

STANDARD TRADING TERMS AND CONDITIONS

I. Interpretation

A. Definitions and Interpretation

1. In these STCs the words set out hereunder shall have the meanings assigned to them hereunder, unless the context clearly indicates the contrary:
 - a) "BULK CONNECTIONS" shall mean Durban Coal Terminal Company (Pty) Ltd, registration number 1982/003063/07, trading as BULK CONNECTIONS, and shall also include its cessionaries, assigns and / or successors in title;
 - b) "Berths" means Bluff Berths 1, 2, 3 and 4 extending from Bollard 1 to Bollard 41 and "Berth" shall mean whichever is applicable of the Berths;
 - c) "Product" shall mean any goods Handled, transported or dealt with by or on behalf of or at the instance of the CUSTOMER or which come under the control of BULK CONNECTIONS or its agents, servants or subcontractors or an authorised third party on the instructions of the CUSTOMER, and includes any form of container or equipment used in connection with or in relation to such goods;
 - d) "CUSTOMER" shall mean any person, whether an agent or a principal, at whose request or on whose behalf BULK CONNECTIONS undertakes or renders any Services, and will include their subcontractors, agents or employees;
 - e) "Handled" means the act of handling the Customer's Products at the Terminal including offloading same from Trucks, stacking, storing and reclaiming same, and loading same onto Vessels at the Berths and "Handling" shall have a corresponding meaning;
 - f) "Loading" means the act of loading Product onto a Vessel or Truck or unloading Product from a Vessel or Truck, and "Load" and "Loaded" shall mean whichever is applicable of loading or unloading or both as the case may be;
 - g) "Parties" shall mean BULK CONNECTIONS and the CUSTOMER collectively, and "Party" shall mean either one of them;
 - h) "Port Regulations" means the Port Rules for the Ports of the Republic of South Africa, prescribed under or in accordance with section 80(2) of the National Ports Act no. 12 of 2005, or any other similar rules which might be promulgated from time to time in place thereof, together with any other rules and regulations of TNPA which may be applicable
 - i) "Services" shall mean the services provided or to be provided by BULK CONNECTIONS to the CUSTOMER, which services may include, but not be limited to, Handling, forwarding, clearing, consulting, advice, information services, warehousing and/or the transport and distribution of Product and any services allied thereto, whether provided gratuitously or not;
 - j) "Terminal" means BULK CONNECTIONS' storage and handling facilities adjoining the Berths;
 - k) "Transnet" means Transnet SOC Limited, and "TFR" means its railways division, Transnet Freight Rail, and "TNPA" means its ports division, the Transnet National Ports Authority;
 - l) "Truck" shall mean any road or rail vehicle; and
 - m) "Vessel" means the Vessel into which the Product is to be loaded by BULK CONNECTIONS on behalf of the Customer.
2. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of these STCs.
3. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and *vice versa* and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these STCs.
5. In so far as the provisions of any written agreement between the Parties are inconsistent with these

STCs, the provisions of these STCs shall prevail. In particular it is recorded that these STCs will take precedence over any terms contained in the CUSTOMER's standard trading terms or purchase orders.

6. The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these STCs shall not apply.
7. The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (eiusdem generis) shall not apply, and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.
8. These STCs shall be interpreted and applied in accordance with South African law.

II. Application and Legal Standing

A. Application

1. All and any Services undertaken or provided by BULK CONNECTIONS is subject to these STCs as updated from time to time. The use of any Services provided by BULK CONNECTIONS shall constitute agreement by the CUSTOMER to pay all charges and to be governed by these STCs.

B. Relationship

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

C. Subcontracting

1. Any Services entrusted by the CUSTOMER to BULK CONNECTIONS may, in the absolute discretion of BULK CONNECTIONS, be fulfilled by BULK CONNECTIONS itself, by its own servants performing part or all of the relevant Services, or by BULK CONNECTIONS 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.
2. Where BULK CONNECTIONS subcontracts any Services, it continues to act as principal with regards to its obligations to the CUSTOMER.

III. Remuneration and Payment

A. Rates

1. Any quotations or estimates given by BULK CONNECTIONS shall be valid and open for acceptance for a period of 30 days only and are based on the scope of work as detailed therein.

B. Payment

1. The CUSTOMER shall pay all sums due to BULK CONNECTIONS within 30 days of date of invoice or as otherwise agreed in writing by the Parties.
2. All payments shall be made without deduction or set-off and payments shall not be withheld or deferred because any claim or counterclaim which the CUSTOMER may allege.
3. In the absence of any written agreement to the contrary, payment of all amounts due to BULK CONNECTIONS shall be made in South African Rands at the address or into the bank account nominated by BULK CONNECTIONS.
4. The CUSTOMER shall pay BULK CONNECTIONS Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.

5. All documents, cash, cheques, bank drafts or other remittances, sent to BULK CONNECTIONS through the post or electronically transmitted shall be deemed not to have been received by BULK CONNECTIONS unless and until they are actually received by BULK CONNECTIONS. If any payment to BULK CONNECTIONS is effected electronically, then the CUSTOMER bears the risk in respect of such payment until the payment is received and cleared into BULK CONNECTIONS's bank account.
6. Any failure by BULK CONNECTIONS to invoice the CUSTOMER any delay in the rendering of any invoices shall not constitute a waiver by BULK CONNECTIONS of its rights to payment nor prejudice BULK CONNECTIONS' claim to any such payment.
7. BULK CONNECTIONS shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.
8. The CUSTOMER acknowledges that BULK CONNECTIONS 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.

C. Default and Debt Collection

1. BULK CONNECTIONS may charge interest at a rate equal to 2% (two percent) above the prime overdraft rate of interest of the First National Bank, a division of FirstRand Bank Limited (or its successor), applicable on the due date, calculated on daily balance and compounded monthly in arrears on any amount not paid to BULK CONNECTIONS by the CUSTOMER on due date.
2. If BULK CONNECTIONS institutes legal proceedings against the CUSTOMER to recover amounts due to BULK CONNECTIONS, the CUSTOMER shall be liable for all legal costs incurred by BULK CONNECTIONS on the scale as between attorney and own client, as well as collection commission and tracing agent's fees, if any.

D. Lien

1. Notwithstanding anything to the contrary contained or implied in the Agreement, if the CUSTOMER fails to pay on due date any amount payable in terms of these STCs, then in addition and until all amounts owing to it by the CUSTOMER have been paid in full, BULK CONNECTIONS:
 - a) shall be entitled to withhold the performance of the Services or any part thereof determined by BULK CONNECTIONS;
 - b) shall have a particular and general lien on all Products and/or documents relating thereto in its possession for all sums of whatsoever kind and nature due at any time, and shall on giving 28 (twenty eight) days' notice in writing to the CUSTOMER, be entitled to sell or dispose of such Products and/or documents at the expense of the CUSTOMER and without any liability to the CUSTOMER, and apply the net proceeds in or towards the payment of such outstanding amounts. Upon accounting to the CUSTOMER for any balance remaining after payment of any sum due to BULK CONNECTIONS and the costs of sale or disposal, BULK CONNECTIONS shall be discharged of any liability whatsoever in respect of the Products and/or documents. If on the sale of the Products and/or documents the proceeds fail to realise the amount due, BULK CONNECTIONS shall be entitled to recover the difference from the CUSTOMER.

IV. Liability and Insurance

A. Limitation of Liability

1. The CUSTOMER shall, and warrants to BULK CONNECTIONS that it shall, at all times be and remain the owner of (or the holder of all the right, title and/or interest in and to, as applicable) all Products which are Handled by BULK CONNECTIONS in terms of the Agreement. The CUSTOMER will bear all risk of loss of or damage to the Products.
2. BULK CONNECTIONS shall not be liable for any claim of whatsoever nature (whether in contract or

- in delict) and whether for damages or otherwise, howsoever arising unless such claim arises from:
- a) a grossly negligent act or omission on the part of BULK CONNECTIONS, its employees or subcontractors; and
 - b) in respect of loss of or damage to Product, at a time when the Product in question are in the actual care and custody of BULK CONNECTIONS, its employees or subcontractors and under their actual control and such loss exceeds 5% (five percent) of the aggregate mass of Product delivered by or on behalf of the CUSTOMER to the Terminal prior to or during the whole period preceding the date upon which any claim is made by the CUSTOMER in respect of Product loss, including any deliveries made to the Terminal during any period preceding the date of the Agreement, and including any such preceding period during which the Terminal was under the control of an associated company of BULK CONNECTIONS.
3. Notwithstanding anything to the contrary contained in these STCs or elsewhere, BULK CONNECTIONS shall not be liable for any indirect loss, including but not limited to: consequential, incidental or remote loss; special or speculative damages; or loss of profit, business or production.
 4. For the avoidance of doubt, it is recorded that, subject always to the provisions of the Agreement, or unless otherwise agreed in writing between BULK CONNECTIONS and the CUSTOMER, BULK CONNECTIONS' obligations relating to Product in terms of the Agreement shall commence:
 - a) in respect of rail deliveries, where applicable, when the relevant Trucks are handed over by TFR to BULK CONNECTIONS at the exchange yard in the Terminal; or
 - b) in respect of road deliveries, where applicable, when the relevant road vehicles are offloaded at the Terminal, and
 - c) shall terminate when the relevant Product is loaded by or on behalf of BULK CONNECTIONS onto the Vessel at the Terminal.
 5. The CUSTOMER shall be solely responsible for the delivery of Product to the Terminal and any assistance which BULK CONNECTIONS may render or any advice which BULK CONNECTIONS may give relating to or in connection with the delivery of Product to the Terminal shall be entirely without prejudice to this obligation of the CUSTOMER nor shall it impose any liability on BULK CONNECTIONS relating to or arising out of any such deliveries or any delays in or failures of Product delivery to the Terminal.
 6. If, at the request of the CUSTOMER, BULK CONNECTIONS arranges for the haulage of Product from the Terminal, whether by road or rail, the haulier in question shall be deemed to be the haulier of the CUSTOMER, and BULK CONNECTIONS shall not have any responsibility to the CUSTOMER for any such haulage nor for any loss of, damage to, or deterioration of Product as a consequence of such haulage, nor for any delays in or failures of delivery.
 7. Without limiting the generality of the limitations or exclusions of BULK CONNECTIONS' liability contained in these STCs or elsewhere, BULK CONNECTIONS is specifically not responsible or liable for:
 - a) providing ventilation or other safety precautions;
 - b) any consequences whatsoever of the Vessel loading over her marks or in excess of the quantity of Product required or for which space has been allocated or in respect of the Vessel's stability including such consequences arising from negligence on the part of servants or agents of BULK CONNECTIONS;
 - c) any damage to, deterioration or loss of Product however caused and any common law liabilities of BULK CONNECTIONS as a warehouseman, bailee or deposittee are specifically excluded;
 - d) any damages, including consequential damages, which the CUSTOMER may suffer from whatsoever cause connected with the discharge of excess Product, including the negligence of the servants and agents of BULK CONNECTIONS;
 - e) any consequences or damages arising from any inaccuracy or failure of examination or certification of Product or the Vessel's hold and any warranties by BULK CONNECTIONS in this connection, whether express or implied, are specifically excluded;
 - f) damage to Vessels or Trucks howsoever caused including damage caused by the negligence of BULK CONNECTIONS' servants or agents. BULK CONNECTIONS shall not be responsible for any consequential loss occasioned by such damage to or repair of a Vessel or Truck;

- g) loss or damage to Product, latent defects, inherent vice or contamination, admixture or degeneration of Product, however caused and whether prior to receipt into storage or thereafter and whether caused by the negligence of BULK CONNECTIONS or its servants or agents or from any omission by any party howsoever caused;
 - h) delays in loading or unloading of Vessels or Trucks or any other delay to Vessels or Trucks or the consequences of such delays, regardless of the cause and whether occasioned by any negligence of BULK CONNECTIONS or its servants or agents or otherwise;
 - i) any demurrage arising from Trucks being delayed where such delays are caused by a daily intake of Trucks in excess of the maximum provided for by BULK CONNECTIONS or as a result of other circumstances beyond its control;
 - j) any demurrage in respect of any Vessels or Trucks due to any Trucks required to deliver or offload Product at the Terminal not arriving timeously or at all;
 - k) any claims or damages whatsoever arising from the use of Trucks found not to have been clean and fit for use, whether caused through loss, contamination or any other cause whatsoever;
 - l) any departure from the CUSTOMER's instructions for any reason including but not limited to the public good;
 - m) any liability related to airborne dust from other Products Handled, settling on the Product whilst in storage;
 - n) any consequences or damages resulting from any decision or act of any port, railway, government, provincial or local authority, which may prevent, hinder or have an effect on the carrying out of any of its obligations.
8. If BULK CONNECTIONS is, notwithstanding the provisions of this clause, liable to the CUSTOMER in terms of these STCs or otherwise, in no case whatsoever shall any liability of BULK CONNECTIONS, howsoever arising, whether in contract or in delict, arising directly or indirectly from BULK CONNECTIONS operations, exceed the lesser of:
- a) the fair market, actual customs or insurance declared value of the Product; or
 - b) an amount of R100 000 (hundred thousand Rand) in respect of any occurrence giving rise to liability; and
 - c) in any event, R 500 000 (five hundred thousand Rand) in respect of all occurrences giving rise to liability in any calendar year, regardless of the nature, number and amount of claims arising.
9. No claim shall be made against any director, servant or employee of BULK CONNECTIONS in his personal capacity which imposes or attempts to impose any liability upon him in connection with the provision of the Services, and the CUSTOMER waives all and any such claims.

B. Claims

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

C. Insurance

- 1. The CUSTOMER shall be responsible for insuring the Products while under the custody and control of BULK CONNECTIONS and shall use its best endeavours to procure that the relevant insurance suitably covers and protects the interests of BULK CONNECTIONS. The CUSTOMER shall, if so requested by BULK CONNECTIONS, furnish a copy of the CUSTOMER's insurance policy or policies to BULK CONNECTIONS.

D. Indemnity

1. Without prejudice to BULK CONNECTIONS's rights under these STCs, any agreement between the Parties and/or at law, the CUSTOMER indemnifies and holds BULK CONNECTIONS harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by BULK CONNECTIONS (unless and to the extent caused by the wilful misconduct or gross negligence of BULK CONNECTIONS) arising directly or indirectly from or in connection with:
 - a) BULK CONNECTIONS complying with the requirements or instructions of the CUSTOMER or any Authority regarding the Product or Services;
 - b) any warranty given to BULK CONNECTIONS by the CUSTOMER being untrue or incorrect;
 - c) any act or omission or breach of these STCs by the CUSTOMER or any person, subcontractor or carrier acting on its behalf or under its instruction;
 - d) a declaration made to SARS Customs by the agent of the CUSTOMER being made falsely, incorrectly or not at all;
 - e) a breach of the CUSTOMER's obligations to Customs or the storage of the Product in bond, including legal costs on the scale as between attorney and own client, all fines, penalties, expenses and forfeiture, or the cost of any proceedings
 - f) any claim made by the owner of the Product, the consignor or consignee the carrier, the CUSTOMER's clients or suppliers or any third party in connection with the Services or Product, or with a decision made by BULK CONNECTIONS to depart from the Scheduling Rules for any reason whatsoever;
 - g) any claim by, or liability to, any third persons, to the extent that such claim or liability exceeds whichever is the lesser of the amount referred to in sub-clause IV.A.8 or the liability that BULK CONNECTIONS would have incurred if BULK CONNECTIONS had been able to rely on the provisions in the Contract of Carriage excluding and/or limiting the CUSTOMER's liability and which would have applied had the scope of such exclusions and/or limitations applied to or included BULK CONNECTIONS services;
 - h) any demurrage claim from any third party or Vessel which may be caused by any failure of the Customer to comply with its obligations under the Scheduling Rules;
 - i) the contents, quality, nature, legality, inherent vice, counterfeit nature, defect in or description of the Product;
 - j) the loading, offloading, numbering, weight, measurements, non-delivery, mis-delivery or defective packaging of the Product unless done by BULK CONNECTIONS in terms of a written agreement between the Parties;
 - k) the defective condition of, or overweight, containers or vehicles, unless provided by BULK CONNECTIONS in terms of a written agreement between the Parties; and / or
 - l) 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.

V. Rights and Obligations**A. Rights and Obligations of BULK CONNECTIONS**

1. BULK CONNECTIONS undertakes that it will
 - a) possess or have available knowledge and expertise sufficient to enable it to provide the relevant Service;
 - b) have available all tools and equipment necessary to enable it to provide the relevant Service;
 - c) employ a sufficient number of suitably trained and skilled staff to provide the relevant Service;
 - d) provide the relevant Service materially in compliance with all laws, regulations and by-laws, and reasonable requirements of local or other authorities, which are applicable to the rendering of the relevant Service; and
 - e) give effect to any requirements of any Government or Local Authority, including any inspector

of any thereof, relating to or resulting from the nature of the Product itself, all of which shall be at the cost of the CUSTOMER unless BULK CONNECTIONS has, in accordance with the Agreement, accepted responsibility for bearing such cost.

B. RIGHTS AND OBLIGATIONS OF THE CUSTOMER

1. The CUSTOMER shall be liable for the replacement of or repair to any property and any damages whatsoever resulting from any loss of use thereof:
 - a) at a terminal damaged by the CUSTOMER's Product (whether with or without the fault or privity of the CUSTOMER), whether suffered by BULK CONNECTIONS or by any other user of the Berth or the Terminal;
 - b) when a Vessel has caused damage to any of the property of BULK CONNECTIONS. The fact that at the time the damage was caused the Vessel was under compulsory pilotage in terms of the Port Regulations shall not afford the CUSTOMER any excuse for avoiding such liability.
2. The CUSTOMER undertakes:
 - a) to supply to BULK CONNECTIONS all information relating to its business and/or the Product that is relevant to the provision by BULK CONNECTIONS of the Services. The CUSTOMER shall be deemed to have reasonable knowledge of all matters directly or indirectly relating to its business and Product; and
 - b) that no claim shall be made by it against any servant, agent or subcontractor of BULK CONNECTIONS (where BULK CONNECTIONS acts as principal) which imposes or attempts to impose upon him or her any liability in connection with the Product or the rendering of any Services and the CUSTOMER hereby waives all and any such claims, which claims should be made directly against BULK CONNECTIONS in terms of these STCs.
3. In respect of SARS Customs, Port Regulations and other legal requirements, the CUSTOMER:
 - a) must duly clear all Product through Customs and must ensure that all other legal requirements in respect of such Product have been complied with in full;
 - b) must ensure that all Product entered and removed from any bonded facilities at BULK CONNECTIONS is cleared timeously and that the necessary proof of acquittal is provided to BULK CONNECTIONS within the prescribed time periods;
 - c) must ensure that all Product is moved out of the Terminal within the time periods prescribed;
 - d) consents to BULK CONNECTIONS, at the cost of the CUSTOMER, clearing such Product, that is at risk of exceeding the time permissible for storage in bond, from the Terminal or alternatively abandoning such Product to Customs.
4. The CUSTOMER warrants that:
 - a) it is either the owner or the authorised agent of the owner of any Product in respect of which the CUSTOMER instructs BULK CONNECTIONS and that each such person is bound by these STCs;
 - b) in authorising the CUSTOMER to enter into any contract with BULK CONNECTIONS, the owner, sender or consignee is bound by these STCs for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that BULK CONNECTIONS shall have the right to enforce against them jointly and severally any liability of the CUSTOMER under these STCs and/or to recover from them any sums to be paid by the CUSTOMER which upon proper demand have not been paid;
 - c) all information and instructions supplied or to be supplied by it or its agent to BULK CONNECTIONS 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 BULK CONNECTIONS for customs, consular and other purposes, and the CUSTOMER warrants that it will not withhold any necessary or pertinent information.
5. Where the CUSTOMER is a carrier under a contract of carriage applicable to the Product in respect of which BULK CONNECTIONS provides services, the CUSTOMER is hereby expressly authorised

and required by BULK CONNECTIONS (and shall have a clause in its Contract of Carriage to such effect) to:

- a) act on BULK CONNECTIONS' behalf to obtain for BULK CONNECTIONS, its servants, agents, sub-contractors and such parties for whom BULK CONNECTIONS may be vicariously liable, whatever benefits, exclusions and limitations of liability accrue to the CUSTOMER in terms of any Contract of Carriage;
 - b) accept the benefits referred to above on behalf of BULK CONNECTIONS and the other parties referred to therein.
6. If the CUSTOMER is not a party to the Contract of Carriage applicable to the Product in respect of which BULK CONNECTIONS provides service, the CUSTOMER shall procure that the carrier in terms of such Contract of Carriage or the issuer of any bill of lading in terms thereof shall fulfil the CUSTOMER's obligation in clause 9 above and such persons are expressly authorised by BULK CONNECTIONS to act for, accept and contract for, such benefits on BULK CONNECTIONS' behalf and that of the other parties referred to in clause 9 above.
7. BULK CONNECTIONS hereby ratifies any contract that the CUSTOMER or carrier or issuer of a bill of lading may have concluded in terms of clauses 9 or 10 above on behalf of BULK CONNECTIONS and the other parties referred to in these clauses, and accepts any benefit which may have been stipulated for BULK CONNECTIONS and such other parties.

VI. General

A. Compliance with Legislation

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

B. Confidentiality, Personal Information and Intellectual Property

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 STCs or agreement between them, whether prior to, during or after the currency of these STCs or the said agreement.
2. All documentation furnished by one Party to the other Party pursuant to these STCs or any agreement between them will remain the property of that Party and upon the request of that Party

will be returned to it.

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

C. Breach and Termination

1. In the event that either BULK CONNECTIONS or the CUSTOMER commits a material breach of any of its obligations under these STCs, and fails to remedy such material breach within a period of 30 (thirty) days of receipt from the other of them of notice in writing calling upon the party in breach to remedy such material breach (reasonable details of which shall be given in such written notice), then the other party shall be entitled, by giving the party in breach not less than 30 (thirty) days prior written notice, to terminate these STCs.
2. BULK CONNECTIONS or the CUSTOMER (as the case may be) shall be entitled, without prejudice to its other remedies at law including its right to claim damages, to cancel these STCs on 30 (thirty) days' written notice to the other of them, if the other party:
 - a) is placed in liquidation or under judicial management, or steps are taken towards that end; or
 - b) effects or attempts to effect a compromise with any of its creditors generally; or
 - c) being a company, is placed under or takes steps to place itself under, Business Rescue; or
 - d) commits an act of insolvency as defined in the South African Insolvency Act No.24/36, or being a juristic person, commits an act which would be an act of insolvency if committed by a natural person; or
 - e) takes steps to deregister itself or is deregistered.
3. Notwithstanding the provisions of this clause, if the CUSTOMER fails to pay on due date any amount payable in terms of these STCs, and fails to pay any such amount within 7 (seven) days after the giving by BULK CONNECTIONS to the CUSTOMER of a written notice requesting such payment, BULK CONNECTIONS shall be entitled by notice in writing to the CUSTOMER to forthwith cancel these STCs. BULK CONNECTIONS 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 BULK CONNECTIONS to continue.

D. ANY REMAINING PRODUCT

1. If, following the termination for whatever reason of these STCs any Product of the CUSTOMER remains behind on the Terminal then the following provisions of this clause shall apply.
2. Notwithstanding the termination of these STCs, BULK CONNECTIONS shall have, and be entitled to exercise, all relevant rights accorded to it under these STCs.
3. The CUSTOMER shall immediately take steps to remove from the Terminal all Product of the CUSTOMER which is on the Terminal, provided that the CUSTOMER shall, prior to such removal, procure payment to BULK CONNECTIONS of any and all amounts owing, or which may become owing by the CUSTOMER to BULK CONNECTIONS.
4. In the event that the CUSTOMER does not remove the Product from the Terminal as required by BULK CONNECTIONS, then the CUSTOMER shall, in addition to any storage fee payable in accordance with the foregoing, be liable for all damages sustained by BULK CONNECTIONS, including consequential losses.
5. BULK CONNECTIONS shall continue to load Trucks on the instructions of the CUSTOMER until such

time as all of the CUSTOMER's Product is removed from the Terminal.

6. The CUSTOMER shall be liable for and shall pay to BULK CONNECTIONS, for so long as any such Product remains on the Terminal the rates and charges applicable in accordance with the Agreement provided that, if the Agreement is silent as to the relevant rate payable, then the rates and charges payable for such continued storage shall be the rates and charges payable immediately prior to the expiry of the said period plus an increase of 50% (fifty percent).
7. BULK CONNECTIONS shall be entitled to invoice the CUSTOMER in respect of the storage fee referred to in this clause from time to time, and it shall be entirely within BULK CONNECTIONS' discretion to determine the date on which it does so.
8. Any amounts due by the CUSTOMER in terms of this clause shall be paid within not later than 14 (fourteen) days after the date of BULK CONNECTIONS' invoice for same.
9. Notwithstanding anything to the contrary herein contained or implied, in the event that any Product of the CUSTOMER remains behind in the Terminal for a period of longer than 90 (ninety) days following the termination referred to in subclause D1, BULK CONNECTIONS shall be entitled at its option:
 - a) to cause the relevant Product to be removed from the Terminal by any third party selected by BULK CONNECTIONS and all costs incurred in so doing shall be for the account of the CUSTOMER, or
 - b) to sell or dispose of such Products at the expense of the CUSTOMER and without any liability to the CUSTOMER and apply the net proceeds in or towards the payment of any outstanding amounts owing or which may become owing by the CUSTOMER to BULK CONNECTIONS. Upon accounting to the CUSTOMER for any balance remaining after payment of any sum due to BULK CONNECTIONS and the costs of sale or disposal, BULK CONNECTIONS shall be discharged of any liability whatsoever in respect of the Products. If on the sale of the Products the proceeds fail to realize the amount due, BULK CONNECTIONS shall be entitled to recover the difference from the CUSTOMER.
10. Nothing herein contained shall impose any obligations on BULK CONNECTIONS to store any Product for any period other than the period agreed to between the Parties.

E. Force Majeure

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

F. Notices and domicilia

1. Each Party chooses as its *domicilium citandi et executandi* for all purposes under these STCs and any agreement between them, the physical address most recently provided by it to the other in writing.
2. Either Party shall be entitled to change its *domicilium* by way of written notice to the other

specifying its new *domicilium* provided that such new address shall be a street address within the Republic of South Africa.

3. All notices by one Party to the other shall be delivered, to the chosen *domicilium citandi et executandi* of the addressee and shall be deemed to have been received on the date of delivery or dispatch unless the contrary is proved.
4. Copies of all notices shall in addition be emailed on the email address most recently provided.

G. Licences and Leases

1. BULK CONNECTIONS shall, at its election, 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.
2. BULK CONNECTIONS provides the Services subject to all applicable Laws and any requisite approvals of, and licence terms and conditions imposed by, Transnet and any other authority having jurisdiction, from time to time. The provision of the Services is further subject to BULK CONNECTIONS having a valid lease agreement in place with Transnet, and BULK CONNECTIONS shall not be liable for any inability to provide services due to the termination of any such lease.

H. Dispute Resolution

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

I. General

1. Notwithstanding the Electronic Communications and Transactions Act, 2002, no amendment or variation of these STCs or any agreement between the Parties shall be of any force or effect unless reduced to writing and physically signed by a duly authorised director of BULK CONNECTIONS. Whilst correspondence for operational reasons may occur via email, no formal amendment or variation may be concluded via email.
2. No failure, refusal or neglect by a Party to exercise any rights under these STCs or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party's obligations under these STCs or such agreement, shall constitute a waiver of the provisions of these STCs or such agreement or of any of that Party's rights. A Party may at any time require strict compliance with the provisions of these STCs or any agreement between the Parties and shall not be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.

3. Each of the provisions of these STCs and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these STCs or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these STCs or any agreement between the Parties.
4. Neither Party may cede or assign any of its interest in, or its rights and obligations deriving from, these STCs 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, or in the case of BULK CONNECTIONS, to any subsidiary company of the Bidvest Group Ltd.
5. BULK CONNECTIONS makes no warranties and representations to the CUSTOMER save as may be specifically provided herein or as notified in writing by BULK CONNECTIONS to the CUSTOMER.
6. In the absence of manifest error, the records of Bulk Connections shall be used for purposes of all calculations required to be made in terms of the STCs or the Service Schedule.