



PORT STEVEDORING (PTY) LIMITED
Reg no. 1994/000482/07

STANDARD TRADING TERMS AND CONDITIONS

1. Applicability

The terms and conditions as set out herein shall be incorporated into each and every transaction or series of transactions between the Company or any authorised subcontractor of the Company, and the Customer.

All and any business undertaken or advice, information or Services provided by the Company, whether gratuitous or not, is undertaken or provided in terms of these Standard Trading Conditions ("STC").

The Company reserves the right to amend its STC as and when required in its sole and absolute discretion by giving prior written notice of such amendment to the Customer.

2. Definitions and interpretation

- 2.1 The following definitions shall have the meanings assigned to them unless the context requires otherwise:
- 2.1.1 "accident": shall mean one accident or occurrence or a series of accidents or occurrences arising from one event;
 - 2.1.2 "agent": shall mean a person duly authorised to bring his principal into a binding relationship with others;
 - 2.1.3 "claimant": shall mean any person making any claim, including a recourse claim, against the Company arising out of the performance of its functions in terms of these conditions;
 - 2.1.4 "credit application": shall mean the written application for credit signed by the Customer or its duly authorised representative in terms whereof credit facilities were applied for and granted by the Company in favour of the applicant;
 - 2.1.5 "day": shall mean a 24-hour period from midnight to midnight;
 - 2.1.6 "person": shall mean any natural person, statutory body, company incorporated in terms of the law enforced at the place at which such company is incorporated, a firm, partnership, close corporation or association;
 - 2.1.7 "parties": shall mean the parties to this Agreement, being the Company and the Customer;
 - 2.1.8 "the company": shall mean Port Stevedoring (Pty) Ltd Registration Number 1994/000482/07 or any division of Port Stevedoring (Pty) Limited or any holding or subsidiary or associated company/ies which may render services to the customer;

2.1.9 “the customer”: shall mean the person or persons at whose request or on whose behalf the company undertakes any transaction, business, advice, service or mandate and is specifically the Applicant referred to in Company's Credit Application form, in terms whereof the Applicant applied to the Company for credit facilities in relation to the Services to be rendered by the company as stipulated herein;

2.1.10 “transaction”: shall include any agreement or business between the company or any authorised sub-contractor, and the Customer whereby the Company renders a service either gratuitously or otherwise which shall include any service, information or otherwise;

2.2 In respect of these Standard Trading Conditions :-

2.2.1 words which denote any gender shall import and include the other;

2.2.2 words which denote the singular shall import and include both the plural and vice versa;

2.2.3 headings to clauses are for reference purposes only and shall not aid in the interpretation of any clause.

2.2.4 Where an expression has been defined and such definition contains a provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement.

2.2.5 A reference to a statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or re-enacted from time to time.

3. **Scope**

It is recorded that the services to be rendered in terms of this Agreement includes but is in no way limited, to be of the nature of stevedoring services (“the Services”). The Services to be rendered, the goods and equipment to be supplied and the time and manner in which such Service, goods and equipment are to be provided, shall be agreed between the Parties and confirmed by the Company in writing (either by fax or e-mail). In the absence of such confirmation the Services shall be so rendered and provided in accordance with the norm for the particular Customer, cargo type and berth.

4. **Rates and charges**

4.1 The rates applicable in respect of the Services to be rendered shall be as agreed between the Company and the Customer and same shall be reduced to writing.

4.2 It is recorded that all rates to be quoted shall exclude lashing, dunnage and material supplied unless it has been specifically included.

4.3 Services or the supply of any materials or equipment shall be at the standard ruling rates of the Company from time to time, which are available for inspection.

4.4 In addition to the chargeable rates referred to above, the Company shall be entitled to charge for additional or wasted labour at rates either agreed between the Parties in writing or which are the usual and normal rates charged by the Company for similar work.

4.5 The rates referred to in this Clause 4 are in respect of sound cargoes of an ordinary nature to be handled by the Company in such manner as is the standard and acceptable practice under normal circumstances.

5. Increase In rates

It is recorded that the rates as quoted shall be increased proportionately if the Services to be rendered, or the goods and equipment to be supplied, or the time when and the manner by which such Services, goods and equipment are to be provided, are varied in any way by:

5.1 any additional charges which the Company agrees to incur and which are not quoted or agreed;

5.2 any increase in the Company's expenses which directly or indirectly affect the Services, goods or equipment to be provided hereunder by reason of any general increase in the wages payable by the Company or any other factor beyond the control of the Company including but not limited to alterations in port working hours, statutory cost increases, increases in storage, port charges, customs excise, value added tax or other duties, imports, overheads or charges.

The rates shall as from the dates of such increases be increased by an additional charge based on the ratio, which such increase bears to the Company's total costs.

5.3 A certificate issued by the auditors of the Company (who shall act as experts and not arbitrators) stating only the reason for such increase in general terms and the amount of such additional charge shall be conclusive and binding upon the Parties.

6. Payment

6.1 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company in cash immediately upon presentation of account all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

6.2 As security for the payment of any amounts due hereunder the Company shall have a general lien over all goods, bills of lading, permits or other documentation in its possession. Such lien shall not be affected by any temporary or partial extinction of any indebtedness due hereunder. The limitation in clause 13.2 shall mutatis mutandis apply to any loss of or damage to and goods retained in the implementation of the said lien.

6.3 Any agent who contracts with the Company on behalf of a Customer whose principal place of business is outside of the Republic of South Africa shall, in respect of any fees or disbursements invoiced by the Company to such foreign Customer, be jointly and severally liable for payment of the amounts reflected on such invoices. The Company may in its absolute discretion waive this provision, but will not do so without proof to it by such agent that the agent itself holds security for payment of such invoices, and such waiver in order to be valid must be in writing.

7. Interest

The Customer shall be liable to pay interest as follows:

7.1 In the event of any invoice rendered not having been paid within the period as stated thereon ("the Due Date"), the Customer shall pay interest calculated at 5% (five per centum) above the prevailing prime rate applied by the Standard Bank of South Africa and which shall be computed and capitalised monthly in advance from the date of the rendition of the said account, up to and including date of payment, both dates inclusive;

7.2 In the event of any dispute with regard to the prevailing prime rate of interest, or in the event of legal action having been taken against the Customer to recover amounts due in terms hereof, then and in such event a certificate issued by any Manager of Standard Bank of South Africa, shall be prima facie proof and evidence of such prime rate and of the date or period of application thereof.

8. Goods and equipment

8.1 The Company shall only supply such goods and equipment as are regularly used for the purposes referred to herein. In the event that additional or modified goods and equipment are required, adequate notice shall be given to the Company and the Company shall be reimbursed in terms of Clause 5.1 above for any additional expenses incurred. The Company shall be notified timeously of the unusual nature of any cargo, which requires special precautions.

8.2 Derricks, winches, cranes, lighting and electricity for hoppers and similar equipment (all in good order and condition and with adequate power for their operation) shall be provided by the Customer to the Company free of charge for the purpose as set out in herein and, unless otherwise agreed in writing by the Company, the Company shall not be responsible for the rigging of any of the appliances on a vessel.

9. Performance

9.1 Whilst the Company shall endeavour to meet all times and dates for performance as quoted by it, work undertaken by the Company shall be done when the Company is ready and able to do it, and neither the Company nor any of its servants or representatives shall be liable for any loss or damage of any nature, howsoever arising, occasioned by delays in performances which are not :

9.1.1 unreasonable, having regard to the surrounding circumstances;

9.1.2 caused by any disregard by the Company of its obligations, which amounts to wilful malfeasance or gross negligence.

9.2 The Company shall not be liable for any loss or damage caused to vessels or cargoes when required by the Master of any vessel or the Customer or any other Person to work in adverse weather conditions or other similar unfavourable working conditions.

- 9.3 The Customer warrants and undertakes that all cargoes shall be ready for loading or unloading, that it is bound by all times and dates for performance, that all necessary documentation shall be timeously and correctly prepared and safe and adequate access, loading and unloading facilities to cargoes and vessels shall be provided.
- 9.4 The Customer shall be obliged to ensure that all statutory requirements applicable to any vessel or cargo are complied with, and in respect of any non-compliance, if such non-compliance is the fault of the Customer or its servants or agents, indemnifies the Company against any liability whatsoever arising from such non-compliance.
- 9.5 The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any Person acting or purporting to act for and on behalf of the Company, whether negligently or otherwise, unless such statements representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorized by written resolution of the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

10. Vis major

Any occurrence commonly referred to as vis major which prevents performance of the whole or any part of the Company's obligations, and including, without limitation, acts of God, casus fortuitus, demnum fatale, inherent defect or vice, strike, lock-out, differences with workmen, acts of government or other superior authority, war, riot, civil disobedience, fire, flood and Accident shall, for so long as it continues, excuse performance by the Company. The Company shall without delay notify the Customer of such occurrence and the cessation of such occurrence, and may at its sole option cancel, without notice, and in writing and agreement or any part thereof which remains unperformed should this vis major as herein defined continue for more than 15 (fifteen) days, by giving written notice to the Customer.

11. Third parties

- 11.1 The Company reserves the right to use representatives such as sub-contractors and agents in connection with the provision of any Services, goods and equipment hereunder. Where the Company uses independent third parties to perform all or any of the functions required of the Company:
- 11.2 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part of all the relevant Services, or by the Company employing, or entrusting the Goods or 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.

- 11.3 The Company shall, if it has in its reasonable discretion, been suitably indemnified against all costs (including attorney and client costs) which may be incurred or awarded against the Customer and has been provided with adequate security in that regard, take such action against the third party or alternatively, may cede to the Customer any claim or right or cause of action which the Company may have against the third party in that regard.
- 11.4 The Company shall not be liable for the acts of omissions of such sub-contractors or agents to any greater extent than it would have been liable had the acts or omission been those of the Company itself; and
- 11.5 no such sub-contractor or agent shall be liable to any greater extent than the Company would itself be had the acts or omissions been its own.

12. Agents

- 12.1 Any agent entering into an Agreement with the Company is deemed to have warranted and undertaken that it has the necessary authority to act on behalf of the Customer and to bind the Customer accordingly. In the absence of such authority the agent shall itself be liable for any charges raised against the Customer.
- 12.2 Notwithstanding anything else contained elsewhere in these terms and conditions or any obligation of any other party to the Company arising there from the customer shall be liable in respect of all the obligations incurred in terms of these standard trading terms and conditions. The liability of the Customer shall not in any way affect or detract from the liability of any other person to the Company arising out of these terms and conditions.

13. Risk

- 13.1 Unless specific written instructions are received by the Customer timeously, the Company may determine in its absolute discretion, the time and manner of performance.
- 13.2 All Services, goods and equipment are provided in terms hereof entirely at the sole risk of the Customer. Neither the Company nor its servants or agents shall be liable for any loss or damage of any nature whatsoever arising out of any lesser default by the Company or its servants or agents other than gross negligence or wilful malfeasance of the Company or its servants or agents acting within the course and scope of their duty.
- 13.3 No responsibility shall rest with the Company, its servants or representatives if any Services, goods or equipment are not in accordance with any law or regulation or in breach of third party rights and the Customer warrants and undertakes that the vessels and cargoes in respect of which such Services, goods and equipment are to be provided do not violate, infringe or contravene any law or regulation or rights of third parties and the Customer indemnifies and holds the Company, its servants and

representatives harmless against any loss or damage of whatsoever nature and howsoever arising that they may suffer by reason of any such violation, infringement, contravention or omission.

- 13.4 The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him/her any liability in connection with the rendering of any Services which are the subject of these trading terms and conditions and hereby waives all and any such claims provided that this clause shall not be applicable where the director, servant or employee of the Company was grossly negligent.

14. Authorisation

- 14.1 If permissible in terms of any bill of lading or any other contract of carriage, the Customer shall procure and obtain on behalf of the Company:
- 14.1.1 such benefits, limitations of liability, indemnities and the like as may accrue to the Customer in terms of any bill of lading or contract of carriage relating to the cargo which is dealt with by the Company and/or
- 14.1.2 Notwithstanding the provisions contained elsewhere in these standard trading terms and conditions, the Customer shall, in addition thereto, accept such benefits, limitations of liability, indemnities and the like on behalf of the Company.
- 14.2 In the event that the Customer is not the issuer of any bill of lading or not the carrier in terms of any contract of carriage in terms of which the cargo was dealt with by the Company in terms hereof, the Customer shall procure that the issuer of such bill of lading or carrier in terms of the contract of carriage shall extend any benefits, limitations, indemnities and the like which may accrue in terms of such bill of lading or other contract of carriage to the Company.
- 14.3 The Company hereby expressly authorises the Customer or the issuer of any bill of lading or contract of carriage referred to in clauses 14.1 and 14.2 above, to act for such purposes only on the Company's behalf and to accept such benefits, limitations, indemnities and the like to the extent necessary for such person to fulfil the obligations undertaken by the Customer in terms of paragraph 14.1 and 14.2.
- 14.4 The Company hereby ratifies any contract which the Customer issuer or carrier may conclude on the Company's behalf in terms of this clause and accepts any such benefit, limitations of liability, indemnities and the like which may be stipulated for the benefit of the Company by such parties in terms of this clause 14.
- 14.5 The Customer hereby indemnifies and holds the Company, its servants and representatives harmless against any loss or damage of whatsoever nature and howsoever arising (including without limitation loss or damage arising out of damage to cargo) to the extent that such loss or damage exceeds the amount that would have been payable by it had the Company enjoyed all the Customer's benefits, limitation of liability, indemnities and the like referred to in this clause. The liability of the Company or its servants or representatives shall not exceed the amount to which the insurers or carrier's liability is limited in terms of the relevant bill of lading or contract of carriage, as the case may be.

15. **Limitation of liability**

- 15.1 The Customer must give immediate written notice of any incident which may lead to a claim for loss or damage, injury or death.
- 15.2 The Company shall not be liable for any consequential loss nor for any other loss or damage, injury or death except where such loss or damage, injury or death is a result of proven gross negligence on the part of the Company, its employees and/or subcontractors.
- 15.3 The Customer indemnifies the Company against any third party claim, liability or related expense to the extent that such claim or liability exceeds the Company's liability as provided herein.
- 15.4 The Customer acknowledges that the Company has not and does not assume, the responsibility for insuring the Goods at its own instance or on behalf of the Customer and it is further recorded that any quoted price or rate bears reference to and does not include any insurance premiums

16. **Lien**

The Customer hereby acknowledges that the Company holds a lien over the Customer's goods in its possession in respect of any amount owing, whether overdue or otherwise. Should the Customer owe any monies to the Company which are overdue, and whilst holding its goods, the Company may inform the Customer that it intends to exercise its lien over such goods. If the Customer, in such event, nevertheless fails to pay such monies due, (in which event all monies due shall be deemed to be immediately payable without notice) then the Customer hereby irrevocably nominates, constitutes and appoints the Company as its lawful agent and representative to sell on its behalf such goods as advantageously as possible and then to retain such amounts owing by the Customer. Any excess amount shall, however, be paid to the Customer after deduction of monies due and charges plus interest and the costs of such sale. In the event of such sale, the Company is furthermore hereby authorized to deliver the goods and ownership therein to the purchaser and then to issue a valid receipt for the proceeds of such sale.

17 **Dispute resolution**

- 17.1 In the event of any disagreement arising out of these standard trading conditions or the interpretation thereof, while in force or after its termination and the Parties being unable to reach agreement, the matter will be referred to the Executive Management of each of the Parties who shall endeavour to settle the dispute through bona fide negotiations.
- 17.2 In the event that the Parties are still unable to reach agreement through the process referred to in Clause 17.1 above, it is hereby agreed that a dispute shall be submitted to and decided by arbitration in accordance with the rules of the arbitration Foundation of Southern Africa ("AFSA"), by an arbitrator agreed upon between the Parties or, failing agreement, appointed by the AFSA.

- 17.3 Each Party is entitled to give notice of arbitration, provided that such notice shall be given within 7 (seven) days and not later than 30 (thirty) days from the date that the Chief Executive Officer of the Parties or their nominees first met as contemplated in Clause 17.1; unless the Parties agree to extend the time periods referred to herein.
- 17.4 Unless otherwise agreed by the Parties in writing the arbitration shall be held in Cape Town, in the Republic of South Africa;
- 17.5 Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 17.6 The Parties shall use their best endeavours to expedite the arbitration process.
- 17.7 Subject to the other provisions of this clause, arbitration shall be held in accordance with the provisions of the Arbitration act, Act No 42 of 1965, as amended.

18. Confidentiality

The Parties undertake to keep confidential the contents of this document including, generally, all matters relating to any operations undertaken by either of them pursuant hereto and not to disclose such information to any third party save with the written consent of each other or otherwise where such disclosure is expressly required by law or for the purpose of the audit of any of the accounts of either of the Parties or for purposes of making such reports as may be required to be made to any authority including any other person vested under law with any of the powers and authorities of the aforementioned authority, in relation to the subject matter hereof.

19. Anti bribery and anti corruption

The Parties are committed to sustainable and ethical business practices and to this end, the Company warrants and represents that when rendering the Services to the Customer, it shall not:

- 19.1 offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier; or
- 19.2 make or offer, directly, any payment, gift or other advantage to a public official or any other person with the intention of influencing them and obtaining or retaining an advantage in the conduct of business.

20. Compliance with laws and policies

The Parties shall at all times:

- 20.1 comply with all international codes and conventions, national legislation, regulations and/or any other statutory or regulatory directives, bylaws and consents including but not limited to codes, conventions, laws and regulations concerning the protection of the environment, transportation, labour and social responsibility;

- 20.2 ensure that it is in possession of and that it observed the terms and conditions of all relevant permits, licences and approvals of public authorities in relation to the activities carried out by it under these Standard Trading Conditions;
- 20.3 observe the provisions of any written collective agreement that may become binding on either of the Parties, its respective employees and a registered trade union;
- 20.4 ensure compliance with SOLAS Chapter VI and the relevant IMO guidelines relating to the mandatory verification of the gross weight of containers prior to loading same on vessels, which came into effect on 1 July 2016; and
- 20.5 save for the above, ensure compliance with all applicable regulatory requirements applicable to its respective business.

21. Default

In the event of the Customer failing to pay on Due Date all or any amounts payable hereunder, or should it be in default or breach of any other term or condition of this Agreement, the Company may, without prejudice to its other legal rights and remedies, including the right to claim payment of damages and/or exercise its lien over the Customer's Goods in its possession, be entitled either:

- 21.1 to cancel this Agreement by notice in writing to the Customer and to claim damages; and/or
- 21.2 to claim specific performance and/or payment of all the Customer's obligations in terms hereof; and/or
- 21.3 to claim damages which it may have suffered due to the Customer's breach of contract. The Company shall, however, not be entitled to exercise the rights granted to it in terms hereof, unless the Customer received notice in writing to make the payment, or to remedy such default or breach and the Customer failed to make the payment or to remedy the default or breach within a period of 24 (twenty four) hours reckoned from the time of receipt or deemed receipt of such notice.

22. General

- 22.1 No extension of time or waiver or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.
- 22.2 The terms of this Agreement form the sole present and future contractual relationship between the Parties and no variation of this Agreement shall affect the terms hereof unless such a variation shall be reduced to writing and signed by the Parties hereto. It is agreed that this proviso may not, under any circumstances, be revoked, varied amended or cancelled verbally.
- 22.3 In the implementation of the provisions of this Agreement, the Parties undertake to observe the utmost good faith and they warrant that in their dealings with each other they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of each other.

- 22.4 Should it at any time appear that any other proviso, agreement or arrangement be in conflict with the terms and conditions of this Agreement, then and in such event such conflicting proviso, arrangement or agreement shall be null and void and *pro non scripto*, unless such be recorded in writing, duly signed by both Parties and have the specific intention to vary or amend such conflicting provision in this Agreement.
- 22.5 Should legal action be instituted against the Customer occasioned by its failure to perform and/or its breach of this Agreement and/or other agreement, the Customer shall in such event be liable to pay all such legal costs and expenses calculated on Attorney and Own Client scale.
- 22.6 The rule of interpretation that an agreement is to be interpreted against the party responsible for drafting and/or preparation of such agreement does not apply to these Standard Trading Conditions.

23. Notices and domicilium

ADDRESSES: The Parties select as their respective *domicilia citandi et executandi* (“*domicilium*”) and for the purpose of giving or sending any notice provided for or required in terms of these Standard Trading Terms the addresses as set out in the Credit Application or such other address or telefax number as may be substituted by notice given herein required.

NOTICES: Any notice addressed to a Party at its physical address shall be sent by prepaid registered post, or delivered by hand or sent by telefax.

DEEMED RECEIPT: Any notice shall be deemed to have been received: -

- 23.1 if posted by prepaid registered post, 7 (seven) days after the date of posting thereof,
- 23.2 if hand delivered, on the day of delivery,
- 23.3 if sent by telefax, on the date and time of sending of such telefax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such telefax, or should no postal facilities be available on that date, on the next business day.
- 23.4 The Parties record that, whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of hereof, nor any amendment or variation hereof may be given or concluded via e-mail.

24. Governing Law

These trading terms and conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms t hereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

25. Submission to jurisdiction

The Parties consent to the jurisdiction of the Magistrate's Court with jurisdiction in terms of Section 28 of the Magistrate' s Court Act 1944, in regard to any legal proceedings instituted in connection with this Agreement; provided that any party shall be entitled to institute such proceedings in any division of the High Court of South Africa in which jurisdiction is vested in accordance with the jurisdictional laws of South Africa where such proceeding would, but for the foregoing, fall outside the jurisdiction of the Magistrate's Court.

26. Severability

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

27. Good faith

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