

SOUTH AFRICAN CONTAINER DEPOTS (PTY) LTD TRADING AS BIDVEST SACD

Reg. No. 1999/000645/07

GENERAL TRADING CONDITIONS



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DEFINITIONS AND INTERPRETATION

1. INTERPRETATION

- 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.
- 1.2 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.
- 1.3 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.
- 1.4 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
- 1.5 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
- 1.6 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely:
 - 1.6.1 "Abnormal Goods" - Goods which by reason of their nature, weight (mass), dimensions or otherwise require special preparations to be made or require unusual or special care, treatment or precautions to be taken for the transport or movement thereof, or such Goods which BSACD in its sole discretion, or in the case of intended transport by rail, then also TFR, classifies or regards as abnormal;
 - 1.6.2 "Carrier" - any carrier of Goods whether by rail, road, sea or air;
 - 1.6.3 "Conditions" - these general trading conditions as amended or supplemented from time to time;
 - 1.6.4 "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;
 - 1.6.5 "Customer" - any Person at whose request or on whose behalf BSACD 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, any agent acting for such Owner, consignee or consignor of the Goods and any other Person claiming any right to or in respect of any such Goods;
 - 1.6.6 "Day" - the 24 hour period from midnight to midnight;
 - 1.6.7 "Dangerous Goods" - Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in BSACD'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 IMO 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 or specified as dangerous goods in the special classification of dangerous goods issued by TFR from time to time;
 - 1.6.8 "Goods" - any cargo handled, transported or dealt with by or on behalf of or at the instance of BSACD or under the control of BSACD or its agents, employees, contractors, or subcontractors on the instructions of the Customer and includes any package or any other form of covering, packaging or Transport Unit used in connection with or in relation to such goods;
 - 1.6.9 "Law" - any common law or legislative enactment or Convention including any statute, rule or regulation promulgated thereunder;
 - 1.6.10 "Loss" - physical loss, whether actual or constructive and includes loss arising out of damage, theft or any other cause whatsoever;

- 1.6.11 "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 International maritime Organisation 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 BSACD are possessed of inherent vice, likely to affect other Goods adversely or to cause physical discomfort or injury to personnel handling them;
- 1.6.12 "Owner" - the legal owner of the Goods or any other Person with right, title or interest in and to the Goods;
- 1.6.13 "Person" - natural person, statutory body, company incorporated in terms of the law in force at the place at which SACD is incorporated, a firm, partnership, close corporation, trust or association;
- 1.6.14 "BSACD" - South African Container Depots (Proprietary) Limited including its employees, agents, contractors and sub- contractors acting within the course and scope of their employment by BSACD
- 1.6.15 "Services" - the warehousing, logistics and related services to be provided to the Customer by BSACD;
- 1.6.16 "Service Charge Schedule" - the Service Charge Schedule published by BSACD as amended and in force from time to time, or any alternative Service Charge Schedule published by BSACD in writing. Copies of the Service Charge Schedule are available from BSACD upon request;
- 1.6.17 "Transport Unit" - containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air;
- 1.6.18 "TFR" - Transnet Freight Rail, a division of Transnet Ltd;
- 1.6.19 "TNPA" - Transnet National Ports Authority, a division of Transnet Ltd; and
- 1.6.20 "TPT" - Transnet Port Terminals, a division of Transnet Ltd.

APPLICATION AND LEGAL STANDING

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

- 2.1 These Conditions as updated from time to time and the Service Charge Schedule apply to any and all business undertaken by BSACD, and advice, Services and information provided by BSACD, whether gratuitous or not, to any liability which may apply to BSACD, whether or not arising from the performance of the Services, and to every Customer for or on whose behalf BSACD procures and/or renders any Services in respect of Goods.
- 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, BSACD 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 BSACD'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 BSACD notices, correspondence, receipts, e-mails or other electronic communications and other documents.
- 2.4 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.
- 2.5 The relationship between the Parties is a contract of service and does not constitute a contract of employment or partnership.

3. ACTING AS AGENT

- 3.1 Unless otherwise agreed in writing, BSACD in procuring the Services shall be entitled to act either as an agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.
- 3.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by BSACD acting as agent for and on behalf of the Customer or as a principal.

- 3.3 The Customer acknowledges that when BSACD, as agent for and on behalf of the Customer in the context of the provision of the Services, concludes any agreement with a third party, such agreement is concluded between the Customer and the third party.
- 3.4 Unless otherwise agreed in writing, BSACD, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions.
- 3.5 Where BSACD as agent for and on behalf of the Customer concludes any contract with a third party, the Customer agrees that BSACD shall have no responsibility or liability to the Customer for any act or omission of such third party, even though BSACD may be responsible for the payment of such third party's charges. Notwithstanding the foregoing BSACD undertakes to cede any right of action which it may have against such third parties to the Customer upon demand, the Customer hereby indemnifying BSACD against any Loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.
- 3.6 Notwithstanding anything to the contrary contained herein the Customer agrees that all Goods shall be dealt with by any third party appointed to perform any function in terms of this clause, on the terms and conditions, whether or not inconsistent with these Conditions, stipulated by any such third party, including but not limited to Carriers, warehousemen and government departments.

4. SUBCONTRACTING

- 4.1 Any Services performed by BSACD on behalf of the Customer may, in the absolute discretion of BSACD, be fulfilled by BSACD L itself, by its own employees performing part or all of the relevant Services, or by BSACD employing, or entrusting such Services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Services, or such part thereof as they may be employed to carry out.
- 4.2 Where BSACD subcontracts any Services, it continues to act as Principal with regards to its obligations and liabilities to the Customer.
- 4.3 Where the Customer subcontracts certain aspects of the services to a third party other than BSACD but requires BSACD to manage the third party and / or make payment to the third party, BSACD shall have no liability to the Customer for the acts or omissions of that third party.

REMUNERATION AND PAYMENT

5. QUOTATIONS

- 5.1 BSACD shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or agreement in circumstances where it becomes impracticable or uneconomical for BSACD to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against BSACD for any Loss that the Customer might incur as a result of BSACD cancelling or reselling from the quotation or executory agreement.
- 5.2 Without in any way limiting the provisions of the foregoing clause all quotations and agreements are subject to revision without notice having regard to changes in dimension or weight of the Cargo, currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of BSACD to third parties including, without limitation, freight, fuel, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of BSACD or any other auditors nominated by BSACD, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

6. CHARGES

- 6.1 The Customer on whose behalf BSACD performs Services shall be liable to BSACD for the payment of all amounts due to BSACD 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 BSACD's credit application form and/or as agreed to at the time by the parties. BSACD 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.
- 6.2 The Customer shall pay to BSACD all sums immediately when due without set-off, deduction or deferment on account of any claim, counterclaim or set-off.
- 6.3 In the absence of any agreement to the contrary, payment of all amounts due to BSACD shall be made in South African Rands into the bank account nominated by BSACD.
- 6.4 The Customer shall pay BSACD Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.
- 6.5 The Customer acknowledges that BSACD 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.
- 6.6 BSACD may appropriate any payment made by the Customer to any outstanding undisputed indebtedness by the Customer to BSACD, 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.
- 6.7 When BSACD 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.
- 6.8 If accepted by BSACD, instructions to collect payment on delivery shall be subject to the condition that BSACD will be entitled to assume that the recipient will effect payment and regarding the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by BSACD at the Customer's risk.
- 6.9 BSACD shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract between the Customer and BSACD, or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as BSACD in its absolute discretion deems fit.
- 6.10 Notwithstanding that BSACD may seek recovery of any amount due to it, from any person other than the Customer; the Customer shall remain liable to make payment of the said amount to BSACD upon demand, at any stage.
- 6.11 BSACD shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements 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.
- 6.12 Notwithstanding any prior dealings between BSACD and the Customer all documents, cash, cheques, bank drafts or other remittances sent to BSACD through the post or electronically transmitted shall be deemed not to have been received by BSACD unless and until they are actually received by BSACD.
- 6.13 In the event that any payment to BSACD is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into BSACD's bank account.

7. DEFAULT AND DEBT COLLECTION

- 7.1 In the event of the Customer being in default of payment of any one or more amount, or if the Customer's creditworthiness has, in BSACD's reasonable opinion, deteriorated, then BSACD shall be entitled forthwith to declare all amounts immediately due and payable.
- 7.2 On all amounts overdue to BSACD, the latter 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.
- 7.3 The Customer agrees that in the event of BSACD instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these Conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to BSACD in terms of such agreement, the Customer shall be liable for all legal costs incurred by BSACD, as the case may be, on the scale as between attorney and own client, as well as collection commission and tracing agents' fees.

8. THIRD PARTY CHARGES

- 8.1 The Customer, whether or not the cause of payment was due to an act, instruction or omission of the sender, Owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the Goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, Loss or damage or whatsoever incurred or sustained by BSACD in connection therewith or arising there out.
- 8.2 BSACD shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, air or ocean freight, railage or cartage or any other tariff, before or after the performance by BSACD of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.
- 8.3 Where as a result of any act or omission by or on behalf or at the instance of BSACD and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which BSACD may otherwise have will cease and fall away if the Customer does not within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise BSACD that an incorrect amount has been paid or levied; and do all such acts as are necessary to enable BSACD to effect recovery of the amount incorrectly paid or levied.
- 8.4 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.
- 8.5 The Customer shall be liable for and shall defend, indemnify and hold harmless BSACD 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 TFR, TPT, TNPA and the South African Revenue Services, and for all claims, costs, expenses, Loss and damage whatsoever incurred or sustained by BSACD in connection therewith.

9. LIEN

- 9.1 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 BSACD in any place by BSACD or any other authorized agent of BSACD as security either for monies due in respect of such Goods or for other monies due to BSACD by the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 9.2 In delivering the Goods into the custody of BSACD 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 BSACD at that time or which become payable in the future. In the event of BSACD 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 BSACD for purposes of exercising BSACD's right to retention under lien and/or pledge.
- 9.3 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 BSACD. The lien and pledge and right of retention in favour of BSACD, 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 BSACD's lien, pledge or right of retention.
- 9.4 Should any amount due to BSACD remain unpaid, BSACD 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, BSACD shall be entitled to sell the Goods in accordance with clause 25.

LIABILITY AND INSURANCE

10. GENERAL LIABILITY

- 10.1 BSACD shall not be liable for any claims of whatsoever nature and howsoever arising (whether arising in contract or delict, or arising out of the provision of Services or not, or for damages or otherwise) unless such claims arise from a grossly negligent act or omission on the part of BSACD, its employees or subcontractors.
- 10.2 Without limiting the generality of the limitations or exclusions of BSACD's liability, BSACD is specifically not liable for loss of or damage to Goods, unless it occurs at a time when the Goods in question are in the actual care and custody of BSACD, its employees or subcontractors and under their actual control.
- 10.3 Notwithstanding anything to the contrary contained in these Conditions, BSACD shall not be liable for:
- 10.3.1 Any Loss or damage to property other than the Goods themselves;
 - 10.3.2 Any indirect, consequential, incidental or remote Loss or special or speculative damage;
 - 10.3.3 Loss of market, profit, business or production;
 - 10.3.4 Delay or deviation arising from any cause.
- 10.4 The Customer agrees that no claim shall be made against any director, servant or employee of BSACD in his/her 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.

11. AMOUNT OF COMPENSATION

- 11.1 In the event that BSACD is liable to the Customer in terms of these Conditions or otherwise, in no case whatsoever shall any liability of BSACD, howsoever arising, and notwithstanding that the cause of Loss or damage be unexplained exceed the following:
- 11.1.1 in the case of transit via domestic road freight (where BSACD acts as carrier), the lesser of the actual customs or insurance declared value of the Goods or R 1 500 000 per conveyance;
 - 11.1.2 in the case of loss of or damage to Goods in storage in BSACD's warehouses (where BSACD acts as warehouseman), the lesser of the actual customs or insurance declared value of the Goods or R 100 000 per incident (for the purposes of a stock shrinkage claim an incident shall be defined as an annual stock take);
 - 11.1.3 in the case of carriage by rail by any Person other than TFR, and always subject to clause 22.2, R500.00 in respect of any one claim;
 - 11.1.4 in respect of claims arising out of Loss of or damage to Containers, the reasonable cost of repair thereof; or the lesser of the market value 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;
 - 11.1.5 In respect of any and all other claims, whether related to the Services or Goods or other property and/or equipment, including claims arising out of or in any way attributable to delay, the amount of BSACD's charges in respect of the Services provided in respect of the relevant Goods; and
 - 11.1.6 in any event, R 5 000 000 in the annual aggregate.
- 11.2 The value of Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid. 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 value 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.

12. CLAIMS

- 12.1 BSACD shall be discharged of all liability unless:
- 12.1.1 Notice of any claim is received in writing by BSACD within 14 (fourteen) Days after the date specified

in clause 12.2 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

- 12.1.2 Suit is brought in the proper forum and written notice thereof received by BSACD within 9(nine) months after the date specified in clause 12.2 below.
- 12.2 The time limits referred to in clause 12.1 shall commence on:
 - 12.2.1 In the case of Loss or damage to Goods, the date of delivery of the Goods;
 - 12.2.2 In the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
 - 12.2.3 In any other case, the event giving rise to the claim.

13. INSURANCE

- 13.1 BSACD shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the Goods. Any insurance requirements of the Customer shall be the sole responsibility of the latter.
- 13.2 If the Goods are transported, or are to be transported, by rail, the Customer acknowledges that it is aware of the terms and conditions under which TFR undertakes the rail carriage of containerised goods, the terms and conditions of the insurance cover offered by TFR and their limitations of liability. TFR Conditions of carriage are available on request or may be viewed on TFR's website. Should the Customer require insurance which is additional to the insurance cover offered by TFR, it is the Customer's responsibility to procure same. Under no circumstances whatsoever shall BSACD be liable for any Loss suffered by the Customer and howsoever caused, while the Goods are in the custody of TFR.
- 13.3 Notwithstanding anything to the contrary herein contained BSACD shall in no circumstances whatsoever be liable for any consequences of any failure to obtain any insurance cover, or otherwise.

14. GENERAL INDEMNITIES

- 14.1 Without prejudice to BSACD's rights under these Conditions, any agreement between the Parties and/or at law, the Customer shall defend, indemnify and hold harmless BSACD against all liability, Loss, damage, claims, penalties, costs or expenses, except and only to the extent that such liability, Loss, damage, claims, penalties, cost or expense is caused by BSACD's gross negligence, arising directly or indirectly from or in connection with:
 - 14.1.1 the nature, contents, quality, legality, inherent vice, description of or defect in the Goods;
 - 14.1.2 BSACD acting in accordance with the Customer's or Owner's instructions or the instructions of any authority;
 - 14.1.3 any breach of warranty or obligation by the Customer or Owner or any person, subcontractor or Carrier acting on its behalf or under its instructions;
 - 14.1.4 any act or omission or the negligence, in any degree, of the Customer or Owner or any Person acting on its behalf;
 - 14.1.5 any contractual or other penalties for which the Customer may be liable including, but not limited to, demurrage, detention, deadfreight, 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 TPT, TFR and/or TNPA.
 - 14.1.6 BSACD being reflected on a SARS Customs SAD500 declaration as the importer or exporter when acting in its capacity as agent on behalf of the Customer;
 - 14.1.7 the late or non-provision by the Customer of any documentation required by the Authorities;
 - 14.1.8 any claim made by the Owner, the consignor or consignee (if not BSACD), the carrier (where BSACD is the consignor or consignee), the Customer's clients or suppliers or any third party in connection with the Services or Goods;
 - 14.1.9 the handling, stowage, loading, offloading, marking, labelling, numbering, weight, measurements, non-delivery, mis-delivery or defective packaging of the Goods unless done by BSACD in terms of a written

agreement between the Parties;

- 14.1.10 the defective condition of, or overweight, containers or vehicles, unless provided by BSACD in terms of a written agreement between the Parties;
 - 14.1.11 Loss, damage, contamination, soiling, detention or demurrage suffered or incurred before, during and after the carriage of Goods by BSACD or any Person or vessel;
 - 14.1.12 the provision of Services in relation to Special Goods unless in terms of a written agreement between the Parties;
 - 14.1.13 any claims of a general average nature which may be made against BSACD in connection with the Goods (and the Customer shall, on demand by BSACD, provide security in connection herewith; and / or
 - 14.1.14 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
- 14.2 Advice and information, in whatever form it may be given, is provided by BSACD for the Customer only and the Customer shall defend, indemnify and hold harmless BSACD for all liability, Loss, damage, costs and expenses arising out of any other Person relying on such advice or information.
- 14.3 The Customer hereby waives any claims it may have and shall defend, indemnify and hold harmless BSACD from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of BSACD 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 BSACD, in whatever degree, its employees, contractors, sub- contractors and agents.
- 14.4 Save where caused by the fault of BSACD, the Customer shall indemnify and hold BSACD 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 BSACD 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 BSACD may incur as a consignor or consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations to that Act.
- 14.5 In no circumstances shall BSACD be liable to any Customer for any penalty which a Customer attempts to impose against or on BSACD for any reason whatsoever which is alleged by the Customer to be in consequence of negligence or wrongdoing by BSACD.

CUSTOMER

15. INSTRUCTIONS

- 15.1 The Customer's instructions to BSACD shall be precise, clear and comprehensive and, in particular, but without limitation, shall cover any valuation or determination issued by the Customer in respect of any Goods to be dealt with by or on behalf of or at the request of BSACD. Instructions given by the Customer shall be recognised by BSACD as valid only if timeously given specifically in relation to a particular matter in question.
- 15.2 Oral instructions, standing or general instructions or instructions given late, even if received by BSACD without comment, shall not in any way be binding upon BSACD, but BSACD may act thereupon in the exercise of its absolute discretion.
- 15.3 Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing.
- 15.4 Unless specific written instructions are timeously given to and accepted by BSACD, the latter shall not be obliged to:
- 15.4.1 Make any declaration for the purpose of any Law, convention, or contract, as to the nature or value of any Goods or as to any special interest in delivery. In particular, BSACD shall be under no obligation to make any declaration or to seek any special protection or cover from any Carrier in respect of any Goods which are, or fall within the definition ascribed thereto by that body of Dangerous Goods or

Obnoxious Goods or Abnormal Goods; and

- 15.4.2 Arrange for any particular Goods to be carried, stored or handled separately from other goods
- 15.5 In the absence of specific instructions given timeously in writing by the Customer to BSACD -
- 15.5.1 It shall be in the reasonable discretion of BSACD to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
- 15.5.2 BSACD shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or Services it has agreed to perform; and
- 15.6 Notwithstanding anything to the contrary herein contained, if at any time BSACD 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, BSACD shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 15.7 If events or circumstances come to the attention of BSACD, its agents, servants, or nominees which, in the opinion of BSACD, make it in whole or in part, impossible or impracticable for BSACD to comply with a Customer's instructions BSACD 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 BSACD in writing, BSACD shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Goods concerned at the risk and expense of the Customer.
- 15.8 In any event, it shall always be in BSACD's sole discretion as to whether to accept any instruction for Services to be provided.
- 15.9 BSACD shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions and all necessary documentation relating to the Goods.

16. OBLIGATIONS

- 16.1 The Customer warrants that:
- 16.1.1 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 (if applicable) as agent for and on behalf of the Owner of the Goods and thereby binds such Owner jointly and severally with itself to the terms herein contained.
- 16.1.2 In circumstances where it is the authorised agent, contractor and/or sub-contractor of the Owner of the Goods, it shall bring the attention of the Owner of the Goods to all the terms of these Conditions by providing a copy to such Owner.
- 16.1.3 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.
- 16.1.4 All information and instructions supplied or to be supplied by it to BSACD 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 BSACD for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies BSACD against all claims, Losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment.
- 16.1.5 The Goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the implementation by or on behalf of BSACD or at its instance of the contract involved and the characteristics of the Goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract.
- 16.1.6 Where Goods are carried in or on a Transport Unit then, save where BSACD has been given and has accepted specific written instructions to load the Transport Unit:

- 16.1.6.1 That the Transport Unit has been properly and competently loaded;
- 16.1.6.2 That the Goods involved are suitable for carriage in or on the Transport Unit; and
- 16.1.6.3 That the Transport Unit is itself in a suitable condition to carry the Goods loaded therein and complies with the requirements of all relevant transport authorities and Carriers.
- 16.1.7 It will comply with all of BSACD's safety, health and environment site rules when on any of BSACD's sites.
- 16.2 Without prejudice to BSACD's rights to claim damages from the Customer arising out of a breach by the Customer of any of the warranties in this clause, such breach shall result in the Goods being handled by BSACD at the sole risk of the Customer.

17. ACCEPTANCE OF BENEFITS AND RATIFICATION

- 17.1 Notwithstanding anything to the contrary contained in these Conditions, BSACD shall be entitled to all the benefits, rights, immunities and limitations contained in bills of lading, combined transport documents or other documents relating to the Goods 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 BSACD.
- 17.2 BSACD 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:
 - 17.2.1 To act as BSACD'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 BSACD the same benefits as those which accrue to Carriers in terms of agreements evidenced by such documents; alternatively and/or in addition,
 - 17.2.2 To act as BSACD'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.
- 17.3 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 BSACD'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 above to procure for BSACD the same benefits as accrue to the Carrier in terms of such documents.
- 17.4 Every Customer from or on whose behalf BSACD receives Goods, undertakes to BSACD that all such Goods shall be subject to a contract of carriage evidenced by a bill of lading, combined transport document or other document evidencing the 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 or not 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."
- 17.5 The Customer shall procure that every receipt, delivery release order, delivery note or any similar document issued by or on behalf of a Carrier shall contain a statement to the effect that the liability of BSACD is limited in terms of these Conditions.

SERVICES

18. TRANSPORT

- 18.1 BSACD deals with Goods only on the basis that it is neither a common Carrier nor a public Carrier. All transporting and/or handling of Goods by or on behalf of or at the request of BSACD is effected at the sole risk of the Customer and/or the Owner, and the Customer fully indemnifies BSACD against any claim which might be brought against BSACD, howsoever arising, from the transporting of Goods.
- 18.2 BSACD shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a combined transport document or bill of lading ("CTBL") in a form that shall be within BSACD's discretion, including a FIATA combined transport bill of lading, a warehouse and/or forwarding receipt, an air or sea waybill, a consignment or delivery note, a Container movement or transport order, a Groupage or house bill of lading or a received for shipment or despatch bill of lading, (any of which may reflect BSACD or another Person as the Carrier in terms thereof). These Conditions shall continue to apply as between BSACD on the one part and the Customer and/or the Owner on the other part where a CTBL is issued (save with regard to the Owner, to the extent that these Conditions conflict with the terms and conditions applicable to the CTBL, in which event the provisions of the CTBL shall to the extent of such conflict only, have precedence). The issue of the CTBL by BSACD shall entitle it to raise an additional charge determined by BSACD, to cover any additional obligations arising under the CTBL.
- 18.3 Where the vehicle is loaded at the Customer's premises or under the Customer's supervision, the Customer shall be liable for all costs, fines and/or penalties arising from the overloading of any vehicle or incorrect weight distribution of Goods on a vehicle.
- 18.4 Unless otherwise agreed in writing between the Parties, time shall not be of the essence in respect of deliveries made by BSACD on behalf of the Customer.
- 18.5 Every undertaking to convey or warehouse Goods is subject to the condition that BSACD has available a suitable storage facility, vehicle or vehicles at the appropriate time.

19. DELIVERY

- 19.1 If delivery of any Goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then BSACD shall be entitled to store the Goods or any part thereof at no risk to BSACD and at the expense of the Customer.
- 19.2 BSACD accepts no responsibility and/or liability whatsoever for the late departure or arrival of Goods.
- 19.3 An acknowledgement of receipt of any Goods by BSACD 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.
- 19.4 Unless the Parties have agreed to the contrary in writing, BSACD shall not be responsible for the loading or offloading of vehicles, save at its own premises; provided that BSACD may give assistance in that regard where such assistance is customary and practicable, but any assistance so given shall be without liability on the part of BSACD.
- 19.5 BSACD may refuse to receive any Goods if it has reasonable cause to do so, including, but not limited to circumstances where BSACD is of the opinion that the handling, transport or storage thereof is not desirable or is not satisfied that arrangements have or will be made for the removal of such Goods from its premises.
- 19.6 BSACD shall be entitled to deliver Goods to the bearer of any delivery order or other document relating to such Goods, notwithstanding that such delivery order or other document provides for delivery to a named party or to his order. BSACD shall be entitled to assume that the person presenting such delivery order or other document is the person lawfully entitled to take delivery and is not required to verify signatures appearing on such delivery order or other document.

20. CONTAINERS

- 20.1 If a Container has not been packed or stuffed by BSACD, the latter shall not be liable for Loss of or damage to the contents if caused by:

- 20.1.1 The unsuitability of the Goods for carriage in Containers, unless BSACD has approved the suitability in writing;
- 20.1.2 The unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of BSACD this clause shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of BSACD or (b) would have been apparent upon reasonable inspection by the Customer or Person acting on behalf of either of them;
- 20.1.3 The fact that the Container has not been properly sealed at the commencement of the Carriage except where BSACD has agreed to seal the Container.
- 20.2 The Customer hereby waives any and all claims which it may have and indemnifies BSACD against any claims which may arise against BSACD arising out of or in connection with the matters covered by this clause, 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 BSACD.
- 20.3 Where BSACD is instructed to provide a Container, in the absence of a written request to the contrary, BSACD is not under an obligation to provide a Container of any particular type or quality.
- 20.4 In the event that BSACD agrees to undertake the packing of the Goods into any container or the packaging or unitisation of the Goods for any purpose, it shall be the obligation of the Customer to provide BSACD with full packing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the Goods and any noxious or other possible hazardous or dangerous properties they might possess, failing which such packing shall be effected by BSACD at the sole risk of the Customer.

GOODS

21. DANGEROUS GOODS

- 21.1 The Customer shall obtain in advance BSACD's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees any Abnormal Goods or any Obnoxious Goods or any Dangerous Goods, or any Goods, including radio- active materials, which are or may become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any Person, goods or property, including Goods likely to harbour or attract disease, vermin or other pests. The Customer warrants that such Goods, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such Goods will comply with any applicable laws, regulations or requirement of any authority or Carrier and that the nature and characteristics of such Goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such Goods.
- 21.2 If any such Goods are delivered to BSACD, such Goods may for good reason as BSACD in its discretion deems fit (including, without limitation, risk to other goods, property, life or health) be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without BSACD being liable for any compensation to the Customer or any other party, and without prejudice to BSACD's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Goods. The Customer indemnifies BSACD against all Loss, liability or damage whatsoever caused to BSACD as a result of the tender of Goods to BSACD.
- 21.3 The Customer shall ensure that any Dangerous and/or Abnormal and / or Obnoxious Goods which BSACD agrees to handle comply in every respect with any and all applicable Law and/or international conventions. The Customer shall provide BSACD with current Safety Data Sheets as required by law.
- 21.4 The Customer furthermore warrants that any consignee in respect of Dangerous Goods will be authorised and/or qualified to uplift, receive and/or handle such Goods.

22. WASTE

- 22.1 If waste (defined in the National Environmental Management: Waste Act, 59 of 2008, as amended) is generated

at any premises controlled by BSACD, whether as a result of the leakage of the Goods or otherwise:

- 22.1.1 BSACD shall be responsible for the management, clean-up and/or disposal of such waste in an environmentally sound manner and with no harm to health, in accordance with the relevant legislation;
 - 22.1.2 the Customer shall approve the manner of transport and place of disposal of such waste in writing within a reasonable time if required by BSACD; and
 - 22.1.3 the Customer shall be responsible for any costs incurred as a result of any actions taken by BSACD in terms of this sub-clause, unless and to the extent that the waste was caused by the gross negligence or wilful default of BSACD.
- 22.2 If BSACD stores waste on behalf of a Customer and such waste has not been uplifted within 90 days of BSACD receiving same, despite a request therefor by BSACD, BSACD shall, without further notice, be entitled to dispose of such waste forthwith in accordance with the relevant legislation at the Customer's cost.

23. PROHIBITED GOODS, ABNORMAL GOODS AND BONDED GOODS

- 23.1 BSACD shall not accept nor deal with unlawful Goods that are prohibited by the Laws of any country through which the Goods may transit. BSACD will further not accept or deal with counterfeit Goods, bullion, coins, banknotes, stamps, deeds, cheques, securities or other currency, precious stones, jewellery, valuables, antiques, pictures, personal effects, real or imitation fire arms, weapons, explosives or ammunition and their parts, human remains, livestock or plants. Except under special arrangements made previously in writing, BSACD will not accept or deal with tobacco products, spirits, wine, mobile telephones and their components or computers and their components and parts. Should the Customer nevertheless deliver such Goods to BSACD or cause BSACD to handle or deal with any such Goods otherwise than under lawful special arrangements previously made in writing, BSACD may in its sole discretion destroy such Goods without compensation to the Customer and shall incur no liability whatsoever in respect of such Goods or the destruction thereof, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such Goods or their destruction.
- 23.2 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving at least two days written notice to BSACD 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 precooled 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 BSACD shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 23.3 Whenever Goods are moved under duty and/or VAT suspension, either within South Africa or across border, the Goods remain under SARS Customs control until the legislated acquittal processes have been complied with. Where the Customer nominates or appoints the transporter, the Customer is responsible for obtaining and retaining the acquittal documentation as prescribed by law and providing this documentation to BSACD as soon as reasonably possible but at the latest within the prescribed 30 day period. Should the Customer fail to provide the documentation within the prescribed time period, duty and VAT will become payable, and penalties will be imposed by SARS Customs and / or other relevant authorities. The Customer will be fully liable for these payments and penalties.

24. EXAMINATION OF LANDED GOODS

- 24.1 Where it is necessary for an examination to be held or other action to be taken by BSACD in respect of any discrepancy in the Goods which are landed or discharged from any vessel, aircraft, vehicle, or Transport Unit, no responsibility or liability shall attach to BSACD for any failure to hold such examination or to take any other action unless BSACD has been timeously advised by the landing or discharge agent that such Goods have been landed and that such a discrepancy exists.
- 24.2 BSACD will not be responsible for examining or counting any Goods received by it where such Goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should BSACD undertake to examine or count Goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of

BSACD or otherwise. BSACD shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

25. RIGHTS TO DISPOSE OF GOODS

- 25.1 Without limiting or affecting any other terms of these Conditions, Goods (whether perishable or otherwise) in the care, custody or control of BSACD may at the Customer's expense be sold by private treaty or public auction or otherwise disposed of by BSACD, in its sole discretion, without notice to the Customer, sender, Owner or consignee, provided that BSACD has taken reasonable steps to procure the best available price for the Goods, without reference to any court of law, if -
- 25.1.1 Such Goods have begun to deteriorate or are likely to deteriorate;
 - 25.1.2 Such Goods are insufficiently addressed or marked;
 - 25.1.3 The Customer cannot be identified; or
 - 25.1.4 The Goods have not been collected or accepted by the Customer or any other Person after the expiration of 21 (twenty one) Days from BSACD notifying the Customer in writing to collect or accept such Goods, provided that if BSACD has no address for the Customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by BSACD in respect thereof shall be equivalent to delivery of such Goods.
- 25.2 Should any amount owing by the Customer to BSACD in respect of any matters referred to in this clause become due and payable and remain unpaid, or in the event that any Goods are not accepted for delivery as provided for in clause 21 below, BSACD shall be entitled and the Customer hereby authorises BSACD and without first obtaining an order of court, to sell all or any of the Goods by public auction or on reasonable notice not exceeding 14 (fourteen) Days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by BSACD, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to BSACD in respect of such Goods without prejudice to BSACD's rights to recover from the Customer any balance which may remain owing to BSACD after the exercise of such rights. Should the total amount collected by BSACD, after deducting there from all costs, charges and expenses incurred by BSACD in respect thereof, exceed the full amount of the Customer's obligations to BSACD in respect of such Goods, BSACD shall be obliged to refund such excess to the Customer.

GENERAL

26. APPLICABLE LEGISLATION

- 26.1 If BSACD is obliged, in the execution of any of its duties and/or responsibilities, to comply with any Law of any nature whatsoever, then BSACD, by complying therewith, shall not be deemed to have waived nor abandoned any of its rights in terms of these Conditions.
- 26.2 In addition thereto, in complying with the Law, BSACD shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer. The responsibility of BSACD in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 26.3 If any of the terms of these Conditions is repugnant to or in conflict with the Law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these Conditions.
- 26.4 BSACD 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.
- 26.5 BSACD 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.

- 26.6 BSACD and the CUSTOMER undertake to strictly observe and abide by any rules and regulations applicable to the import, export, re-export or transshipment of the Goods, such as those relating to embargoed or sanctioned countries, commodities or services, for example and not limited to the economic and trade sanctions.

27. INCOTERM

- 27.1 Any INCOTERM which might be made applicable to any contract between BSACD and the Customer or between BSACD acting on behalf of the Customer and any third party, shall be interpreted in accordance with the published guidelines issued from time to time by the International Chamber of Commerce and particularly the Introduction to the official publication containing the latest INCOTERMS published and in force as at the time of the incorporation of INCOTERMS into such contract.

28. CONFIDENTIALITY, PERSONAL INFORMATION AND INTELLECTUAL PROPERTY

- 28.1 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. 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. 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.
- 28.2 The Parties acknowledge that they will receive and may process, each other's Personal Information as defined in the Protection of Personal Information Act, 4 of 2013. Both Parties consent to the collection and processing of the Personal Information for the purposes of fulfilling their obligations to each other in terms of these Conditions, and the provision of services by BSACD to Customer. Failure to provide the Personal Information may result in the cancellation of these Conditions. In processing the Personal Information both Parties:
- 28.2.1 Shall comply with the act and all other applicable local and international laws and regulations pertaining to the processing of Personal Information;
 - 28.2.2 Shall use and/or hold such Personal Information only for the purposes of performing their obligations and shall not otherwise modify, amend or alter the contents of such Personal Information or disclose or permit the disclosure of such Personal Information to any third party, unless specifically authorised to do so or as required by law or any regulatory body and shall take all such reasonable steps as may be necessary to safeguard such Personal Information;
 - 28.2.3 shall ensure that reasonable appropriate technical and organisational measures are taken to prevent the unauthorised or unlawful processing of such Personal Information and the accidental loss or destruction, of, or damage to, such Personal Information;
 - 28.2.4 shall immediately notify the other Party when it becomes aware of, or has reasonable grounds to suspect, any unauthorised, unlawful or dishonest conduct or activities, or any breach of these Conditions relating to Personal Information;
 - 28.2.5 shall cooperate with the other Party in complying with any request for access or query from an individual who is the subject of Personal Information and/or responding to any enquiry made, or investigation or assessment of any processing initiated by a relevant regulatory authority in respect of such Personal Information;
 - 28.2.6 acknowledge that the Personal Information may be sent to a country outside the Republic of South Africa in which the Customer may or may not be trading;
 - 28.2.7 shall bind any operators to which they subcontract to the provisions of this clause; and
 - 28.2.8 indemnify each other against all claims, penalties and fines in the event of a Personal Information breach within its business.
- 28.3 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.

29. ELECTRONIC DATA

- 29.1 Notwithstanding the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time, BSACD 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.
- 29.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of BSACD or its employees) shall BSACD be liable for any Loss or damage arising from or consequent upon the provision by BSACD to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the Electronic Communications and Transactions (Act 25 of 2002), as amended from time to time, where such incorrect information has been generated by and provided to BSACD by any Person with whom BSACD conducts business, and/or any other third party.
- 29.3 BSACD shall furthermore under no circumstances whatsoever be liable for any Loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of BSACD, of BSACD's computer systems and/or software programmes, including those "Information System Services" as defined in the Electronic Communications and Transactions (Act 25 of 2002), as amended from time to time, provided and/or operated by BSACD and/or by any Person with whom BSACD conducts business, and/or any third party, and which systems shall include BSACD's electronic automated information service provided to its Customers.

30. BREACH AND TERMINATION

- 30.1 BSACD 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 BSACD to continue.
- 30.2 If BSACD breaches any of these Conditions or any agreement between it and the Customer and fails to remedy such breach within 30 (thirty) Days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by BSACD of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions and any agreement between the Customer and BSACD.
- 30.3 If Customer breaches any of these Conditions or any agreement between it and BSACD and fails to remedy such breach within 30 (thirty) Days of the date of receipt of written notice requiring it to do so then the BSACD shall be entitled to compel performance by Customer of the obligations it has defaulted in, and / or cancel these Conditions and any agreement between the Customer and BSACD.
- 30.4 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:
- 30.4.1 the other Party commits any act of insolvency in terms of any applicable insolvency legislation;
 - 30.4.2 the other Party commences business rescue proceedings;
 - 30.4.3 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;
 - 30.4.4 the other Party compromises or attempts to compromise with its creditors;
 - 30.4.5 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;
 - 30.4.6 the other Party fails to satisfy any default or other judgement granted against it, within 10 days.
- 30.5 No provision in these Conditions shall derogate from BSACD's common law rights in the event that the Customer breaches any term or condition of the agreement.

31. FORCE MAJEURE

- 31.1 A Party shall not be liable for any claims whatsoever arising from any force majeure event which, for purposes hereof is defined as the arising of any occurrence or event whatsoever which is beyond the reasonable control of that Party, including but in no way limited to the following:
- 31.1.1 Vis major or any Act of God whatsoever, including without limitation all natural catastrophes such as fire, flood, storms, strong winds, lightning, droughts, meteorites, pandemic, epidemic, plague or quarantine;
 - 31.1.2 Riots, civil commotions, strikes (whether lawful or not), lockouts, stoppages, go slows or restraint of labour from whatsoever cause;
 - 31.1.3 Pressure waves caused by aircraft or other aerial devices;
 - 31.1.4 A nuclear incident;
 - 31.1.5 War (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, public demonstration, terrorist act (or act by any Person acting from political motives), sabotage, or act of vandalism;
 - 31.1.6 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;
 - 31.1.7 Unforeseen breakdown of essential machinery or equipment;
 - 31.1.8 Power failures or surges or electricity interruptions of any nature whatsoever;
 - 31.1.9 Confiscation, expropriation, nationalisation, requisition, regulation, destruction or damage caused by the order of any Government, public or local authority;
 - 31.1.10 Mines, torpedoes, bombs, weapons of explosion or of war, whether derelict or not.
- 31.2 If and to the extent that BSACD is prevented from executing Services by any force majeure event described in clause BSACD shall be relieved of its obligations to provide the Services for the duration of the force majeure event, but shall use its best endeavours to continue to perform its obligations in so far as reasonably practicable, and the Customer shall be in no way relieved from performing such of its obligations as it is still able and which arose prior to the force majeure event, including its obligation to make payment. To the extent that BSACD is able to perform some of its obligations following and during the continuation of the force majeure event, the Customer shall perform those of its obligations in relation thereto as it is able.
- 31.3 BSACD shall as soon as reasonably practicable notify the Customer of the happening of any force majeure event and the anticipated effect on the Services, and shall again notify the Customer upon the cessation of the force majeure event.
- 31.4 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.
- 31.5 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.

32. MISCELLANEOUS

- 32.1 All notices in terms of these Conditions shall be given in writing and delivered by hand or e-mail. The Customer appoints as his/her/its domicilium citandi et executandi for all purposes under these Conditions the physical address and e-mail address stipulated herein, failing which any other physical address or e-mail address provided by the Customer to BSACD on any letterhead, order or other document generated or completed by the Customer. BSACD's domicilium citandi et executandi is 30 Breede Road, New Pier 2, Bayhead, Durban.
- 32.2 These Conditions and any claim or dispute arising out of or in connection with the Services of BSACD shall be subject to South African law.
- 32.3 In any dispute between BSACD and the Customer BSACD shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

- 32.4 The Parties shall negotiate in good faith with a view to settling any dispute arising out of or relating to this agreement. 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. Legal action or proceedings may only be instituted if the dispute cannot be resolved within 14 days of this meeting.
- 32.5 The parties agree that any legal action or proceedings arising out of or in connection with these Conditions, or the granting of any credit, may at BSACD's sole discretion, be brought in the relevant court which has jurisdiction over the area where BSACD's registered office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court. This clause is for the benefit of BSACD only and shall not limit the right of BSACD to bring proceedings against the Customer in any other court of competent jurisdiction or concurrently in more than one jurisdiction.
- 32.6 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.
- 32.7 Notwithstanding the Electronic Communications and Transactions Act, 2002, no variation of these Conditions shall be binding on BSACD unless embodied in a written document signed by a director of BSACD, duly authorised by a BSACD Board Resolution. Any purported variation, alteration or novation of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation, alteration or novation is written or oral, or takes place before or after receipt of these Conditions by the Customer.
- 32.8 If any provision of these Conditions is unenforceable, then BSACD 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.
- 32.9 BSACD 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.
- 32.10 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.
- 32.11 BSACD makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by BSACD to the Customer.
- 32.12 The defences and limits of liability provided for by these Conditions shall apply in any action against BSACD whether such action is founded in contract or delict, or otherwise.
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AGREEMENT AND SIGNATURE

I, the undersigned hereby certify that I am duly authorised by the Customer to sign this document on its behalf. I confirm that I have read and understood the Conditions as set out above and agree that the Customer is bound by them. I confirm that I am over the age of 18 years and that I am legally able to agree to the Conditions.

SIGNED:

NAME:

DESIGNATION:

DATE:



COMPANY CONTACT DETAILS E-MAIL:

FAX:

PHYSICAL ADDRESS:

POSTAL ADDRESS: