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

1. DEFINITIONS

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

1.1.1. “Bulk Terminal” means an area especially set aside primarily for the handling of bulk cargo by specialised equipment at the following Bulk Terminals:
   - Richards Bay
   - Maydon Wharf
   - East London
   - Port Elizabeth
   - Saldanha;

1.1.2. “Business Day” means any day other than a Saturday, Sunday or public holiday in South Africa;

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

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

1.1.5. “Parties” means collectively the Customer and the Terminal Operator, and “Party” means either of them as the context dictates;

1.1.6. “Port” means any of the ports where the Terminals are located;

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

1.1.8. “Ro-Ro, Break-bulk and Agricultural Terminal” means an area set aside primarily for the handling of general break-bulk cargo, bulk cargo, containers and vehicles by standard port equipment at the following Ro-Ro, Break-bulk and Agricultural Terminals:
• Richards Bay
• Cape Town
• Saldanha
• Port Elizabeth
• Durban and Maydon Wharf
• East London;

1.1.9. “Ro-Ro Automotive Terminal” means an area especially set aside primarily for the handling of vehicles at the following Ro-Ro Automotive Terminals:
• Durban
• East London
• Port Elizabeth;

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

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

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

1.1.13. “Tariff Book” means the tariff book issued by the Terminal Operator which applies from time to time, the current tariff book being applicable from 1 April 2013 till 31 March 2014;

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

1.1.15. “Terminal Operator” means Transnet Port Terminals, an operating division of Transnet SOC Ltd;

2. INTEPRETATION

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

2.2. These Standard Trading Terms and Conditions must, where applicable, be read in conjunction with the Terminal Operator's Tariff Book, the Terminal Operating Guidelines and the Standard Terms and Conditions for all Visitors to the Terminal Operator's Ro-Ro, Break-bulk and Agricultural, Bulk and Ro-Ro Automotive Terminals, subject to any supplements and amendments thereto ("the other documents"), all of which constitute the entire agreement between the Parties with regard to any aspect, matter or thing referred to herein or which arises out of or relates to such matters as are referred to, and are the sole and exclusive memorial thereof. The other documents can be found on the Terminal Operator's website at www.transnetportterminals.net.

2.3. The headings and sub-headings in these Standard Trading Terms and Conditions are inserted for convenience only and are not relevant for the purpose of interpretation.

2.4. Subject to 4.2 below, no addition to, subtraction from, amendment of or variation to these Standard Trading Terms and Conditions is of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

3. INTRODUCTION

3.1. The Customer imports and/or exports the Cargo and appoints the Terminal Operator to store and handle the Cargo and to provide handling and related services ("the Services") on the terms and conditions of these Standard Trading Terms and Conditions.

3.2. These Standard Trading Terms and Conditions apply to all contracts entered into between the Terminal Operator and the Customer in respect of the Services provided by the Terminal Operator’s Terminals unless a separate written agreement has been concluded and signed by the Parties which specifically excludes the application of all or some of the provisions of these Standard Trading Terms and Conditions.

4. TERMS AND APPLICATION OF STANDARD TERMS AND CONDITIONS

4.1. These Standard Trading Terms and Conditions are effective from 1 April 2013 till 31 March 2014.

4.2. Notwithstanding the provisions of Clause 2.4 above, the Terminal Operator reserves the right to amend these Standard Trading Terms and Conditions during
the period in Clause 4.1 above, as and when required in its sole and absolute discretion, by giving prior written notice of such amendment to the Customer.

4.3. These Standard Trading Terms and Conditions apply exclusively to the Customer’s Cargo handled, and vessels calling at the Terminals.

5. **REMUNERATION AND PAYMENT**

5.1. The Terminal Operator must be remunerated by the Customer at the rates as quoted by the Terminal Operator to the Customer and within the timeframes set out herein unless otherwise specifically agreed to in writing by the Terminal Operator.

5.2. All tax invoices of the Terminal Operator and the Customer’s account for any particular month must be paid by the Customer on or before the twentieth (20th) day of the following month.

5.3. Any amount falling due for payment by the Customer pursuant to the Services rendered in terms of these Standard Trading Terms and Conditions and which is not paid timeously shall bear interest against the Customer and in favour of the Terminal Operator at 1 % (one percent above the prime-lending rate levied by the Terminal Operator’s bank compounded monthly in arrears. In the case of a dispute as to the rate of interest, a certificate in writing by a manager or accountant of the said bankers shall be *prima facie* proof thereof.

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

6. **DANGEROUS GOODS**

6.1. The Customer must ensure compliance with all applicable international and national legislation in respect of hazardous, dangerous and noxious goods.

6.2. The Customer must ensure all Cargo which is hazardous, dangerous or noxious is clearly marked with approved IMDG labels or placards in accordance with international and national legislation.

6.3. If hazardous or dangerous Cargo is handed over to the Terminal Operator without being marked, labelled, packaged or documented in accordance with the relevant legislation and if, when the Terminal Operator takes possession of such Cargo, the
Terminal Operator does not know of its hazardous, dangerous or noxious character or nature, the Terminal Operator is entitled but not obliged to:

6.3.1. take all precautions the circumstances may require, including, when the Cargo poses an imminent danger to any person or property, destroying the Cargo, rendering it innocuous, or disposing of it by any other lawful means, without liability for payment of compensation for damage to or destruction of the Cargo resulting from the Terminal Operator taking such precautions; and

6.3.2. receive reimbursement from the Customer for all costs incurred by the Terminal Operator in taking the measures referred to in Clause 6.3.1 above.

6.4. The Terminal Operator has the right to refuse to handle Cargo when the safe handling or storage of that particular Cargo could expose people or property to a risk of injury or damage.

7. LIMITATION OF LIABILITIES

7.1. Notwithstanding anything to the contrary contained in these Standard Trading Terms and Conditions and without prejudice to any other limitation permitted by law and subject to Clause 7.2 below, the liability of the Terminal Operator arising out of or in connection with the terms and/or the subject matter of these Standard Trading Terms and Conditions and/or in respect of any claim for loss or damages arising out of the handling and storage of the Cargo is limited to US$3,000,000.00 (Three Million United States Dollars) in respect of any one incident or series of incidents arising from the same cause regardless of how such claim arises and damage is caused and irrespective of whether by the negligence, gross negligence, reckless or wilful acts or omissions on the part of the Terminal Operator or its representatives.

7.2. Subject to Clause 7.1 above, the Terminal Operator will not in any event be or become liable, whether by way of indemnity to the Customer or otherwise, for any loss of or damage to the Cargo handled and/or stored for the Customer and/or any property whatsoever of the Customer or third party in the care and custody of the Terminal Operator, or under the Terminal Operator’s control, exceeding the equivalent of 666.67 SDR per package or unit or two (2) SDR per kilogram or gross weight of the Cargo lost or damaged whichever is higher. The terms “SDR”, “package” and “unit” shall have the meaning ascribed under the Hague-Visby Rules.

7.3. The Customer hereby indemnifies the Terminal Operator against any claim brought by any third party in respect of loss of or damage to the Cargo which is handled,
transported or otherwise dealt with or intended to be dealt with by the Customer and/or the Terminal Operator in terms of these Standard Trading Terms and Conditions where, and to the extent that, such claim exceeds the amounts set out in Clauses 7.1 and 7.2 above.

7.4. Where a claim is lodged against the Terminal Operator in respect of the same incident or series of incidents arising from the same cause by the Customer and any third party, then the limit of liability referred to in Clauses 7.1 and 7.2 above will be reduced by an amount which the Terminal Operator is obliged to pay the third party.

7.5. The Terminal Operator is exempt from liability for damage to the Cargo or the packaging of the contents thereof caused by the Customer and/or its representatives.

7.6. Without prejudice to any of the other rights and remedies which the Terminal Operator may have or may acquire under these Standard Trading Terms and Conditions and/or any other applicable laws or contractual provisions, the Terminal Operator is discharged from all liability in respect of any claim, howsoever arising including but not limited to: vessel damage, loss of or damage to the Cargo handled or intended to be handled by the Terminal Operator, unless suit (the institution of formal legal process) against the Terminal Operator is brought and legal process in respect thereof is lawfully served on the Terminal Operator within 420 (four hundred and twenty) days from the date upon which the event occurred which gave rise to such claim. For the purposes of this clause, a day means a day as depicted on the calendar, and includes everyday of each week, whether such day be a Saturday, Sunday or Public Holiday.

8. FORCE MAJEURE EVENTS

8.1. For the purposes of these Standard Trading Terms and Conditions, the expression “Force Majeure Event” means, in respect of either Party, any event or circumstance, or combination of events or circumstances occurring during the operation of these Standard Trading Terms and Conditions, the occurrence of which is beyond the reasonable control (directly or indirectly) of, and could not have been avoided by steps which might reasonably be expected to have been taken by, such Party acting as a reasonable and prudent commercial entity.

8.2. Without limiting the generality of Clause 8.1, such events or circumstances may include any one or more of the following:

8.2.1. an act of God, act of public enemy, act or threat of terrorism, war, invasion, embargo, military coup or armed conflict, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, piracy, act
of vandalism, explosions, lightning, fire, flood, storm, strong winds, drought or earthquake;

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

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

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

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

8.2.6. meteorites;

8.2.7. epidemic, plague or quarantine;

8.2.8. blockade or closure of the Port;

8.2.9. strikes or other industrial action;

8.2.10. curfews in or restrictions on travel within the Magisterial areas of Durban, Richards Bay, East London, Port Elizabeth, Saldanha and/or Cape Town.

8.3. An event or circumstance which results in non-performance by a Party, caused by the usual and natural consequences of external forces will not be regarded as a Force Majeure Event if such event or circumstance occurs regularly or is reasonably foreseeable notwithstanding that its occurrence may be beyond the direct or indirect control of the non-performing Party.

8.4. To enable the other Party to assess the validity, nature and extent of any claim of the occurrence of a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred is required to disclose to the other Party all supporting documentation and information reasonably requested by the other Party to enable the other Party to undertake its own investigation into the alleged Force Majeure Event.

8.5. If either Party is prevented from, or delayed in performing any of its obligations under these Standard Trading Terms and Conditions as a consequence of a Force Majeure Event, such Party shall, to the extent so prevented or delayed by the Force Majeure Event, be relieved of the liability for the delay or failure to perform its obligations under these Standard Trading Terms and Conditions and the consequences of such delay or failure, provided that, if a Party is delayed in performing its obligations by a Force Majeure Event, it must immediately perform the relevant obligation as soon as it is able to do so and the other Party has
accepted that such a Force Majeure Event has prevented them from performing their obligations.

8.6. If a Force Majeure Event occurs, the Party affected by the Force Majeure Event must take all reasonable steps to remedy the Force Majeure Event and to minimise the effect of such circumstances upon the performance of its obligations under these Standard Trading Terms and Conditions.

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

9. NOTICES

9.1. The Parties choose the addresses set out on the Terminal Operator’s quotation to the Customer as their *domicilium citandi et executandi* ("*domicilium*") for the service of all notices and legal process for all purposes of and in connection with these Standard Trading Terms and Conditions.

9.2. Either Party is entitled to change its *domicilium* from time to time by notice in writing to the other on the condition that such new *domicilium* address is:

9.2.1. a physical address, international and / or within the Republic of South Africa and not a post office box or *poste restante*;

9.2.2. accompanied by a telephone number and a telefax number, international and/or within the Republic of South Africa; and such new *domicilium* address replaces the address then stipulated in the quotation.

9.3. All notices, demands, communications or payments intended for either Party must be made or given at such Party’s *domicilium*.

9.4. A notice sent by either Party to the other Party at their chosen *domicilium* is deemed to be received:

9.4.1. on the same day, if delivered by hand (provided that a receipt or confirmation of receipt is obtained);

9.4.2. on the 4th (fourth) day after posting (provided that it is dispatched by pre-paid registered post); or
9.4.3. on the next Business Day after the date of dispatch, if dispatched by telefax (provided that the correct telefax number of the addressee has been used).

9.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party is an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium. However, the Party seeking to rely on it bears the onus of proving delivery thereof.

10. BREACH AND TERMINATION

10.1. If any Party commits a breach of any provision or term of these Standard Trading Terms and Conditions and fails to remedy such breach within thirty (30) days of receipt of written notice from the Party requiring such breach to be remedied, the aggrieved Party shall be entitled (but not obliged) without further notice, in addition to any other remedy it may have at law or under these Standard Trading Terms and Conditions, to cancel the agreement between the Parties or to claim specific performance of any obligation, in either event without prejudice to the aggrieved Party’s right to claim damages.

10.2. Either Party may cancel the Agreement between the Parties with immediate effect on written notice to the other Party (“the defaulting party”) in the event that:

10.2.1. an order is made by a court of competent jurisdiction for the winding-up of the defaulting Party, or a resolution is passed by the shareholders of the defaulting Party for its winding up in such manner that the consequence is that some third party assumes the obligations imposed upon the defaulting Party by this Agreement;

10.2.2. the board of directors or shareholders of the defaulting Party resolve that such defaulting Party be wound up and/or be placed under a business rescue plan or a court of competent jurisdiction makes an order placing the defaulting Party under supervision and commencing business rescue proceedings;

10.2.3. an order is made by a court of competent jurisdiction, whether provisionally or finally, placing the defaulting Party in liquidation and a liquidator is appointed to deal with any of the assets or undertakings of the defaulting Party;

10.2.4. the defaulting Party is deemed to be unable to pay its debts in accordance with the provisions of the company laws of the Republic of South Africa;
10.2.5. the defaulting Party enters into a compromise, composition or arrangement with all or any of its creditors, or attempts to do so.

10.3. The Terminal Operator will render the Services pursuant to licences issued to it in terms of the National Ports Act 12 of 2005 (“the Act”). If the Act is amended or abolished and/or the Terminal Operator’s licence is withdrawn (through no fault or misconduct on the Terminal Operator’s part) and this renders it impossible for the Terminal Operator to continue to provide the Services, then the agreement between the Parties will be terminated forthwith and neither Party shall have any claim whatsoever against the other arising out of these Standard Trading Terms and Conditions, or the termination of the agreement.

11. CONFIDENTIALITY

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

11.1.1. must be kept confidential and must not be disclosed by such Party and its contractors, or by their officers, employees and agents, to any third party;

11.1.2. must not directly or indirectly be used by such Party and its contractors, or by their officers, employees and agents for their own benefit or the benefit of any third party.

11.2. Either Party must on demand to it by the other Party use its best endeavours to obtain secrecy undertakings in the form reasonably specified by the other from any one or more of the persons specified in Clauses 11.1.1 and 11.1.2.

11.3. The Parties agree not to use the name of the other or any of the other’s brand names or trademarks in publicity releases or advertising or for other promotional purposes, without the prior written consent of the other Party.

11.4. The provisions of this confidentiality clause survive the cancellation or termination of the agreement between the Parties for any reason, and remain binding on the Parties for a period of three (3) years after termination of the agreement between the Parties for any reason whatsoever.

12. COMPLIANCE WITH THE LAWS AND POLICIES

12.1. The Customer must at all times:
12.1.1. comply with all applicable international codes and conventions, national legislation, regulations and/or any applicable statutory and/or regulatory directives, laws and bylaws including but not limited to the provisions of the International Ship and Port Facility Security Code (ISPS Code), codes, conventions, laws and regulations concerning the protection of the environment, transportation, labour and social responsibility such as they may be applicable to these Standard Trading Terms and Conditions;

12.1.2. ensure that it is in possession of and that it observes the terms and conditions of all relevant permits, licenses and approvals of public authorities in relation to the activities carried out by it in terms of these Standard Trading Terms and Conditions;

12.1.3. observe the provisions of any written collective agreement that may become binding on either of the Parties and its respective employees and any registered trade union;

12.1.4. act in accordance with the Terminal Operator’s ISO 14001 Environmental Management System (EMS System) and ISO 9001 Quality Management System (QMS); and

12.1.5. ensure compliance with the Act, Port Rules and Harbour Master’s Written Instructions issued in terms of Section 80 (2) and 74 (3) respectively of the Act. In the event of any conflict arising between the interpretation of the Act, such Port Rules and the Harbour Master’s Written Instructions and these Standard Trading Terms and Conditions then the Act, Port Rules and Harbour Master’s Instructions must prevail.

13. DAMAGE TO CARGO (INCLUDING CONTAINERS) AND THE REPORTING AND THE RECORDING OF INCIDENTS

13.1. Damage to Cargo (including Containers)

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

13.1.1. all Cargo delivered to the Terminal Operator, or received by the Terminal Operator must be free of damage or defects of a nature which could render the Cargo unsafe for transportation;

13.1.2. any damage to any Cargo will forthwith be reported to the Terminal Operator’s Operations Supervisor at the Terminal, before such Cargo enters or leaves the premises of the Terminal, and if damage is not reported as intended in this Clause 13.1.2, removal of allegedly damaged
Cargo from the Terminal premises will be deemed to constitute delivery of the Cargo as described in the Bill of Lading;

13.1.3. where Cargo which has been imported is found to be damaged upon delivery, such Cargo will not be removed by it from the premises of the Terminal, unless the landing and shipping order has been signed and endorsed or the EDI electronic release message has been confirmed by a Terminal Claims Examiner, certifying that the Cargo was delivered to the Customer or its duly authorised representative in a damaged condition;

13.1.4. unless the Customer alleges patent damage to Cargo on receipt thereof, it is deemed to have been received in good order and condition and the onus is on the Customer to prove the contrary;

13.1.5. unless the Terminal Operator is advised of patent damage to Cargo on delivery thereof from the Terminal Operator to the Customer or its agent it is deemed to have been received by the Customer in good order and condition.

13.2. Reporting and Recording of Incidents

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

13.2.1. immediately, and before the Customer and/or its Representative, whether by motor vehicle or otherwise, exit the Terminal, report to the Terminal Operator’s Operations Supervisor any incident at the Terminal giving rise to death of or injury to any person, or loss of or damage to property of any nature.

13.2.2. do not leave the premises of the Terminal unless and until a "Notice of Damage Report" has been properly completed and signed by the Customer or its duly authorised representative as well as by the Terminal Operator’s Operations Supervisor;

13.2.3. immediately report to the Terminal Operator Operations Supervisor any injuries sustained by any person while the Customer and its duly authorised representative are on the premises of the Terminal Operator, and ensure that the relevant statutory authority prescribed in the Compensation for Occupational Injuries and Diseases Act, 1993, the Road Accident Fund Act, 1996; the Occupational Health and Safety Act, 1993 or any other Laws, Ordinances or Bylaws governing the reporting and investigation of accidents are notified immediately;
13.2.4. submit all claims in respect of losses allegedly suffered by the Customer, together with full supporting documentation to the respective Terminal by pre-paid registered post. In the case of damage to a vessel, the Customer must submit notice of such damage to the Terminal Operator prior to the sailing of the vessel and the Terminal Operator must be afforded an opportunity to inspect such damage, failing which no liability whatsoever will attach to the Terminal Operator.

14. CESSION

Neither Party shall, without the prior written consent of the other, which consent may not be unreasonably withheld, cede or assign any of its rights or obligations in terms of these Standard Trading Terms and Conditions to any third party. The Party wishing to cede or assign its rights or obligations to any third party shall, if so required by the other Party, be obliged to bind itself as surety and co-principal debtor with the third party for all its obligations in terms of these Standard Trading Terms and Conditions.

15. INDEMNITY

15.1. The Customer indemnifies the Terminal Operator against any and all claims arising from a breakdown of the Customer’s machinery or equipment, or accident or stoppages or delays, and against the cost of any and all maintenance of, and/or loss of or damage to all equipment belonging to the Customer.

15.2. The Customer indemnifies and holds the Terminal Operator harmless in respect of any loss or damage incurred by the Terminal Operator as a consequence of any breach of these Standard Trading Terms and Conditions by the Customer or any act or omission of the Customer constituting negligence or willful misconduct.

15.3. The Customer hereby indemnifies and holds the Terminal Operator harmless from and against any and all actions, claims, demands, proceedings, liabilities or judgments (collectively referred to as “claims”) and all losses, damages, costs (including costs on an attorney and own client scale), charges and expenses (collectively referred to as “losses”) of whatsoever nature and in whatever jurisdiction such claims may be instituted against the Terminal Operator, or such losses as may be suffered or incurred by the Terminal Operator, which relate to or arise, directly or indirectly, from any defect in the performance by the Customer of its obligations or services, or inaccuracy of any information provided by the Customer under these Standard Trading Terms and Conditions, provided that such defect or inaccuracy does not arise from an inaccuracy or incompleteness of any information provided by the Terminal Operator.
15.4. The Customer indemnifies and holds the Terminal Operator harmless against all risk of and liability for any claims arising from the handling, storage, damage, loss, short shipment, short landing and theft, of whatsoever nature, however caused, including any liability and responsibility for all acts, omissions, negligence or breaches of these Standard Trading Terms and Conditions on the part of the Customer or of its Representatives.

16. INDIRECT OR CONSEQUENTIAL DAMAGES

Unless expressly otherwise provided for in writing, neither Party is liable to the other for any indirect or consequential damages or loss of profits suffered by the aggrieved Party.

17. PROTECTION OF RIGHTS

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

18. DISPUTE RESOLUTION

18.1. In the event that either of the Parties wishes to assert, by recourse to legal action, any right claimed by such Party as arising from or under these Standard Trading Terms and Conditions, such Party is entitled to elect to proceed by way of litigation or arbitration. Should such Party elect to proceed by way of litigation, the provisions of Clauses 18.2 herein below apply, and should it elect to proceed by way of arbitration, the provisions of Clauses 18.3 to 18.10 (inclusive) below apply.

18.2. In the event of dispute resolution by litigation, the Customer hereby consents and submits to the exclusive jurisdiction of the KwaZulu-Natal High Court, Durban in respect of any claim by either Party against the other which in any manner arises out of or pertains to these Standard Trading Terms and Conditions.

18.3. A Party electing to proceed by way of arbitration is not barred by such election from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

18.4. In the event of dispute resolution by arbitration, the arbitration in respect of any claim by either Party against the other which in any manner arises out of or pertains to these Standard Trading Terms and Conditions must take place:

18.4.1. in Durban;
18.4.2. as soon as is reasonably practicable in the circumstances and with a
view to it being completed within sixty (60) Business Days after it is
demanded;

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

18.4.4. in terms of the Rules of the Arbitration Foundation of Southern Africa
(AFSA) or its successors in title from time to time, it being the intention
that the arbitration must be held and completed within the period set out
in Clause 18.4.2.

18.5. The arbitrator is to be selected by agreement between the Parties. Should the
Parties fail to agree on an arbitrator within seven (7) days of the aggrieved Party
notifying the other Party of the dispute, the arbitrator is to be appointed at the
request of either Party to the dispute by the AFSA Secretariat, or its successor in
title.

18.6. The Parties agree to keep the arbitration including the subject matter of the
arbitration and the evidence submitted or heard during the arbitration confidential
and not to disclose it to anyone except for the purposes of an order to be made as
set out below.

18.7. The provisions of this clause –

18.7.1. constitute an irrevocable consent by the Parties to any proceedings in
terms hereof and no Party is entitled to withdraw therefrom or claim at
any such proceedings that it is not bound by such provisions; and

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

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

18.9. The Parties irrevocably agree that the decision of the arbitrator may be subject to
one (1) right of appeal to the AFSA appeal tribunal, which appeal is also to be
conducted in terms of the Rules of AFSA.

18.10. The Parties agree that the award of the AFSA appeal tribunal will be final and
binding on them and capable of being made an order of any court of competent
jurisdiction.
19. SEVERABILITY

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

20. INDULGENCE OR EXTENSION

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

21. SUPERSESSION

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

22. GOOD FAITH

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

23. MISCELLANEOUS LEGAL PROVISIONS

23.1. In the absence of specific instructions given timeously in writing by the Customer to the Terminal Operator, the Terminal Operator may in its sole discretion decide when to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer.

23.2. Neither Party is bound by any representation, express nor implied terms, warranty, promises or the like not recorded herein or reduced to writing and signed by the Parties or their Representatives.
23.3. The Terminal Operator has the right to enforce a lien or right of retention it may have over the Customer’s Cargo or equipment on the premises of the Terminal Operator.

23.4. The rule of interpretation that an agreement is to be interpreted against the party responsible for the drafting and/or preparation of such agreement does not apply to these Standard Trading Terms and Conditions.