

STANDARD TRADING CONDITIONS

DEFINITIONS

- 1.1 Unless the context otherwise requires, the following words will have the meanings herein ascribed to them :
- 1.1.1. **“BTT”** means Island View Storage (Pty) Ltd trading as Bidvest Tank Terminals;
 - 1.1.2. **“the Customer”** means the person or entity with whom BTT conducts the services provided for herein and as further stipulated in the Schedule of Charges.
 - 1.1.3. **“the Party/ies”** means BTT and the Customer collectively;
 - 1.1.4. **“Product”** means any product coming under the control of BTT on behalf of the Customer and shall include, but not be limited to, any container not supplied by or on behalf of BTT, and **“Products”** shall have a corresponding meaning;
 - 1.1.5. **“Business”** means all and any business undertaken by BTT, including any advice, information, or service provided, whether gratuitously or not, by BTT to the Customer in terms of this agreement, and **“Service/s”** shall have a corresponding meaning;
 - 1.1.6. **“the Installation”** means any or all, as the context requires, of the tanks situated on any premises occupied or controlled by BTT wheresoever located;
 - 1.1.7. **“the Schedule of Charges”** means the schedule of charges provided by BTT to the Customer;
 - 1.1.8. **“the Customs Authorities”** means the Customs and Excise authorities of the Republic of South Africa;
 - 1.1.9. **“Throughput”** means the quantity of Product received into the Installation.
 - 1.1.10. **“Delivery” (to BTT)** shall be deemed to have been made when the Product passes the flange connecting BTT’s pipeline to the tanker or ships manifold or upon the product passing the connecting flange at the end of the pipeline of the customer or its agent. “Receive” or “received” shall have a concurrent meaning.
 - 1.1.11. **“Dispatch” (by BTT)** shall be deemed to have occurred when the Product passes the flange connecting BTT’s pipeline or delivery hose to the intake hose of the Customer or its agent or nominated consignee (as the case may be).
 - 1.1.12. **“Waste”** shall mean all washings from tank and berth lines, slop drums and any other waste generated by virtue of the business rendered in terms hereof.
 - 1.1.13. **“Permanent Tankage”** shall mean the tankage stipulated on the Schedule of Charges
 - 1.1.14. **“Temporary Tankage”** shall mean tankage supplied to the Customer by BTT which is stipulated or agreed to be temporary or is by the nature of its provision designed to be temporary.
- 1.2. Headings of clauses shall be deemed to have been included for the purposes of convenience only and shall not modify or affect the interpretation of the agreement.
- 1.3. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include an association of persons having corporate status by statute or common law.
- 1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.
- 1.5. The rule of construction that the contract shall be interpreted against the party responsible for drafting or preparation of this agreement shall not apply.
- 1.6. The use of the word “including” followed by a specific example will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example.
- 1.7. A reference to a document includes an amendment or supplement to, or replacement or novation of that document.
- 1.8. Schedules, annexures or appendices to this contract will be deemed to be incorporated into, and form part of this contract, and expressions defined in this contract will bear the same meanings in such schedules, annexures or appendices, as the case may be which do not contain their own definitions.
- 1.9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
2. BTT will only undertake or render the Business in terms of this agreement subject to its Standard Trading Conditions as amended from time to time, which shall be deemed to be incorporated in and be part of this contract and any agreement between BTT and the Customer relating to and/or arising out of the storage of the Product.

SERVICES

3. BTT will, as required by the Customer:
 - 3.1. reserve tank space, subject to availability, at the Installation for the Customer; and/or
 - 3.2. receive into the tank or tanks reserved for the Customer the Product to be stored and ascertain the quantity received; and/or
 - 3.3. store the said Product; and/or
 - 3.4. discharge it from the tank or tanks; and/or
 - 3.5. render any other ancillary services requested by the Customer and/or incorporated into the Schedule of Charges.
4. Nothing herein contained shall impose any obligations on BTT to store any Product except in the reserved tankage allotted to the Customer or the tankage substituted therefor by BTT in terms of these Standard Trading Conditions.
5. Should additional or Temporary Tankage be required by the Customer then such tankage shall be allocated by BTT to the Customer subject to tank availability at the time. The rates for Temporary Tankage will be either as stipulated in the Schedule of Charges or failing their inclusion in the Schedule of Charges as negotiated between the parties. A minimum storage period of one month will to apply to all Temporary Tankage and one month's written notice of cancellation will be required.
6. If the quantity entering the Installation in bulk does not exceed the guaranteed amount stipulated in the Schedule of Charges, a surcharge to compensate for loss of business will be levied on the difference between the guaranteed Throughput and the actual quantity received. This surcharge which will be at the rate set out in the Schedule of Charges, will be calculated on the Throughput after a twelve-month period or at the end of the period agreed between the Parties whichever is the soonest.
7. BTT offers the Customer its services to undertake all the customs clearing of the Customer's product under the BTT "Standard Trading Conditions for Customs Clearing and Related Activities" and charges as reflected on the Customs Clearing rates Schedule. By utilising the BTT customs clearing services the Customer hereby specifically agrees to be bound by the conditions associated therewith. In addition, the Customer shall be required to enter into a separate agreement with BTT in respect of these services before such services are rendered.
8. The storage of Product is subject to all government and local authority regulations and to any requisite approvals by, or license conditions implemented by Transnet Limited or any substituted authority from time to time.

PAYMENT

9. The Customer shall pay to BTT all charges raised for these services and for any other services rendered by BTT, which charges will be in accordance with the Schedule of Charges provided to the Customer by BTT, failing which, in accordance with BTT's usual charges for such services.
10. Statements of account are rendered monthly and payment must reflect in BTT's bank account, in South African currency, free of commission, deduction or demand, in Durban, by the 25th day of the following month.
 - 10.1. The Customer hereby agrees that all invoices for the services or Business rendered in terms hereof, or in respect of any disbursements paid on the Customers behalf shall be transmitted electronically via email to the address stipulated in the Schedule of Charges.
 - 10.2. BTT shall under no circumstances be precluded from raising a charge and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous charge or charges, 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 charges were to follow.
 - 10.3. All and any moneys received by BTT from the Customer shall be appropriated by BTT in its sole and absolute discretion in respect of any indebtedness owing by the Customer to BTT, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
 - 10.4. Disbursement charges, including any payments due to the Customs Authorities, are raised monthly and payment must reflect in BTT's bank account by the last day of that same month, or such earlier date as may be notified by BTT as a result of a SARS requirement. All outstanding disbursement payments will attract an administration fee equal to 5% of the value of the outstanding disbursement payments to a maximum of R 100 000.00.
 - 10.5. In the event that payment is not made in terms hereof, then all amounts which have accrued to BTT shall become immediately payable, and all amounts accruing to BTT thereafter, including disbursement charges shall become immediately payable as and when they are raised as charges by BTT.
 - 10.6. In addition, all late payments are subject to interest charges raised at the prime overdraft rate of the BTT bankers from time to time plus 2%.
11. The Parties acknowledge that the National Energy Regulator of South Africa (NERSA) is authorised to approve the tariffs levied by BTT in respect of the storage and handling of product regulated in terms of the relevant legislation. It is hereby specifically agreed between the Parties that upon the approval of the said tariff by NERSA, BTT shall be entitled to vary the tariff stipulated in the schedule of charges as is necessary. In the event that the tariff approved by NERSA renders it economically unviable for BTT to continue rendering services in terms hereof, then BTT shall be entitled to cancel this agreement forthwith, without penalty.
12. Subject to negotiations with the Customer, BTT has the right to recover, by means of a legislative levy yet to be determined, those costs that may be forced upon it due to legislation from any source being promulgated.

13. BTT shall have a lien on the Products stored on behalf of the Customer. The customer hereby pledges to BTT the products stored on the Customer's behalf as security for any liability of the Customer to BTT, from whatever cause arising, including, without limiting the generality of this provision, any legal costs incurred by BTT in enforcing its rights against the Customer.
14. The Customer shall not, without the prior written consent of, and on the conditions prescribed by, BTT, pass any bond over or further burden the Product and shall ensure that BTT's interest in and to the Product is duly endorsed as such.
15. In the event of non-payment of any monies due by the Customer or its agent to BTT, BTT shall be entitled, without prejudice to any other rights to which BTT may have, and without further notice to the Customer, at the option of BTT, to sell the whole or any part of the Product, either by public auction or by private treaty, and to apply the proceeds of any such sale, after deducting all expenses thereof, in payment of or towards any sum due by the Customer to BTT.

DURATION

16. This Contract will commence on date of acceptance of the Schedule of Charges irrespective of the date of signature thereof and will remain in force for the period set out therein. Thereafter this contract will continue for an indefinite period subject to the right of either Party to terminate this contract by providing written notice as provided for in the Schedule of Charges and failing its inclusion therein on not less than 3 (three) months' written notice. Regardless of the duration of this contract it is hereby specifically recorded and agreed that any and all Business undertaken shall be on the Standard Trading Conditions.
17. After expiry of the period for storage agreed between the Parties, BTT may, in its sole discretion, either require the Customer to remove the Product or any part thereof after not less than seven days' written notice to that effect, which notice may be given prior to the expiry of the said period for storage, or continue to store the Product subject to these standard conditions and on such other terms and conditions as may be agreed between the Parties, and failing such agreement, subject to these Standard Trading Conditions at the rates and charges prevailing in respect of such storage immediately prior to the expiry of the said period plus an increase to be determined by BTT. Such increase shall be a percentage equivalent to or less than the proportion of the new period to one year expressed as a fraction of the prime rate charged by The Standard Bank of South Africa Limited at the commencement of such new period. In the event that the Customer does not remove the Product from the Installation as required by BTT, then the Customer shall be liable to BTT for, and indemnifies BTT against any and all damages sustained by BTT as a result thereof, including but not limited to consequential losses.
18. Nothing herein contained shall impose any obligations on BTT to store any Product for any period other than the period agreed to between the Parties.

GENERAL RIGHTS AND OBLIGATIONS

19. Should BTT be required to carry out the discharge of Products from or loading into vessels or the dispatch of Products or any other services on weekends or Public Holidays or otherwise outside the BTT normal working hours as stipulated in the Schedule of Charges, then such overtime worked shall be charged by BTT to the Customer in accordance with the Schedule of Charges. Overtime for the discharge or loading of product to road vehicles or rail cars shall be booked by 14H30 if booked by email or fax and 15h00 if booked via EDI of the same day required. Overtime which is not used, shall be termed 'aborted overtime', which shall be charged as per the Schedule of Charges.
20. BTT will advise the Customer of all quantities of Products received into storage and of all quantities dispatched from storage.
21. Unless otherwise arranged, BTT shall have the right at any time to withdraw any tank allocated to the Customer on the condition that another tank of suitable capacity is substituted therefor. Should such substitution necessitate pumping Product from one tank to another, the expenses of such pumping and of cleaning the tank from which the Products are pumped will be borne by BTT unless otherwise agreed.
22. Upon six (6) month's notice by BTT the Customer shall ensure that the tanks in which its product/s is being stored are empty in order to allow BTT to undertake statutory inspections. The Customer shall have no claim against BTT for any loss, either direct or consequent, arising from the loss of storage capacity, and BTT shall be entitled to remuneration in respect of the specific tank for the period of such inspection.
23. Upon reasonable notice by BTT the Customer shall ensure that the tanks in which its product/s is being stored are empty in order to allow BTT to undertake routine or special maintenance. The Customer shall have no claim against BTT for any loss, either direct or consequent, arising from the loss of storage capacity and BTT shall not be entitled to remuneration in respect of the specific tank for the period of the routine or special maintenance.
24. When pumping from ship to tank, the actual pumping is to be carried out by the ship without cost to BTT. In all other circumstances, the costs of pumping to or from the Installation are to be borne by BTT unless otherwise agreed.
25. When BTT undertakes to receive liquids in bulk from ship or to pump from shore to ship, the liquids must be free-flowing and be capable of being pumped at the minimum of 100 cubic metres per hour. This rate shall not be construed as a guaranteed pumping rate, but merely as an indication of the viscosity of the Product. Unloading or loading rates are subject to a special arrangement.
26. The Product to be received shall be freely pumpable at normal temperatures unless prior arrangements have been made for heating. If the Product to be received requires heating, then the heated Product must be freely pumpable. BTT will provide steam for heating the land tank at an additional charge to the Customer in accordance with the Schedule of Charges.
27. The vessels carrying or to carry the Customer's Product must be berthed at an appropriate wharf in the port allocated by the port authority for the time being in force and shall receive from or discharge into the pipelines provided alongside the ship.
28. When loading or offloading the Customer must ensure that the ship at all times provides and operates suitable lifting equipment so that the BTT hoses and other gear can be lifted on and off the vessel. Any offloading or loading of a ship will be undertaken entirely

- at the Customer's risk and the Customer hereby indemnifies and holds harmless BTT for any claim which may arise as a result of such activity, including claims for consequential loss.
29. Products received by ship, road or rail will be unloaded by BTT staff but the Customer shall have the right to be present to check all measurements.
 30. BTT will provide tanks and pipelines, which have been cleaned to the best of its ability.
 31. The Customer shall be obliged, on each and every occasion, to nominate an inspector who shall timeously before the arrival or dispatch of the Products examine the relevant tanks and pipelines and if these have been passed by the Customer's inspector, BTT shall have no further responsibility for any contamination due to the state of the tanks and pipelines before use. Should the Customer fail to nominate an inspector, or should the nominated inspector fail to inspect the tanks and/or pipelines, the Customer shall be deemed to have accepted the condition of the tanks and pipelines as satisfactory, and BTT shall have no responsibility due to contamination or losses that may arise from the use thereof.
 32. The delivery of the Product by the Customer to BTT shall render it under the control, care and custody of BTT. Dispatch of the product by BTT to the Customer or its agent or nominated consignee shall have the effect of releasing the product from the control, care and custody of BTT.
 33. The quantities received or dispatched are to be ascertained by measurement in the BTT tanks as carried out by BTT, and, if applicable, by or under the supervision of the Customs Authorities, and, if arranged by the Customer, by some recognised, agreed and approved independent person whose certificate of the quantity in the tank is to be accepted for all purposes. If any such independent gauger is employed, he shall be the Customer's agent for all intents and purposes and his fees and expenses must be borne by the Customer and any instructions given by such gauger to BTT or its representatives shall be deemed as being from the Customer. Any charge made by the Customs Authorities for attendance outside ordinary hours of their officers to supervise the unloading of the Product into or loading from the BTT bonded Installation shall be payable by the Customer. The Customer shall be at liberty on giving reasonable notice to BTT, to send a representative for the purpose of inspecting and checking the Customer's Product.
 34. BTT must be notified in writing 7 (seven) working days in advance of the arrival of the ship. Such notice must state the name of the ship, the expected date of her arrival, the value, quantity and description of the Product to be loaded or unloaded. BTT must be notified in writing at least 4 (four) working days in advance of the arrival of the ship of the tank allocations for the product to be received. Where the Products are of more than one quality, the foregoing information must be supplied in respect of each grade. The bills of lading must be marked "Notify Bidvest Tank Terminals" and one original copy together with a copy of the loading report must be sent to BTT as soon as possible after signing of the bills of lading.
 35. When Product is being received or dispatched by BTT by means of road vehicles or by rail, BTT must be notified in writing via facsimile or email before 14h00 on the preceding working day or via EDI before 15h00 on the preceding working day. However, should the tanks require heating at least three working days' notice must be given in writing.
 36. The costs of transporting Product to or from BTT shall be for the Customer's account unless otherwise agreed in writing.
 37. The Customer must provide BTT with all information or documents that may be required to enable BTT to comply fully with all regulations and/or statutory requirements.

LIABILITY

38. BTT does not accept any responsibility whatsoever in connection with the reception, handling, accommodation or demurrage of or relating to any ship carrying or to carry the Product, or delay in connection therewith or in relation to the discharge of cargoes, except such delays as may arise from the wilful misconduct of BTT, and provided that the ship shall be in readiness to discharge or receive the Product. The Customer or its agents shall, if it so desires, arrange for a representative acting on its behalf to attend on the ship immediately prior to the commencement of loading or discharging for the purpose of taking ullages and samples and any other steps necessary to identify and clear the Product before loading onto or discharging from the vessel.
39. The Products delivered will be received, stored and dispatched on behalf of and at the Customer's risk. BTT will not be responsible for any loss or damage, direct or consequential, due to fire, storm, tempest, explosion, mechanical breakdown, spontaneous combustion, accident, strikes, lockouts, riots, acts of enemies of the state, failure of railway, pipelines and/or roads, force majeure, leakage or handling losses, any deterioration or contamination in the quality and/or evaporation of the Products so stored with them or for any reason whatsoever, including an act or omission of its contractors or subcontractors, other than the wilful misconduct or gross negligence of BTT and the customer hereby indemnifies and holds BTT harmless in respect of any claims thus arising. Further and without in any way limiting any of the foregoing BTT will not be held liable for any loss or damage of any nature, including consequential loss arising out of or attributable to any negligent act or omission by BTT or any of its servants.
40. The Customer indemnifies and holds BTT harmless for any loss or damage and/or against any claim whatsoever by any third party directly or indirectly attributable to the negligence or other wrongful act of the Customer or any of its servants, agents or contractors or of any customer of the Customer or any of the servants, agents or contractors of such customer, occurring during the storage, loading, unloading or movement of the Product or at any other time whatsoever.
41. The Customer hereby warrants that its vessels or vehicles, the vessels or vehicles of its employees, contractors and/or agents are properly maintained, fit for their purpose and comply with all legislative, regulatory, safety and other applicable requirements.
42. The Customer warrants that it has full authority to engage the services of BTT and to contract on the basis of these Standard Trading Conditions on behalf of the owner of the Product and it hereby indemnifies BTT against any claim by the true owner of the Product or any party with an interest therein. The person representing the Customer in contracting with BTT warrants that he is duly authorised to do so.
43. BTT shall not be responsible for alteration of the Product due to the mixing or blending of the Products carried out in accordance with the Customer's instructions, or due to gradual deterioration of and/or inherent vice in the Product.

44. In any instance where BTT is found liable to the Customer by a Court of competent jurisdiction, such liability shall not exceed whichever is the least of the following amounts:
- 44.1. the value of the product evidenced by the relevant documentation declared by the Customer for customs clearing purposes;
 - 44.2. the value of the product declared for insurance purposes;
 - 44.3. R 500 000.00 per event giving rise to any loss or damage subject to an aggregate maximum of R 1 500 000.00 per annum regardless of the number of events giving rise to such loss or damage.
45. The Customer shall, at its own expense, be responsible for the procurement of all such insurance as it may deem necessary including insurance of its Product against all risks.
46. All costs incurred in restoring the tank or tanks or pipelines to the condition in which they were immediately prior to the storage of the Product on behalf of the Customer, shall be paid by the Customer.
47. The customer, its employees, contractors or agents shall at all times adhere to the safety procedures and standards of BTT.

GENERAL

48. Neither Party shall be entitled to cede any rights or benefits accruing to it in terms of an agreement between the Parties to any person, firm or company except with the written consent of the other Party being first obtained, provided however that BTT shall be entitled to cede and assign the agreement to any successor-in-title to the bulk liquid storage and handling business of BTT.
49. Any agreement between the Parties is deemed to have been entered into in Durban and is governed by South African law. The Customer consents to the jurisdiction of the appropriate Magistrates' Court in respect of any claim arising out of such agreement or from any breach thereof. BTT shall nonetheless be entitled in its discretion to bring proceedings in any other court of competent jurisdiction.
50. This contract, as well as amendments made from time to time, constitutes the entire agreement between the parties and supersedes all prior oral and written arrangements or agreements. The parties shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
51. No amendment or variation of this contract by the Customer, including this clause, shall be of any force or effect until reduced to writing and signed by the parties or their duly authorised representatives.
52. Unless the Parties agree, in writing, specifically to the contrary, these Standard Trading Conditions as amended from time to time shall prevail and shall govern the relationship between the Customer and BTT
53. No failure, refusal or neglect by a Party to exercise any rights hereunder or to insist upon strict compliance with or performance of another Party's obligations under this contract, shall constitute a waiver or novation of the provisions of this contract and a Party may at any time require strict compliance with the provisions of this agreement.
54. No indulgences or extensions of time or latitude which one of the Parties may allow to the other shall constitute a waiver by that Party of any of its rights, and it shall not thereby be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.
55. Each of the provisions of this agreement shall be considered as separate terms and conditions. In the event that this agreement is affected by any legislation or any amendment thereto or if the provisions herein contained 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 that illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not part thereof.
56. In the event of the Customer committing any breach of the provisions of this agreement, and failing to remedy such breach within 7 (SEVEN) days of receiving written notice from BTT calling upon it to do so BTT shall be entitled to forthwith cancel this agreement and/or institute action against the Customer for an order of specific performance and/or seek any direct and/or consequential damages suffered without derogating from any other rights or remedies which BTT may have in terms of this agreement or otherwise in law.
57. Should BTT instruct an attorney to enforce compliance with any of the terms of this contract, the Customer shall be liable for costs on an attorney and own client scale and shall be liable for such charges from the moment they are incurred, irrespective of whether or not BTT's claim is settled before proceedings are instituted.
58. BTT hereby nominates as its domicilium citandi et executandi, for the service of any legal process or notice in terms hereof 142 Wharfside Road, Island View, Durban.
59. The Customer hereby nominates as its domicilium citandi et executandi, for the service of any legal process or notice in terms hereof its address which appears on the Schedule of Charges.
60. Either Party shall have the right to vary its domicilium citandi et executandi to an alternative physical address within the Republic of South Africa by providing the other Party not less than 30 days' notice thereof in writing.