule apply to any and all business undertaken by SACD, and advice, services and information provided by SACD, whether gratuitous or not, and to every Customer for or on whose behalf SACD procures and/or renders any services in respect of Goods. In the event that the Customer is not the Owner of the Goods, the Customer

2.1.1 warrants that he is authorized to bind the Owner to the Conditions;

2.1.2 shall in any event bring the contents of the Conditions to the attention of the Owner;

2.1.3 accepts that, to the extent that the Owner may attempt to deny that he is bound by the Conditions, shall remain liable to SACD for all purposes relating to any agreement between SACD and the Customer.

2.2 The Service Charge Schedule is subject to and is to be construed and applied in accordance with the provisions of these Conditions. These Conditions shall prevail in the event of any conflict between them and the Service Charge Schedule, and furthermore, SACD shall not be bound by any term or condition contained in the Service Charge Schedule that would in any way increase or have the effect of increasing SACD's liability or obligations beyond its liability or obligations as set out in these Conditions.

2.3 These Conditions are those referred to in all SACD notices, correspondence, receipts, e-mails or other electronic communications and other documents.

2.4 SACD may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information or services as principal upon and subject to the terms and conditions contained herein which shall apply mutatis mutandis to the Customer and any such member of the Group.

2.5 Each member of the Group shall be deemed to have appointed SACD as its agent for procuring on behalf of any such member of the Group, the benefit of these Conditions and SACD shall further be deemed to accept such benefits at the time of accepting any instruction to perform any function in rendering any services to the Customer.

## 3. **SERVICES RENDERED BY SACD**

3.1 Subject to these Conditions, SACD provides, inter alia, the following Warehousing and related Services:

3.1.1 In respect of Import Goods:

3.1.1.1 Receipt of Goods from Transnet Port Terminals, Transnet Freight Rail or any other person.

- 3.1.1.2 Container inspection, checking and recording of seals.
- 3.1.1.3 Container storage.
- 3.1.1.4 Opening of Containers for inspection by the South African Revenue Services/Department of Health and/or any other Governmental Authority.
- 3.1.1.5 Unpacking, loading and handling of Goods and Containers.
- 3.1.1.6 Delivery of Goods at the Depot to the person in physical possession of the original DRO.
- 3.1.1.7 Goods storage, either directly for the Customer, or, where the Customer has placed goods in storage with SACD, when such Goods continue to be stored on behalf of the State warehouse or pursuant to the Act, any other legislation or any court order.
- 3.1.1.8 Removal of Goods to State Warehouse.
- 3.1.1.9 Receiving, handling and checking of documents.
- 3.1.1.10 Completion of discrepancy and damage reports.
- 3.1.1.11 Provision of facilities for inspection of Goods.
- 3.1.1.12 Repair of damaged packaging.
- 3.1.2 In respect of Export Goods:
  - 3.1.2.1 Receipt of shipping instructions.
  - 3.1.2.2 Receipt, handling and checking of documents.
  - 3.1.2.3 Receipt of Goods in compliance with Export Goods delivery instructions.
  - 3.1.2.4 Outward examination and reporting of the condition of Goods.
  - 3.1.2.5 Packing, handling and loading of Goods and Containers.
  - 3.1.2.6 Closing and sealing of Containers.
  - 3.1.2.7 Preparing Load Lists.
  - 3.1.2.8 Obtaining receipts from Transnet Port Terminals or other agents of the Container Operator.
  - 3.1.2.9 Storage of Containers for export staging.
- 3.1.3 In respect of Containers:
  - 3.1.3.1 The handling, storing, cleaning, repairing and inspection of Containers.

- 3.1.3.2 Compliance with such provisions and obligations as are imposed on a depot operator in terms of Section 44 (5B) of the Act.
- 3.1.3.3 Tracking and stock monitoring.
- 3.1.3.4 Pre-trip inspections of refrigerated Containers.
- 3.1.4 Generally: Any other services which by reason of their nature are Warehousing Services.
- 3.1.5 In terms of the Act, any other legislation or any court order:
  - 3.1.5.1 The receipt of FCL Containers in compliance with the provisions of Section 64A (4) of the Act.
  - 3.1.5.2 Receipt of Containers in bond in terms of Section 18(1) (d) of the Act.
  - 3.1.5.3 Provision at each Depot of accommodation for officials of such governmental authorities as may reasonably require it and facilities for such officials to enable them to carry out their duties in terms of the Act.
  - 3.1.5.4 Storage of Goods in terms of any provision of the Act, any other legislation or any court order.

and in these Conditions, any reference to Warehousing Services shall be deemed a reference to any one or more of the foregoing and/or related services.

- 3.2 Subject to these Conditions, SACD also conducts business as a Cargo Logistics Operator and any reference in these Conditions to Cargo Logistics Services shall be deemed a reference to any one or more of the services performed by SACD as a Cargo Logistics Operator, which shall include any form of carriage and/or transportation undertaken and/or procured by SACD.

#### **CONDITIONS SPECIFICALLY APPLICABLE TO WAREHOUSING SERVICES**

##### **4. PERIOD OF SACD's LIABILITY**

- 4.1 The Goods in respect of which SACD provides any Warehousing Services shall only be regarded as being in the actual custody of SACD and under its actual control from the time the Goods are received by SACD at a Depot to the time that they are delivered.
- 4.2 SACD bears the risk in and to the Goods subject to the terms of these Conditions and only whilst the Goods are in SACD's actual custody at a Depot.
- 4.3 Goods shall be deemed to have been received by SACD at the later of the time when:
  - 4.3.1 the Goods enter through the Depot gate; or
  - 4.3.2 the Goods have been off-loaded from the delivery vehicle at the Depot.

- 4.4 An acknowledgement of receipt of any Goods by SACD shall not constitute an acknowledgement or admission in regard to the state or condition or quantity of such Goods, nor as to the correctness of any statement on the relevant Container Terminal Order form or other transport document.
- 4.5 Goods shall be deemed to have been delivered by SACD at the earlier of the time when:
- 4.5.1 they are placed at the disposal of the person in possession of a DRO or any other document which in SACD's sole opinion entitles that person to possession of the Goods, at a SACD depot; or
- 4.5.2 the Goods exit through the Depot gate.
- 4.6 The Customer shall be entitled to appoint a surveyor to monitor the loading and offloading of Goods at SACD.
- 4.7 SACD shall in no circumstances be responsible and accepts no liability for the loading, unloading, securing and/or lashing of Goods on Container Trailers and/or any other vehicles.
- 4.8 The Customer hereby waives any and all claims which it may have and indemnifies SACD against any claims which may arise against SACD arising out of or in connection with the loading, unloading, securing and/or lashing of Goods, whether or not such claim arose as a result of breach of contract, and/or negligence in whatever degree on the part of SACD.

## 5. **ACCEPTANCE OF BENEFITS AND RATIFICATION**

- 5.1 Notwithstanding anything to the contrary contained in these Conditions, SACD shall be entitled to all the benefits, rights, immunities and limitations contained in bills of lading, combined transport documents or other documents and any statement in such documents to the effect that the benefits, rights, limitations and immunities in such documents and of the contracts of carriage pursuant to which such documents were issued, shall apply to any employee, agent, contractor or sub-contractor of the person issuing such documents, shall be deemed to include SACD.
- 5.2 SACD authorises every Customer, which issues a bill of lading, combined transport document and/or any other document evidencing a contract of carriage, for or on whose behalf it deals with Goods in any manner:
- 5.2.1 to act as SACD's Agent to contract on its behalf with all persons to whom bills of Lading, combined transport documents or any other documents evidencing contracts of carriage are issued, in order to obtain for SACD the same benefits as those which accrue to carriers in terms of agreements evidenced by such documents, alternatively and/or in addition;
- 5.2.2 to act as SACD's agent to accept on its behalf the benefit of all provisions stipulated for the benefit of any employee, agent, contractor and/or sub-contractor in terms of bills of lading, combined transport documents or any other documents evidencing contracts of carriage.

5.3 Every Customer which issues a bill of lading, combined transport document and/or any other document evidencing a contract of carriage of Goods undertakes to contract on SACD's behalf with Persons to whom bills of lading, combined transport documents or any other documents evidencing contracts of carriage are issued in one or both of the manners detailed in 5.2.1 and 5.2.2 to procure for SACD the same benefits as accrue to the Carrier in terms of such documents. Every Customer from or on whose behalf SACD receives Goods, undertakes to SACD that all such Goods shall be subject to a contract of carriage which shall include a provision reading (or having the same meaning) as follows:

“The shipper, holder, consignee or any Person entitled to possession of the Goods or of this bill of lading undertakes that no claim or allegation shall be made against any Person or body whomsoever by whom the Carriage or any part of the Carriage is performed or undertaken (other than the Carrier) which imposes or attempts to impose upon any such Person or any vessel owned by any such Person any liability whatsoever in connection with the goods whether on or arising out of negligence on the part of such Person, and if any such claim or allegation should nevertheless be made to indemnify that Person against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of all provisions herein benefiting the carrier as if such provision were expressly for his benefit; and in entering into this Contract, the Carrier, to the extent of these provisions, does so not only on his own behalf, but also as agent and trustee for such Persons.”

And that accordingly every bill of lading, combined transport document or other document evidencing or purporting to evidence such contract of carriage shall contain the aforesaid paragraph or a paragraph having the aforesaid effect.

5.4 The Customer shall procure that every receipt, DRO, delivery note or any similar document issued by or on behalf of a Carrier shall contain a statement to the effect that SACD renders services in respect of such Goods as are referred to in such document as the agent and/or sub-contractor of the Carrier and that the liability of SACD is limited in terms of these Conditions.

## **CONDITIONS SPECIFICALLY APPLICABLE TO CARGO LOGISTICS SERVICES**

### **6. SACD ACTING AS PRINCIPAL OR AGENT**

6.1 All carriage and/or transport whatsoever and at any point in the movement of Goods is procured and/or arranged by SACD as agent only for and on behalf of the Customer,

6.2 SACD shall only act as principal in the following circumstances:

6.2.1 where SACD issues a bill of lading (whether or not negotiable) or waybill binding itself as Carrier in respect of any consignment, in which event the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions;

- 6.2.2 where the handling or storage of any Goods is actually performed by SACD and such Goods are in the actual physical custody and control of SACD;
  - 6.2.3 where the transport of any Goods is actually performed by SACD in vehicles owned or operated directly by SACD and such Goods are in the actual physical custody and control of SACD ;
  - 6.2.4 SACD expressly agrees in writing to act as a principal;
  - 6.2.5 to the extent that SACD is held by a court of law to have acted as principal.
- 6.3 Without prejudice to the generality of clauses 6.1 and 6.2:
- 6.3.1 the charging of SACD of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that SACD is acting as an agent or a principal in respect of such service or services;
  - 6.3.2 the supplying by SACD of its own or leased equipment shall not in itself determine or be evidence that SACD is acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
  - 6.3.3 SACD acts as an agent where SACD procures a bill of lading or other document evidencing a contract of carriage between a person, other than SACD, and the Customer;
  - 6.3.4 SACD always acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and other similar services.

## **CARGO LOGISTICS SERVICES: SACD CONTRACTING AS AGENT**

### **7. Special Liability and Indemnity Conditions**

- 7.1 To the extent that SACD acts as an agent, SACD does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- 7.2 SACD shall not be liable for the acts and omissions of such third parties referred to in sub-clause 7.1 above.
- 7.3 SACD when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- 7.4 Except to the extent caused by SACD's negligence, the Customer shall defend, indemnify and hold harmless SACD in respect of all liability, loss, damage, costs or expenses arising out of any

contracts made in the procurement of the Customer's requirements in accordance with clauses 7.1 and 7.2.

## **CARGO LOGISTICS SERVICES: SACD CONTRACTING AS PRINCIPAL**

### **8. Special Liability Conditions**

- 8.1 To the extent that SACD contracts as principal for the performance of the Customer's instructions, SACD undertakes to perform or in its own name to procure the performance of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
- 8.2 Where SACD contracts as a Principal and sub-contracts the performance of services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor, SACD shall in addition to its rights in terms of these Conditions, have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between SACD and the sub-contractor and in any law, statute or regulation and the liability of SACD shall not exceed the amount recovered, if any, by SACD from such sub-contractor.
- 8.3 Where any international law or convention regulates any loss or damage to any Goods and the provisions of such law or convention precludes parties from contracting out of the provisions thereof then the liability of SACD to its Customer for any such loss or damage shall, notwithstanding anything to the contrary herein contained, be determined in accordance with the provisions of such law or convention.
- 8.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 8.3 do not apply, SACD's liability shall be determined in accordance with the provisions of the Hague-Visby Rules.
- 8.5 Notwithstanding the provisions of clause 8.3 if the loss of or damage to the Goods and/or Containers occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of SACD shall be limited to the proportion of the said limitation fund allocated to the Goods.

### **9. AIR CARRIAGE**

- 9.1 If SACD acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:

9.1.1 If the carriage involves an ultimate destination or stop in a country other than the country of departure; the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in Carriers' timetables as scheduled stopping places for the route. The address of the first Carrier is the airport of departure.

**10. BOTH TO BLAME COLLISION**

10.1 The current Both-to-Blame Collision Clause adopted by BIMCO is incorporated in these conditions.

**11. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER**

11.1 SACD deals with Goods only on the basis that it is neither a common nor a public Carrier.

**CONDITIONS GENERALLY APPLICABLE TO WAREHOUSING AND CARGO LOGISTICS SERVICES**

**12. OBLIGATIONS OF CUSTOMER**

12.1 The Customer warrants that it is either the Owner of the Goods or the authorised agent, contractor and/or sub-contractor of the Owner of the Goods and that it is authorised to accept and is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner of the Goods.

12.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including but not limited to the provisions of all laws applicable to and the terms of sale and purchase of the Goods and all other matters relating thereto.

12.3 The Customer shall give what in SACD's sole discretion constitutes sufficient and executable instructions.

12.4 Notwithstanding the provisions of the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, SACD 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.

12.5 The Customer warrants that the description and particulars, including the weight of the Goods, are complete and correct.

12.6 The Customer warrants that the Goods are properly packed, packaged and labeled, except where SACD has accepted instructions to pack, package and label the Goods itself.

**13. SPECIAL INSTRUCTIONS, GOODS AND SERVICES**

- 13.1 Unless otherwise previously agreed in writing by SACD, the Customer shall not deliver to SACD or cause SACD to deal in any way with or handle Dangerous and/or Obnoxious Goods, and SACD shall be entitled to refuse to deal with any such Goods, which may be refused entry to and/or removed from SACD's Depot at the Customer's sole risk and expense.
- 13.2 The Customer shall ensure that any Dangerous and/or Obnoxious Goods which SACD agrees to handle in terms of clause 13.1 comply in every respect with any and all applicable legislation and/or international conventions, including any regulations and/or rules promulgated and/or applicable pursuant thereto.
- 13.3 If the Customer is in breach of clause 13.1 and/or 13.2 above, it shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods, howsoever arising, whether or not caused by the negligence or otherwise of SACD or its employees, agents, contractors and/or sub-contractors, and shall defend, indemnify and hold SACD harmless against all penalties, claims, loss, damages, costs (including but not limited to legal costs on the attorney and own client scale) and expenses whatsoever arising in connection therewith and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of SACD or any other Person in whose custody they may be at the relevant time.
- 13.4 If, at any time after SACD agrees to accept Dangerous and/or Obnoxious Goods, and in the sole opinion of SACD they constitute a risk to other Goods, property, life or health they may without notice to the Customer, be destroyed or otherwise dealt with so as to remove such risk, at the sole risk and expense of the Customer.
- 13.5 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving at least 2 days written notice to SACD of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with SACD shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 13.6 SACD will not effect any insurance except upon express instructions given in writing by the Customer and all insurances effected by SACD are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, SACD shall not be under any obligation to effect separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the Customer shall have recourse against the insurers only and SACD shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged

by SACD or paid to SACD by the Customer. Insofar as SACD agrees to arrange insurance SACD acts solely as agent for and on behalf of the Customer.

- 13.7 The Customer hereby waives any claim it may have against SACD arising out of or in connection with the effecting by it of insurance in terms of clause 13.6, whether or not caused by or in any way attributable to SACD's negligence in any degree, and indemnifies SACD in respect of any claims made against it in this regard.
- 13.8 Notwithstanding anything to the contrary herein contained the liability of SACD in respect of any claim brought against SACD arising out of or connected with the provisions of clause 13.6 shall be regulated and determined in accordance with the provisions of clauses 18 and 19 of these Conditions.
- 13.9 Except in accordance with the Customer's express instructions previously received in writing and accepted in writing by SACD, SACD shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
- 13.10 Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and SACD's liability shall not exceed that provided for in these Conditions in respect of misdelivery of Goods.
- 13.11 SACD accepts no responsibility and/or liability whatsoever for the late departure or arrival of Goods.

#### 14. **GENERAL INDEMNITIES**

- 14.1 The Customer shall defend, indemnify and hold harmless SACD against all liability, loss, damage, claims, penalties, costs or expenses arising from:
- 14.1.1 the nature of the Goods, except and only to the extent that such liability, loss, damage, claims, penalties, cost or expense is caused by SACD's gross negligence;
  - 14.1.2 SACD acting in accordance with the Customer's or Owner's instructions;
  - 14.1.3 any breach of warranty or obligation by the Customer or Owner;
  - 14.1.4 the negligence, in any degree, of the Customer or Owner;
  - 14.1.5 any contractual or other penalties for which the Customer may be liable including, but not limited to, demurrage, detention, dead freight, early arrival and storage in the port due to any particular shipment missing vessel stacks and / or being short-shipped due to the fault of Transnet Port Terminals, Transnet Freight Rail and/or Transnet National Port Authority.

- 14.2 Except as otherwise provided in these Conditions, and except to the extent caused by SACD's sole negligence, the Customer shall be liable for and shall defend, indemnify and hold harmless SACD in respect of all duties, fines, penalties, taxes, imposts, detention charges, levies, deposits and outlays of whatsoever nature levied by or paid to any authority whatsoever, including but not necessarily limited to Transnet Port Terminals, Transnet Freight Rail, Transnet National Ports Authority and the South African Revenue Services, and for all claims, costs, expenses, loss and damage whatsoever incurred or sustained by SACD in connection therewith.
- 14.3 Advice and information, in whatever form it may be given, is provided by SACD for the Customer only and the Customer shall defend, indemnify and hold harmless SACD for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- 14.4 The Customer undertakes that no claim be made against any employee, contractor, sub-contractor or agent of SACD which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or any services provided, including advice given, if any such claim should nevertheless be made, to indemnify SACD against all consequences thereof.
- 14.5 Without prejudice to the foregoing, every such employee, contractor, subcontractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract SACD, to the extent of those provisions, does so not only on its behalf, but as agent for such employees, sub-contractors and agents.
- 14.6 The Customer hereby waives any claims it may have and shall defend, indemnify and hold harmless SACD from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of SACD under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of SACD, in whatever degree, its employees, contractors, subcontractors and agents.
- 14.7 In clauses 14.4 to 14.6, "sub-contractors" includes direct and indirect sub-contractors and their respective employees and agents.
- 14.8 The Customer shall be liable for any loss, damage, contamination, soiling, detention or demurrage suffered or incurred before, during and after the carriage of Goods by SACD or any Person or vessel referred to in clauses 14.4 to 14.7 above, caused by the Customer or Owner or any Person acting on behalf of either of them or for which the Customer is otherwise responsible.
- 14.9 Save where caused by the fault of SACD, the Customer shall indemnify and hold SACD harmless against any loss, damages, claim, cost (including but not limited to legal costs on the attorney and own client scale) and/or other liability (including but not limited to fines and other penalties) which SACD

may incur or suffer in terms of the National Road Traffic Act, 93 of 1996, and any regulations promulgated pursuant thereto, as may be in force from time to time and, in particular but without limiting the general meaning of this clause, liability which SACD may incur as a consignor or consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations to that Act.

14.10 In no circumstances shall SACD be liable to any Customer for any penalty which a Customer attempts to impose against or on SACD for any reason whatsoever which is alleged by the Customer to be in consequence of negligence or wrongdoing by SACD.

15. **CHARGES**

15.1 The Customer on whose behalf SACD performs Warehousing and/or Cargo Logistics Services shall be liable to SACD for the payment of all amounts due to SACD for Services rendered in respect thereof, and such payment shall, where applicable, be made in accordance with the charges set out in the then applicable Service Charge Schedule and/or as set out in SACD's credit application form and/or as agreed to at the time by the parties. SACD shall nevertheless be entitled to a reasonable remuneration at the comparable market rate where a service is provided which does not appear in the Service Charge Schedule and/or a rate has not been agreed to by the parties.

15.2 For the avoidance of doubt, the Customer shall remain liable to pay storage costs in respect of Services rendered pursuant to paragraph 3.1.1.7 of these GTC's.

15.3 The Customer shall pay to SACD all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.

15.4 SACD may appropriate any payment made by the Customer to any outstanding undisputed indebtedness by the Customer to SACD, in its sole discretion and even if the Customer, when making payment, seeks to appropriate such payment to any particular debt or part of a debt.

15.5 When SACD is instructed to collect freight, duties, charges or other expenses from any Person other than the Customer, the Customer shall be responsible for the same immediately on receipt of evidence of demand and non payment by such other Person when due.

15.6 On all amounts overdue to SACD, SACD shall be entitled to charge interest, calculated at 4 per cent above base rate of the prime overdraft lending rate of First Rand Bank Limited from the date on which payment was due and payable until the full amount outstanding is paid.

15.7 The Customer shall be obliged to pay all and any costs incurred by SACD in complying with all and any statutory requirements and regulations, notices, requirements of a competent authority or order of court, including storage, movement, permanent removal or destruction of infested or contaminated Containers or Goods or the treatment of SACD's employees, agents, contractors or sub-contractors or premises or any other persons or premises as a result of any infestation or contamination arising from such Containers or Goods, and the Customer waives any claims it may have against SACD for loss of

or damage to property or injury to persons, arising directly or indirectly from such infestation or contamination and indemnifies SADC against any claims in this regard made by any other Person, except where and only to the extent attributable to the negligence of SADC or its employees.

- 15.8 SADC shall be entitled to recover any amounts due to it or other members of the Group by the Customer in respect of instructions relating to or in terms of any contract between the Customer and SADC or the Customer and other members of the Group, or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as SADC in its absolute discretion deems fit.
- 15.9 The Customer agrees that in the event of SADC or any member of the Group instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these trading terms and conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to SADC or any member of the Group in terms of such agreement, Customer shall be liable for all legal costs incurred by SADC or member of the Group, as the case may be, on the scale as between attorney and own client, as well as collection commission and tracing agents' fees.
- 15.10 All and any monies received by SADC in excess of what is due owing and payable by the Customer may be held by SADC and transferred to any other member of the Group where such member of the Group has outstanding invoices due owing and payable by the Customer. The relevant member of the Group will then allocate the funds accordingly and account to the Customer in relation to receipt of same.
- 15.11 To the extent that SADC hereby creates a contract for the benefit of any member of the Group, the latter shall be deemed to have accepted the benefits conferred on it by such contract and may at any time hereafter ratify and accept such benefits to the same that its acceptance.

## 16. **LIBERTIES AND RIGHTS OF SADC**

- 16.1 SADC shall be entitled, without notice to the Customer, and except insofar as has been otherwise agreed in writing, to enter into any contracts on behalf of itself or the Customer for the purpose of performing the services, which shall include but not be limited to contracts:
- 16.1.1 for the carriage of Goods by any route, means or Person;
- 16.1.2 for the carriage of Goods of any description on or under the deck of any vessel;
- 16.1.3 for the storage, packing, transshipment, loading, unloading or handling of Goods by any Person at any place whether on shore or afloat and for any length of time;
- 16.1.4 for the carriage or storage of Goods in Containers or with other Goods of whatever nature;
- 16.1.5 for the performance of its own obligations;

and to do such acts as in the opinion of SACD may be necessary or incidental to the performance of SACD's obligations.

- 16.2 SACD shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of SACD there is good reason to do so in the Customer's interest and it shall not incur any additional liability thereby.
- 16.3 SACD may at any time comply with the orders or recommendations given by any authority. The responsibility of SACD in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 16.4 If at any time the performance of SACD's obligations, in the opinion of SACD or any person whose services SACD makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by SACD or such other Person, SACD may, on giving notice in writing to the Customer or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part thereof at the disposal of the Customer at any place which SACD may deem safe and convenient, whereupon the responsibility of SACD in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by SACD.
- 16.5 If delivery of the Goods or any part thereof is not taken by the Customer at the time and place when and where SACD, or any Person whose services SACD makes use of, is entitled to call upon the Customer to take delivery thereof, SACD or such other Person shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- 16.6 Notwithstanding clauses 16.4 and 16.5, SACD shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer, to sell or dispose of:
  - 16.6.1 on giving 21 days notice in writing to the Customer all Goods which in the opinion of SACD cannot be delivered as instructed; and
  - 16.6.2 without notice Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to any Person or property or to contravene applicable law and/or regulations.
- 16.7 All Goods as well as documents relating to Goods, including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien or pledge and may be held by SACD in any place by SACD or any other authorized agent of SACD as security either for moneys due in respect of such Goods or for other moneys

due to SACD or other company within the Group by the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any.

- 16.8 In delivering the Goods into the custody of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to SACD or other company within the Group at that time or which become payable in the future. In the event of SACD utilising the services or premises of any third party for any purposes including the transportation or storage of any Goods, such third party shall be the agent of SACD for purposes of exercising SACD's right to retention under lien and/or pledge.
- 16.9 If any moneys due to SACD or other company within the Group are not paid within 28 days after notice has been given to the person from whom the moneys are due that such Goods or documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of SACD and at the expense of such person, and the nett proceeds (if any) applied in or towards satisfaction of such indebtedness.
- 16.10 The Customer shall not be entitled to effect or allow to be effected any security in respect of the Goods or the documents relating to the Goods, including without limitation, any general or special notarial bond, hypothec, right of retention, or lien and pledge, without the prior written consent of SACD. The lien and pledge and right of retention in favour of SACD referred to above in 16.7 and 16.8, shall operate as a first and prior charge against the Goods and the documents relating to the Goods and no other security shall rank prior to SACD's lien, pledge or right of retention.
- 16.11 SACD shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 16.12 SACD shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

## 17. **THE MANNER IN WHICH THE CONTAINER HAS BEEN PACKED**

### 17.1 **CONTAINERS**

17.1.1 If a Container has not been packed or stuffed by SACD, SACD shall not be liable for loss of or damage to the contents if caused by:

17.1.1.1 the unsuitability of the Goods for carriage in containers, unless SACD has approved the suitability in writing;

17.1.1.2 the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of SACD this paragraph shall only

apply if the unsuitability or defective condition arose (a) without any negligence on the part of SACD or (b) would have been apparent upon reasonable inspection by the Customer or Person acting on behalf of either of them;

17.1.1.3 the fact that the Container has not been properly sealed at the commencement of the Carriage except where SACD has agreed to seal the Container.

17.2 The Customer shall defend, indemnify and hold harmless SACD against all liability, loss, damage, costs, claims and expenses arising from one or more of the matters covered by 17.1.1 above.

17.3 Where SACD is instructed to provide a Container, in the absence of a written request to the contrary, SACD is not under an obligation to provide a Container of any particular type or quality.

## 18. **GENERAL LIABILITY**

18.1 Except insofar as otherwise provided by these Conditions, SACD shall not be liable for any claims, whether arising in contract or delict, which are in any way related or attributable to:

18.1.1 any act or omission of the Customer or any Person acting on its behalf;

18.1.2 compliance with the instructions given to SACD by the Customer or any other Person entitled to give them;

18.1.3 insufficiency of the packing or labeling of the Goods except where such service has been provided by SACD;

18.1.4 the weight, measurements, contents, quality, defect or description of any Goods;

18.1.5 handling, loading, stowage or unloading of the Goods by the Customer or any person acting on its behalf;

18.1.6 inherent vice of the Goods;

18.1.7 riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;

18.1.8 fire, flood or storm;

18.1.9 damages, costs, claims, penalties and/or charges of whatever nature arising from loss of market or attributable in any way to delay in forwarding or in transit or failure to carry out any instructions given to SACD, including any indirect and/or consequential loss;

18.1.10 loss or non-delivery of any separate package forming part of a consignment or for loss for a package or an unpacked consignment or for damage or mis-delivery;

- 18.1.11 injury or death suffered by the Customer or any Person arising from any cause, including but not limited to SACD's negligence, in whatever degree, as a result of SACD's performance or attempted performance of its obligations to the Customer and/or the Customer's requirements or mandate;
- 18.1.12 the failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part SACD and/or breach by it of these Conditions, of SACD's computer systems and/or software programs, including those "Information System Services" as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, provided and/or operated by SACD and/or by any person with whom SACD conducts business, and/or any third party, and which systems shall include SACD's electronic automated information service provided to its Customers;
- 18.1.13 the provision by SACD to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, where such incorrect information has been generated by and provided to SACD by any Person with whom SACD conducts business, and/or any other third party.
- 18.1.14 any cause which SACD could not have prevented by the exercise of reasonable diligence.
- 18.2 Notwithstanding anything to the contrary contained in these conditions, SACD shall not be liable for: Any loss or damage to property other than the Goods themselves; any indirect or consequential loss or damage; loss of profit; delay or deviation arising from any cause, including but not limited to SACD's negligence, in any degree, or breach by it of any of these Conditions.
19. **AMOUNT OF COMPENSATION**
- 19.1 Except insofar as otherwise provided by these Conditions, the liability of SACD, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:
- 19.1.1 in respect of all claims, of whatsoever nature, relating to the Goods (excluding Containers), whichever is the least of
- 19.1.1.1 the value of, or
- 19.1.1.2 R20 per gross Kilogram of,
- the Goods, lost, damaged, misdirected, misdelivered or in respect of which a claim, including a claim arising out of clause 13.6, arises.

- 19.1.2 In respect of claims arising out of loss of or damage to Containers, which for whatever reason are not excluded by the provisions of these conditions:
- 19.1.2.1 the reasonable cost of repair thereof; or
  - 19.1.2.2 the lesser of the market or depreciated value thereof at the date of such loss or damage in the event of total loss and/or damage being beyond economical repair.
- 19.1.3 In respect of any and all other claims, whether related to the Goods or other property and/or equipment, including claims arising out of or in any way attributable to delay, which for whatever reason are not excluded by the provisions of these Conditions, the amount of SACD's charges in respect of the Goods.
- 19.2 The value of Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 19.3 If there be no invoice value for the Goods, the value shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 19.4 By special agreement in writing and on payment of additional charges, higher compensation may be claimed from SACD not exceeding the value of the Goods or the agreed value, whichever is the lesser.
- 20. NOTICE OF LOSS, TIME BAR**
- 20.1 SACD shall be discharged of all liability unless:
- 20.1.1 notice of any claim is received in writing by SACD or its agent within 14 (fourteen) days after the date specified in 20.2 below, or within a reasonable time after such date, but in any event not exceeding 60 (sixty) days, if the Customer proves that it was impossible to so notify, and
  - 20.1.2 suit is brought in the proper forum and written notice thereof received by SACD within 9 (nine) months after the date specified in 20.2 below.
- 20.2 The time limits referred to in clause 20.1 shall commence on:
- 20.2.1 in the case of loss or damage to Goods, the date of delivery of the Goods;
  - 20.2.2 in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
  - 20.2.3 in any other case, the event giving rise to the claim.

21. **BREACH**

21.1 If SACD breaches any of these Conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by SACD of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions and any agreement between the Customer and SACD.

22. **GENERAL AVERAGE**

22.1 The Customer shall defend, indemnify and hold harmless SACD in respect of any claims of a General Average nature which may be made on SACD and the Customer shall, upon demand by SACD, provide such security as may be required by SACD in this connection.

23. **MISCELLANEOUS**

23.1 Notices sent in terms of these Conditions may be sent by post, telefax and/or e-mail, provided that any postal notice sent in terms of these Conditions shall be deemed to have to be given on the 10<sup>th</sup> day following the day on which it was posted to the address of the recipient of such notice last known to SACD, and notwithstanding the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time, SACD shall only be deemed to have received electronic notices when such electronic notices have been retrieved, processed and read by the addressee.

23.2 The defenses and limits of liability provided for by these Conditions shall apply in any action against SACD whether such action is founded in contract or delict.

23.3 If any legislation is compulsorily applicable to any business undertaken by SACD, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by SACD of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

23.4 These Conditions and any claim or dispute arising out of or in connection with the services of SACD shall be subject to South African law and the Customer submits to the non-exclusive jurisdiction of the South African Courts for the determination of any claim arising out of the contract with SACD. This clause is for the benefit of SACD only and shall not limit the right of SACD to bring proceedings against the Customer in any other court of competent jurisdiction or concurrently in more than one jurisdiction.

23.5 No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any party in respect of its rights under these Conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Conditions.

23.6 No variation of these Conditions shall be binding on SACD unless embodied in a written document signed by a director of SACD, duly authorised by a SACD Board Resolution. Any purported variation or alteration of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Conditions by the Customer.

23.7 If any provision of these Conditions is unenforceable, then SACD shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these Conditions which shall not be affected and shall remain of full force and effect.

24. **CHOICE OF RATES**

24.1 Where there is a choice of rates according to the extent or degree of liability assumed by Persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.