

# SANTOVA STANDARD TERMS AND CONDITIONS (STC'S)

INSTRUCTION FOR CUSTOMER AND USER OF THE SANTOVA SERVICES

## ATTENTION ALL CUSTOMERS

The Santova account application and terms, the terms and conditions of contract, the Estimate of Fees, the Santova Privacy notice and POPIA section 18 processing notice, set out the terms and conditions of contract for the use of Santova International Trade Solutions (Pty) Ltd's Services.

(These documents are hereinafter collectively referred to as the STCs)

Before using the Santova International Trade Solutions (Pty) Ltd's Services and electronic platforms, including its website, please read these STCs carefully as they govern the Services provided by Santova.

These STCs form in whole and to the exclusion of any other contractual terms, the contract as between the Customer and Santova and any and all Services provided by Santova are strictly subject to these STCs.

By virtue of the use by the Customer of the Santova Services, these STCs are explicitly accepted by the Customer, the Customer acknowledging that it has read, understands and accepts the STCs and that it will be bound by the STCs.

To the extent not otherwise regulated in these STCs, any Customer or third-party terms and conditions which attempt to regulate the Services which are provided by Santova are explicitly rejected, including any waybill, bill of lading, consignment note or other transport document.

The **Santova Privacy Notice** and **POPIA Processing Notices** are accessible at: [www.santova.com](http://www.santova.com) or via the following hyperlink: <https://www.santova.com/about-santova/data-protection/>

## ATTENTION SPECIFIC INSTRUCTIONS TO CONSUMERS BEING:

In terms of the **CONSUMER PROTECTION ACT, 68 OF 2008 (CPA)**: INDIVIDUAL CUSTOMERS OR LEGAL ENTITIES WHO HAVE AN "ANNUAL TURNOVER OR ASSET VALUE" AS DEFINED UNDER THE CPA, OF R2 000 000.00 OR LESS.

In terms of the **NATIONAL CREDIT ACT, 34 OF 2005 (NCA)**: INDIVIDUAL CUSTOMERS OR LEGAL ENTITIES WHO HAVE AN "ANNUAL TURNOVER OR ASSET VALUE" AS DEFINED UNDER THE NCA OF R1 000 000.00 OR LESS.

A number of clauses under these STCs house and contain onerous clauses, where risk is passed by Santova to the Customer / Consumer.

As per the CPA and the NCA, Santova is required to draw the Consumer's specific attention to these onerous clauses. In order to comply with this requirement, Santova has UNDERLINED EACH CLAUSE WHICH MAY BE ONEROUS and DIRECTS THAT ALL CONSUMERS PAY PARTICULAR ATTENTION TO THESE CLAUSES.

Following the above, the Consumer acknowledges and accepts that it has read and understands all these onerous clauses and accepts that these STCs, including all onerous clauses, which it has familiarised itself with, form in whole and to the exclusion of any other contractual terms, the contract as between the Consumer as Customer and Santova and any and all Services provided by Santova, are strictly subject to these STCs.

By virtue of the use by the Consumer as Customer of the Services, these STCs are explicitly accepted by the Consumer, the Consumer acknowledging that it has read, understands and accepts the STCs and that it will be bound by the STCs.

To the extent not otherwise regulated in these STCs any Consumer, Customer or third-party terms and conditions, which attempt to regulate the Services which are provided by Santova, are explicitly rejected, including any waybill, bill of lading, consignment note or other transport document.

THE CONSUMER HAS AN OBLIGATION TO NOTIFY SANTOVA WHEN IT EXCEEDS THE CPA OR NCA THRESHOLDS REFERRED TO ABOVE.

## 1. INTERPRETATION AND DEFINITIONS

### 1.1 Definitions

For the purposes of these STCs and related contractual terms, unless inconsistent with the context, the following words shall have the following meaning:

**"assets"** means all assets of the Customer held by Santova which form part of the Services which are subject to these STCs, including without detracting from the generality thereof the Goods, customs and excise documents, shipping documents, bills of lading, insurance policies, claims or payments, commercial invoices, certificates as to weight, quality, or any other assets such as packing material which make up and comprise the Services;

**"Applicable laws"** means all and any laws and conventions, treaties and regulations, codes or legal procedures, as amended from time to time, whether applicable in South Africa or otherwise which apply to and regulate the Services and the Financial Services;

**"carriage"** means the conveyance of the Goods by whatever means appropriate, including by vehicle or rail on land, by aircraft in the air, or by ship on the sea;

**the "carrier"** means transporter, who is tasked with transporting the Goods whether by road, rail, sea or air;

**"Consequential loss"** means any indirect form of loss or damage suffered by a party and arising from a breach of the STCs, any other agreement or contract which may relate to the Services, a delictual act or claim in tort, or arising under or from any other basis in law or equity including without limitation any loss of profit, loss of revenue, loss of production, loss of income or earnings, loss or denial of opportunity, loss of goodwill, loss of access to markets, indirect or remote or unforeseeable loss, loss of business reputation, or publicity, or any similar loss which was not contemplated by the parties at the time of using or providing the Services;

**"Consumer"** means any individual, or an entity who has an

- "annual asset value or turnover" as defined under the **Consumer Protection Act, 68 OF 2008 (CPA)**, of R2 000 000.00 (Two Million Rands) or less, as per the definition of Consumer, housed under the CPA; or
- "annual asset value or turnover" as defined under the **National Credit Act 34 of 2005 (NCA)**, of R1 000 000.00 (One Million Rands) or less, as per the definition of Consumer housed under the NCA,

who receives, or at whose request, or on whose behalf, or for whom Santova undertakes any business, or provides any advice, information or Services, whether gratuitously or not;

**"Customer"** means any person or persons who has completed the Santova account application and terms and who Santova has agreed to provide the Services to under the Santova account application and terms, and / or who receives the Services or any benefit thereof, or on whose behalf or for whom Santova undertakes any business, or provides any advice, information or Services, whether gratuitously or not, including a Consumer and any owner or holder of the assets or Goods, or a holding certificate or similar document evidencing the receipt of Goods, and including any employees, agents, officers, or contractors of the Customer;

**"Dangerous Goods"** means any of the Goods or cargo or packaging comprising the Goods which is a waste product, is noxious, hazardous, inflammable, explosive, offensive, radioactive, or which may become a waste product, noxious, hazardous, inflammable, explosive, offensive, or radioactive or any Goods which may become of such a nature that it is capable of causing damage or harm to any person or property by virtue of its properties;

**"Data message and / or electronic communication"** means data generated, sent, received or stored by electronic means and includes voice, where the voice is used in an automated transaction, and a stored record;

**"Debts"** means all and any amounts which may be owing as a result of the provision of the Services, whomsoever owed to and on any account whatsoever in relation to the Services;

**"ECTA"** means the Electronic Communications and Transactions Act, 25 of 2002;

**"Estimate of Fees"** means the Santova Estimate of Fees and / or costings in respect of the Services, as set out under a proposal, quote, offer, Data message, verbally conveyed to the Customer or set out under a presentation and / or under a document or Data message headed "Estimate", "Estimate of fees" or "Tariff Increase" provided to the Customer for each shipment, on an annual basis or from time to time, and as may be amended from time to time;

**"Fees"** means the sum total of procurement fees, project management fees, agency, freight, documentation charges, information technology related charges, disbursement and facility fees, interest, credit underwriting fees, duties, customs, VAT, levies and taxes, other disbursements and imposts, any sample fees incurred, deposits, unpaid freight or outlays of whatsoever nature, levied in respect of the Services and charged by Santova and its agents, contractors, subcontractors or any other third party;

**"Financial Services"** means the procurement or arrangement of credit facilities through third party credit underwriters and banking institutions, for the purposes of financing charges and disbursements, subject to certain terms and conditions as set out by those underwriters, institutions and Santova;

**"Inland Transport"** means any Services conducted by Santova which involves the carriage of the Goods by road or rail;

**"Instruction"** means an instruction received by Santova from the Customer to initiate and proceed with the Services, which Instruction at the choice of the Customer may be relayed to Santova telephonically, verbally, face to face, by a Data message, including email, or in any other written format, whatever the case may be;

**the "Goods"** means any goods of any nature whatsoever in respect of which Santova provides the Services, and includes without limitation where applicable, the assets, any container, transportable tank, flat pallet, package, parcel, envelope or any other form of covering, packaging, container or equipment used in connection with or in relation to such Goods;

**the "owner"** means the owner of the Goods which form the subject matter of the Services and any other person who is, or who may have, or acquire any title or interest, financial or otherwise, in the Goods;

**the "parties"** means Santova and the Customer and where applicable the owner;

**the "Services"** means the services provided by Santova including, without limitation, end to end supply chain solutions; procurement; project management (including research, planning, organising and delivery); freight forwarding and logistics services, such as the handling, transportation, consolidation, forwarding and clearing, receipt, warehousing, arranging insurance, courier, storage and dispatch of Goods, negotiating and arranging for the requested Services, booking the required or requested carriage in respect of the Goods, handling, packing or distribution of Goods, storage and warehousing of the Goods where requested or required, the issuing of air, sea and other transport documents in respect of the carriage of the Goods, the clearing and forwarding of the Goods, organising for the collection of the Goods where required, attending to the release of the Goods against presentation of appropriate documents and information; consolidation of all paper work and costing's, including all Fees and invoicing; and any related and ancillary services in respect of the Services and the providing of advice and information relating thereto, including but not restricted to, the receipt of an enquiry for procurement, project management, logistics or freight forwarding services, quoting and providing an Estimate of Fees in respect of such services that Santova performs or may be required to perform for and on behalf of a Customer, or any recipient or beneficiary of the Services, or the owner, whether such Services are provided for benefit, in exchange, for reward, or gratuitously provided, and which where applicable will include the Financial Services, Santova may provide procurement and / or project management services without providing freight forwarding and logistics services;

**"Santova"** means Santova International Trade Solutions (Pty) Ltd, Registration No. 2005/042259/07 together with its successors in title, or assigns;

**"Santova Group"** means all and any entities within the Santova Limited group of companies;

**"Santova Limited"** means Santova Limited, a JSE listed company, bearing Registration No. 1998/018118/06 and its successors in title, or assigns;

**"Santova account application and terms"** means the standard Santova account application form completed by the Customer and signed declaration read together with the Estimate of Fees and the Santova acceptance of the Santova account application and terms, which acceptance is done by way of a letter addressed to the Customer which letter sets out the relevant credit limit and payment terms which Santova has agreed to grant to the Customer and which acceptance is sent to the Customer by way of a Data message or in any other written format, whatever the case may be;

**"Sea Transport Document"** means—

- a bill of lading;
- a through bill of lading;
- a combined transport bill of lading;
- a sea waybill; or
- any consignment note, combined transport document or other similar document, relating to the carriage of goods either wholly or partly by sea, irrespective of whether it is transferable or negotiable;

**the / these "STCs"** mean the terms and conditions of contract set out hereunder including the **Santova account application and terms** where applicable, the Estimate of Fees, and Instruction, the Santova Privacy terms, and the Santova POPIA processing notice, all which together govern the Services which are provided by Santova and which bind and apply to the Customer, the owner of the Goods and / or any recipient of the Services, assets, or the Goods;

**"VAT"** means Value Added Tax levied at the prescribed rate as prescribed as per the Value Added Tax Act, 89 of 1991.

### 1.2 Interpretation

- 1.2.1 The head notes to the clauses of the STCs are inserted for reference purposes only and shall in no way govern or affect the interpretation of these STCs.
- 1.2.2 Unless inconsistent with the context, an expression which denotes: -
  - 1.2.2.1 any gender includes the other genders;
  - 1.2.2.2 a person includes individuals and created legal entities including public, private, corporate or unincorporated entities, and vice versa;
  - 1.2.2.3 the singular includes the plural and vice versa.
- 1.2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition and interpretation clause, effect shall be given to it as if it were a substantive provision of this agreement.
- 1.2.4 Where any term is defined within the context of any particular clause in these STCs, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these STCs, notwithstanding that the term has not been defined in this interpretation clause.
- 1.2.5 Reference to any Applicable law or to any section or provision or regulation thereof, includes any statutory modifications, re-enactments, substitutions, or replacements thereof and all laws inserted thereunder.
- 1.2.6 For the purpose of any limitations of liability and / or indemnities contained under these STCs and to the full extent permitted by law, where reference is made to Santova in the case of any limitations of liability or indemnities, such reference shall be deemed to include and be in favour of Santova, Santova Limited, the Santova Group, and the Santova, Santova Limited and Santova Group directors, employees, agents, contractors and subcontractors.

### 1.3 Communications

- 1.3.1 For the purposes of all and any communications between the parties, but subject to the provisions of clause 2.3.1, 8.3.2.1, 16.3, 17.1.2 and 22.3, Santova and the Customer agree that they will communicate with each other by way of, or using Data messages and electronic communications, the parties acknowledging and agreeing that as per the provisions of ECTA, such Data messages and / or electronic communications will have the same status and legal weight as a written form of communication, the parties agreeing and undertaking that they will not contest the validity of any Data message and / or electronic communications, including any contracts and these STCs on the basis:
  - 1.3.1.1 that they were concluded by way of a Data message or electronic communication;
  - 1.3.1.2 that the original records are in a Data message or electronic form, or
  - 1.3.1.3 that no signature(s) evidences such STCs and / or contracts.

- 1.3.2 Notwithstanding the provisions of any legislation or other law regulating Data messages and / or electronic communications and transactions, and in particular ECTA, Santova shall only be deemed to have received electronic data and / or Data messages when such electronic data and / or Data messages have been retrieved, processed and read by the Santova addressee and the Santova addressee, or another on his or her behalf, has acknowledged that it has received such communication in writing.
- 1.3.3 Under no circumstances whatsoever and howsoever arising, including negligence on the part of Santova or its employees, shall Santova be liable for any loss or damage arising from or consequent upon the provision by Santova of incorrect information to the Customer in whatever manner and / or form, including electronically communicated information or Data messages, where such incorrect information or Data messages have been generated by and provided to Santova by any person with whom Santova conducts business with, and / or provided to Santova by any other third party.
- 1.3.4 Santova shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and / or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of Santova, of the Santova computer systems and / or software programmes, provided and / or operated by Santova and / or by any person with whom Santova conducts business with, and / or any third party, and which systems shall include but not be limited to, Santova's internet based suite of packages or electronic automated information service provided to its Customers.

#### 1.4 Inconsistent or conflicting terms

- 1.4.1 Whilst the terms and where applicable any conditions set out under these STCs are to be read together with the Santova account application and terms, the Santova Privacy terms, the POPIA processing notice, the Estimate of Fees and the Instruction, all which together govern the Services which are provided by Santova and which bind and apply to the Customer, the owner of the Goods and / or any recipient of the Services, assets or the Goods, where there is any inconsistency between these terms and any conditions set out under these documents, the relevant documents and / or agreements shall be considered, interpreted, and applied in the following descending order of priority:
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|---------|--|
| 1.4.1.1 | the STCs;                              |
| 1.4.1.2 | the Estimate of Fees;                  |
| 1.4.1.3 | the Instruction;                       |
| 1.4.1.4 | Santova account application and terms; |
| 1.4.1.5 | Privacy terms;                         |
| 1.4.1.6 | POPIA processing notice.               |

## 2. GENERAL PROVISIONS IN RESPECT OF SERVICES

### 2.1 Nature of the Services

- 2.1.1 The provision of the Services is agency in nature, in terms of which Santova in its capacity as an agent acting on behalf of the Customer, the Customer acting in its capacity as the Principal, will provide the Services.
- 2.1.2 Santova is not a common carrier, a public carrier, or a depository for or without reward and will accept no liability as such.

### 2.2 Risk

- 2.2.1 The Services will be performed and provided at the sole risk of the Customer.

### 2.3 Services subject to STCs only

- 2.3.1 The Services provided by Santova will, without exception be subject to the STCs, which STCs apply to the exclusion of any other terms and conditions, including without limitation any other general or standard trading terms and conditions of the Customer or owner of the Goods and / or third party agreements, including any contractor or subcontractor terms, unless otherwise specifically agreed to in writing by Santova and which agreement is signed by a Santova Director, a member of Santova's Executive Committee and the Customer. Notwithstanding clause 1.3, for the purposes of this clause 2.3.1, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a Data message as defined in ECTA and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention, by the Customer, a Santova Director and a member of Santova's Executive Committee.

### 2.4 Customer and Owner of Goods both bound

- 2.4.1 Where the Customer is acting as the authorised agent of the owner of the Goods, then in such case the STCs will apply to and bind both the Customer and the owner by virtue of the provision and / or receipt of the Services or the assets or Goods and / or any benefit thereto, and Santova may, at its election, exercised in its sole discretion, claim performance and / or payment, from the Customer and / or the owner / principal, or any one of them, on a joint and severable basis.

### 2.5 Provision of the Services

- 2.5.1 Santova at its election may provide the Services either itself or it may procure that any member of the Santova Group provides the Services upon and subject to the terms and conditions contained herein, which terms and conditions shall apply *mutatis mutandis* to the Customer and any such member of the Santova Group.
- 2.5.2 Santova at its election and in its sole discretion, for reasons which it need not disclose, may decline to perform the Services, which reasons, include without detracting from the generality thereof:
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|---------|---|
| 2.5.2.1 | where Santova is of the view that such service will expose it or its employees, the Santova Group, its agents, contractors or subcontractors to unnecessary risk; |
| 2.5.2.2 | where the Customer has failed to comply with the STCs including the Santova account application and terms;  |
| 2.5.2.3 | where the Customer has refused to provide Santova with details, which are required for the performance of the Services, including personal information;           |
| 2.5.2.4 | where Santova, Santova Limited, the Santova Group or the Santova agents, contractors or subcontractors are of the view:   |

- |           |   |
|-----------|---|
| 2.5.2.4.1 | <u>that the Customer is a credit risk to Santova, Santova Limited, the Santova Group or to the Santova agents, contractors or subcontractors;</u><br>or |
| 2.5.2.4.2 | that the Customer's financial position does not warrant the awarding of a credit facility.  |

### 2.6 Authority to conclude the contract and commit to STC'S

- 2.6.1 The Customer warrants that it has the authority to conclude this contract with Santova and commit and accept to these STCs either in its capacity as owner of the Goods, or as the authorised agent of the owner of the Goods.

## 3. SANTOVA CONTRACTING AS AN AGENT ON BEHALF OF CUSTOMER

### 3.1 Customer is Santova's principal

- 3.1.1 By virtue of the Services being procurement, project management, transportation and/or financing of the Goods where Santova is not the owner and the Customer is the owner or acts on behalf of the owner, the Customer enters into this agreement in its capacity as Santova's principal, it being agreed and accepted that Santova is acting on behalf of and in accordance with the instructions of the Customer.
- 3.1.2 When providing the Services, the Customer accepts that Santova will act on behalf of the Customer in its capacity as the Customer's agent and duly authorised representative.
- 3.1.3 In accordance with the above, the Customer in its capacity as principal, mandates Santova to provide

the Services, which Services may at Santova's discretion be done in Santova's own name or in the Customer's name, but always on behalf of the Customer, which will include performing all and any required formalities and concluding any such agreements as are necessary for such purpose.

### 3.2 All contracts, including subcontracts, entered into by Santova as agent will bind Customer as principal

- 3.2.1 By virtue of the nature of the Services provided to the Customer, Santova will contract for and on behalf of the Customer, as agent, the Customer acknowledging that:
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| 3.2.1.1 | <u>any and all such contracts will bind the Customer to the agent, contractor, subcontractor, or any third party, as the case may be, in its capacity as Principal;</u>   |
| 3.2.1.2 | <u>Santova will not under any circumstances be liable for the performance of any contract which it will, or has entered into, for and on behalf of the Customer;</u>  |
| 3.2.1.3 | <u>Santova will have no responsibility or liability to the Customer for any negligent, grossly negligent or intentional act or omission of any agent, contractor, subcontractor or third party in the performance of the contracted Services.</u> |
- 3.2.2 Santova when acting as the Customer's agent, shall at its discretion be entitled to enter into any contract with any party which Santova in its sole discretion deems reasonably necessary or requisite for the delivery of the requested Services and the fulfilment of the Customer's Instruction and the Customer gives permission and expressly authorises Santova where required to procure the Services from any agent, contractor, subcontractor or third party whom Santova deems necessary and to conclude all and any contracts with such third parties on such terms and conditions as may be stipulated by, or negotiated with, the aforementioned party (ies) for the purposes of such Services.

## 4. INCOTERMS®

### 4.1 Definition of incoterms

- 4.1.1 Incoterms® are usually agreed between the seller and the buyer of goods as part of their sale of goods contract in order to define the terms of shipment and delivery as well as the transfer of risk between those two parties.

### 4.2 Incoterms® not part of the STCs

- 4.2.1 These STCs cover and regulate the relationship of the parties in so far as the Services are concerned, and do not regulate the sale or trade of the Goods. Following this any Incoterms® agreed between the seller and the purchaser do not become part of the STCs as between Santova and the Customer in respect of the provision of the Services.

### 4.3 Fees in respect of Incoterms®

- 4.3.1 Notwithstanding the provisions of clause 4.2,
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| 4.3.1.1 | where the Customer provides Santova with an Instruction which may include the applicable Incoterms®, Santova will use its best endeavours to follow such information and Instruction in relation to the Service/s;  |
| 4.3.1.2 | <u>the Customer accepts that it will remain liable for all Fees which are due and owing to Santova in respect of the Services and that Santova has no obligation whatsoever to recover any of the Fees from a third party as per the split as indicated under the selected Incoterms® which costs will be solely for the Customer's account and which will, where applicable, be added to the Fees.</u> |

## 5. APPLICABLE LAWS

### 5.1 Customer liable for compliance

- 5.1.1 Where Santova is required in the execution of any of its duties and / or responsibilities in rendering the Services, to apply any applicable provisions housed under the Applicable laws, Santova will be acting on behalf of and as agent of the Customer, the Customer accepting full responsibility and liability for compliance with the Applicable laws.
- 5.1.2 It is furthermore recorded that Santova does not act as a common carrier, a public carrier, a depository for or without reward and following this, Santova will not under any circumstances, accept liability as such in relation to the Applicable Laws.

### 5.2 Advice and instruction from others

- 5.2.1 Santova cannot guarantee that the Regulators or other parties who apply the Applicable laws, including without detracting from the generality thereof, officers from the South African Revenue Services and / or Customs and Excise, will interpret the Applicable laws in the same manner as Santova and the Customer accepts that Santova will not be liable for any loss or damage, howsoever caused, as a result of the use of, or any reliance being placed on any information and / or advice or instruction, whether provided by quote, advice, letter, telephone, email, verbally or by any other means, by such parties.

### 5.3 Indemnity by Customer

- 5.3.1 The Customer indemnifies and keeps Santova, Santova Limited and the Santova Group, and their directors, employees, contractors and subcontractors indemnified against all claims, liabilities, damages, actions and / or costs which either the Customer or Santova, Santova Limited or the Santova Group, or their directors, employees, agents, contractors or sub-contractors may incur or suffer as a result of, or arising from:
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|---------|--|
| 5.3.1.1 | <u>the use of, or reliance being placed on information provided and referred to under clause 5.2; and / or</u> |
| 5.3.1.2 | <u>any non-compliance with any of the Applicable laws which pertain to the assets, Goods or Services.</u>      |

## 6. COMMERCIAL TERMS

### 6.1 General Terms

- 6.1.1 Santova has the right
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|---------|--|
| 6.1.1.1 | to undertake such credit reference checks on the Customer and the Customer's members, directors or shareholders with such persons or parties (including without limitation the Customer's bankers and any credit bureau) as Santova may reasonably require from time to time;  |
| 6.1.1.2 | to have access to such information, including personal information, as it may reasonably require in order to assess the ability of the Customer to pay any amounts due to Santova and the Customer shall allow and procure that Santova obtain such access;  |
| 6.1.1.3 | to at any time and for any reason whatsoever immediately withdraw all and any credit facilities extended to the Customer and claim forthwith from the Customer the full outstanding balance due and payable in terms of such facility and the related Services, which have been provided to the Customer;  |
| 6.1.1.4 | in the event that the Customer, neglects, refuses or fails to effect payment of any Fees or any amount whatsoever due to Santova in terms of these STCs by the due date for such payment, or where Santova is of the view that the Customer is carrying on its business recklessly, to call upon and request, and the Customer shall be obliged to immediately furnish Santova with copies of the Customer's business management accounts and annual financial statements over such period as Santova may require. |

### 6.2 Subordination of claims

- 6.2.1 The Customer hereby subordinates all and any of its claims on loan account that it currently has, or may in the future have from time to time, against any of its subsidiaries in favour of Santova and shall ensure that such claims remain subordinated whilst any Fees are due and owing by the Customer to Santova from any cause whatsoever.

**6.3 Discounts, brokerages, commissions, allowances**

6.3.1 Santova is entitled to the benefit of any discounts, brokerages, commissions, allowances, rebates, markups and other remuneration obtained and to retain and be paid all brokerages, commissions, allowances and other additional remunerations of whatsoever nature and kind customarily retained by or paid to agents, contractors, subcontractors or third parties, and Santova shall not be obliged to disclose or account to the Customer, or any other party for any such benefit or remuneration received by it, save where the Customer is a Consumer, which Consumer has the right to request details of these benefits as per section 27 read with regulation 9 of the CPA.

**6.4 Specific charges and duties**

6.4.1 When Goods are accepted or dealt with on instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall nevertheless remain responsible for these charges if they are not paid by such consignee or other person immediately when due, which it authorises Santova to add to the Fees and which amounts will be paid on invoice, and the Customer indemnifies and agrees to keep Santova, Santova Limited and the Santova Group, indemnified against all such fees and charges and to pay to Santova any such amounts on demand.

6.4.2 If accepted by Santova, instructions to collect payment on delivery in cash or otherwise shall be subject to the condition that Santova in the matter of such collection will be liable for the exercise of reasonable care only and when collecting such amounts, Santova expressly advises that it does not waive nor shall it be deemed to have waived its rights set out under these STCs.

6.4.3 Without derogating from the provisions set out above, for clarity sake, Santova will under no circumstances be liable for any duties, taxes, imposts, levies, deposits, unpaid freight or outlays of whatsoever nature levied in connection with the Goods, including all and any payments, fines, expenses, loss or damage whatsoever and which may be due and owing by the Customer, sender, owner, consignee and/or consignee and their agents, whether incurred or sustained by Santova in connection with the Services, or otherwise, the Customer accepting that it will at all times when using the Services be liable for any of the abovementioned amounts and the Customer indemnifies Santova, Santova Limited, and the Santova Group against all and any such amounts and agrees to pay them on demand.

**6.5 Courier Service**

6.5.1 Should any of the Services entail the use of courier services, then the following terms will apply to all and any such courier services:

6.5.1.1 **Over Maximum Limits:** Goods or packages with an actual weight of more than 70kg per piece, or those that exceed 270cm in length, or exceed a total of 419cm in length and girth combined [girth = (2 x width) + (2 x height) + length]: shall not be accepted for transportation through the courier network. These Goods or packages shall be shipped via special courier or airfreight, and special surcharges shall apply and shall be for the Customer's account.

6.5.1.2 **Large Package Surcharge:** Goods or a package are considered a "large package" when its length plus girth [girth = (2 x width) + (2 x height) + length] exceeds 330cm, but does not exceed the maximum size of 419cm: Large packages are subject to a minimum billable weight of 32kg. In addition, a large package surcharge shall be applied and shall be for the Customer's account. The surcharge per package is in addition to the shipping charge.

6.5.1.3 **Additional Handling Charge:** Additional handling is required for: any Goods or package which are encased in a container for shipping made of metal or wood; any cylindrical item, (such as a barrel, drum, pail, or tyre), that is not fully encased in a corrugated cardboard container for shipping; any Goods or package where the longest side exceeds 150cm or its second-longest side exceeds 76cm; any Goods or package with an actual weight greater than 32kg; or each package in a shipment where the average weight per package is greater than 32kg and the weight for each package is not specified on the source document or the automated shipping system used. In the event that additional handling is required, an additional handling charge shall apply, and the charge shall be for the Customer's account.

6.5.1.4 **Extended Area and Remote Area:** A surcharge will apply for any collections or deliveries to areas considered an extension of the standard service area. This surcharge shall be for the Customer's account. Depending on the ease of accessibility, these locations served, are classified as either an "extended" area or a "remote" area and the Customer shall be charged accordingly.

**6.6. Procurement Service**

When Goods are procured on behalf of a Customer, as soon as the Customer accepts the purchase price for such Goods, Santova shall request samples (in partial or complete form) from the factory for the Customer to test and approve. On approval of the aforesaid samples and on satisfaction that the Goods meet the required specifications and standards of the Customer, the Customer shall issue a written order to Santova. On receipt of the written order, Santova shall issue a commercial invoice to the Customer for the purchase price of the Goods to enable the Customer to raise and deliver a Letter of Credit to Santova. If the Letter of Credit is not acceptable, the Customer must pay a non-refundable (minimum 30%) deposit to Santova prior to the commencement of the production of the Goods. The balance of the payment for the Goods procured will be payable against a draft Bill of Lading prior to shipment departure.

**7. ESTIMATE OF FEES, ACCEPTANCE OF FEES, BILLING AND PAYMENT OF THE FEE****7.1 Estimate of Fees and actual costs of the Services**

7.1.1 All costs in respect of the Services are set out under the Estimate of Fees which is provided to the Customer.

7.1.2 All Services provided to a Customer will be charged out as per the amounts set out under the Estimate of Fees, as amended from time to time, and subject to the provisions of this clause 7.1.

7.1.3 The Customer acknowledges that the Estimates of the Fees are the result of ad-hoc calculations based on the Services requested by the Customer in accordance with the information provided by the Customer, which due to the nature of the Services' environment, and in particular the freight forwarding environment, may fluctuate and / or change without any prior notice to Santova and / or the Customer. Following this the Customer accepts that it may not hold Santova responsible for any changes in the Estimate of Fees and / or the final Fees levied in respect of the Services.

7.1.4 When Goods are accepted or dealt with on instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall nevertheless remain responsible for such expenses and charges if they are not paid by such consignee or other person immediately when due.

7.1.5 If accepted by Santova, instructions to collect payment on delivery in cash or otherwise shall be subject to the condition that Santova in the matter of such collection will be liable for the exercise of reasonable care only.

7.1.6 Notwithstanding the Estimate of Fees, the Customer, sender, owner, consignee and/or consignee and their agents, if any, shall be liable for all and any additional charges which may be incurred as a result of the provision of the Services, including without detracting from the generality thereof, any duties, taxes, imposts, levies, deposits, unpaid freight or outlays of whatsoever nature which may be levied in connection with the Goods and / or Services, and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by Santova in connection therewith; and in such instances agreeing and accepting that it will notwithstanding any notice, be responsible and liable for such additional charges which it authorises Santova to add to the Fees and which

amounts will be paid on invoice, and the Customer indemnifies Santova against all such amounts and agrees to pay them on demand as per invoice.

7.1.7 For the purpose of these STC's, fluctuations and changes to Fees as set out under the Estimate of Fees or invoice will include, without detracting from the generality thereof:

7.1.7.1 changes in rates or charges due to increases or decreases in rates or charges previously offered by Shipping Lines, Airlines, Port Authorities, Governmental Authorities or their subsidiaries;

7.1.7.2 changes made to taxes, duties, VAT, or withdrawal of rebate facilities by the South African Revenue Services, including Customs and Excise and the Department of Trade and Industry;

7.1.7.3 changes made to disbursement fees, facility fees, interest, credit underwriting fees and any other fees related to Financial Services or any other services provided by banks, financial institutions and credit underwriters; and

7.1.7.4 currency exchange rates, rates of freight, surcharges, insurance premiums, equipment rental rates, labour rates and any other charges applicable to the handling of the Goods or the provision of the Services.

**7.2 Instruction**

7.2.1 When the Customer requires the Services, it will provide Santova with a description of the required Services, which Services will be based on the charges set out under the Estimate of Fees.

7.2.2 On receipt from the Customer of an instruction, the Customer will be deemed to have accepted the Estimate of Fees, however and in whatever format such Estimate of Fees was provided to the Customer, if at all.

7.2.3 On the basis of an Instruction, Santova will proceed to provide the Services.

7.2.4 Notwithstanding the Instruction, Santova may, from time to time, and will if necessary, have the right to:

7.2.4.1 withdraw from the Instruction;

7.2.4.2 revise the Estimate of Fees if provided, and the Fees in respect of the Services (with or without notice) in the event of changes to the Estimate of Fees and / or the Fees as detailed under these STCs and in particular clause 7.1.

**7.3 Invoicing and payment**

7.3.1 All Fees due to Santova in respect of Services rendered will be reflected in a Santova invoice and related statement, which amounts the Customer undertakes to pay timeously in accordance with the relevant Santova account application and terms, calculated from date of invoice unless agreed otherwise, in South African Rands in cleared funds to Santova at its principal place of business or into such bank or bank accounts as Santova may specify and which payment shall be made without deduction or demand, or withheld or deferred on account of any counterclaim or set-off, subject to clause 6.

7.3.2 Notwithstanding clause 7.3.1, where payment is made in a foreign currency, and Santova accepts such payment, which it may do in its sole discretion, then Santova shall be entitled to levy a currency conversion premium when converting receivables into South African Rands.

7.3.3 In the event that payment to Santova is affected electronically, or by way of cheque, then in such an event the Customer bears the risk in respect of such payment until such time as the funds are received into and cleared in the Santova bank account.

**7.4 Non-payment**

7.4.1 An amount not paid on due date will result in the following:

7.4.1.1 Santova will have the right to exercise its rights in respect of the Lien and Pledge as set out under clause 16 as well as the cession in **securitatem debiti** as set out in terms of clause 17, with immediate effect;

7.4.1.2 Santova will be entitled to claim immediate payment and/or performance by the Customer of the Customer's obligations in terms of these STCs, whether or not the due date for payment and/or performance will have arisen, in either event, without prejudice to Santova's right to terminate any agreement it has with the Customer to render the Services and/or claim damages;

7.4.1.3 all the amounts not paid on due date will bear interest, which will be levied at Santova's discretion, at Santova's applicable interest rate, as determined by Santova from time to time, calculated from due date of payment until date of receipt of full payment;

7.4.1.4 all other amounts which are owed by the Customer to Santova, notwithstanding the provisions of the Santova account application and terms, will immediately become due and payable, which amounts if not paid immediately will bear interest, at Santova's discretion, at Santova's applicable interest rate, as determined by Santova from time to time, calculated from date when the debt referred to under clause 7.4.1.3 is due;

7.4.1.5 Santova will have the right to impose and charge additional credit underwriter fees or charges, and/or debt collection or incurred legal fees, or other charges incurred as a result of such non-payment, in respect of all overdue amounts which may be due and owing to Santova.

**7.5 Disputed invoices or statements**

7.5.1 The Customer must notify Santova in writing of any dispute relating to any invoice within 14 (fourteen) calendar days after the date of invoice which notice must set out clearly the areas and issues of dispute, failing which the invoices will be deemed to be correct in all respects.

7.5.2 In the event of a notified dispute the parties undertake to use their best endeavours to resolve any such dispute within 30 (thirty) working days after the date of the invoice in question.

**7.6 Appropriation of payments**

7.6.1 All Fees and amounts received by Santova shall be appropriated by Santova at its sole discretion in respect of any undisputed Debt owed by Customer to it, notwithstanding that the Customer might when making payment seek to appropriate the payment so made to a particular Debt or portion of Debt.

**8. GOODS INFORMATION****8.1 General requirements**

8.1.1 The Customer undertakes to inform and / or provide to Santova, in writing, all required particulars in respect of the Goods which Santova may reasonably require for the purpose of providing and performing the Services, which particulars, without detracting from the generality, include at least the following:

8.1.1.1 actual numbers, quantities, measurements and weight of the Goods, including the verified gross mass of the goods as required under the Safety of Life at Sea (SOLAS) convention;

8.1.1.2 quality, markings, characteristics, descriptions and specifications of the Goods including whether such Goods are Dangerous Goods and / or perishable;

8.1.1.3 details of any relevant matters, including any special precautions necessitated by the nature, weight or condition of the Goods and any statutory or other duties specific to the Goods, which Santova or others may need to know;

8.1.2 The Customer will ensure that the Goods are fit for the safe and proper execution of the Services, and that the Goods bear all proper marks and labels to facilitate easy identification of the Goods

and the properties, including an indication of the weight of the Goods as required under the Safety of Life at Sea (SOLAS) convention.

## 8.2 Warehousing

- 8.2.1 In providing the Services, the Goods may be warehoused or otherwise held at any place as determined by Santova in its absolute discretion.
- 8.2.2 At all times the Goods will be held at the Customers risk and expense and the Customer hereby indemnifies and holds Santova, Santova Limited or the Santova Group, harmless from all and / or any loss, costs, expenses, and / or damages which it or any other party may incur or suffer as a result of Santova warehousing the Goods and in particular which may arise as a result of the breach of warranties set out below under clauses 8.2.3. and 8.2.4.
- 8.2.3 The Customer warrants that:
- 8.2.3.1 if Goods delivered to Santova require warehousing, that the Customer shall be responsible for any costs associated with ensuring Goods are properly packed and labeled and in the event of any such Goods requiring special storage, packing or labeling by reason of their nature or properties or in accordance with any Applicable law, to ensure all such requirements shall be complied with; and
- 8.2.3.2 notice of any special storage requirements of any such Goods shall be given to Santova in writing prior to the delivery of the Goods into the custody of Santova or its agents, provided that Santova shall **NOT** be obliged to take delivery of any such Goods if it believes that such Goods or the handling or storage thereof are, for any reason whatsoever, harmful, dangerous or undesirable, which decision will be exercised in its sole and absolute discretion.
- 8.2.4 Where Santova undertakes as part of the Service to pack the Goods into any container or any other transportation unit, or when Santova undertakes to attend to the packaging or unitization of the Goods for any purpose on behalf of the Customer, such packaging or unitization shall be subject to the following:
- 8.2.4.1 the Customer will timeously provide Santova with full packing and labeling instructions, in writing, including but not limited to any requirements as to the internal or other securing, mass distribution, maximum aggregate mass restrictions, labeling, temperature control or other restrictions, and / or information as to the properties of the Goods and any noxious or other possible hazards or dangerous properties which they might possess;
- 8.2.4.2 the cost of the aforementioned Service will be at the cost and for the account of the Customer;
- 8.2.4.3 the aforementioned Service will be undertaken at the sole risk of the Customer and the Customer hereby indemnifies and holds Santova, Santova Limited or the Santova Group, harmless from all and / or any loss, costs, expenses, and / or damages which it or any other party may incur or suffer as a result of Santova packing the Goods into any container or other transportation unit or Santova packaging or unitizing the Goods on behalf of the Customer.

## 8.3 Goods requiring special arrangements

### 8.3.1 Dangerous Goods

- 8.3.1.1 Santova will not be obliged to provide any Services in respect of Dangerous Goods or Goods which it is of the view are hazardous, dangerous, noxious or liable to cause injury or damage to any person, other Goods, assets or property whatsoever, unless it agrees to do so, which will be exercised in its sole discretion.
- 8.3.1.2 Where Santova agrees to provide the Services in respect of Dangerous Goods then the Customer has an obligation, in addition to those set out under clause 8.1 above to ensure that the container, package or other covering in which the Dangerous Goods are to be tendered is prominently marked on the outside so as to indicate the nature and the character of the Goods including the verified gross mass of the Goods as required under the Safety of Life at Sea (SOLAS) convention; which markings must comply with internationally and locally accepted practices as well as the Applicable laws.
- 8.3.1.3 Where Santova provides Services in respect of Dangerous Goods, regardless of whether it has consented to provide the Services or where such Service is provided without its knowledge or express consent, the Customer indemnifies Santova, Santova Limited and the Santova Group and any third party against all loss, damage and / or expenses incurred or suffered by Santova, Santova Limited and the Santova Group or any third party, caused by or as a result of Santova providing the Services in respect of such Dangerous Goods.
- 8.3.1.4 Santova where it is of the view that the Dangerous Goods are a risk and which could give rise to a dangerous situation, may at its discretion and at the Customers cost and expense, remove, sell, destroy or otherwise dispose of any Dangerous Goods received by it or which are under its control and regardless of whether it has agreed to handle the Goods or not, and the Customer agrees to indemnify Santova, Santova Limited and the Santova Group against all and any costs, expenses, claims, losses or damage which Santova, the Customer or any third party may face or suffer as a result of the disposal of the Dangerous Goods.

### 8.3.2 Other goods

- 8.3.2.1 Except under special arrangements previously made in writing, Santova will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. For the purposes of this clause 8.3.2.1, and notwithstanding clause 1.3, "in writing" shall exclude any written document that is in the form, either wholly or partly, of a Data message as defined in ECTA and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention, by the Customer, a Santova Director and a member of Santova's Executive Committee. Should the Customer nevertheless deliver any goods referred to under this clause to Santova or cause Santova to handle or deal with any such goods otherwise than under special arrangements previously made in writing, Santova, Santova Limited and the Santova Group, shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods.

### 8.3.3 General discretion

- 8.3.3.1 Notwithstanding anything to the contrary herein contained, if at any time Santova should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, Santova shall be entitled to do so and Santova, Santova Limited and the Santova Group, will not incur any liability in consequence of doing so and the Customer indemnifies Santova, Santova Limited and the Santova Group and any third party against all loss, damage and / or expenses incurred or suffered by Santova, Santova Limited and the Santova Group or any third party, caused by or as a result of Santova departing from any of the Customer's instructions.
- 8.3.3.2 If events or circumstances come to the attention of Santova which, in the opinion of Santova make it in whole or in part, impossible or impracticable for Santova to comply with a Customer's instructions, Santova shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instruction and if such further instructions are not timeously received by Santova in writing, Santova shall, at its sole discretion, be entitled to detain, return, store, sell,

abandon, or destroy all or part of the Goods concerned at the risk and expense of the Customer, and the Customer indemnifies Santova, Santova Limited and the Santova Group and any third party against all loss, damage and / or expenses incurred or suffered by Santova, Santova Limited and the Santova Group or any third party, caused by or as a result of Santova taking such action.

## 8.4 Customer warranties

- 8.4.1 The Customer warrants that
- 8.4.1.1 if Santova has not provided Procurement Services, it is either the owner of the Goods or is authorised by the owner to deal with the Goods on the owner's behalf;
- 8.4.1.2 it guarantees to Santova the accuracy of all such information, including samples, marks, measurements, numbers and weights and any other specifications or information given, reflected in or shown on any documentation relating to the Goods, including, but not limited to packing lists, invoices, bills of lading, waybills, customs and revenue service documents are accurate and may be relied on by Santova;
- 8.4.1.3 if Santova has not provided Procurement Services, the Goods will be presented to Santova securely and properly packed in compliance with the Applicable Laws, recognised standards and best practice;
- 8.4.1.4 if Santova has not provided Procurement Services, the Goods are and will remain in a condition to be safely handled, stored and / or carried, and which will not cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, equipment or to any other items in a way;
- 8.4.1.5 except to the extent previously notified in writing and accepted by Santova none of the Goods are Dangerous Goods, bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants, oversized, tyres, weapons, live animals, chemicals, hazardous or contaminated; may cause pollution to the environment or harm to human health if they escape from their packaging; require temperature controls or special security measures; require any official consent or license to handle, process, deal with or carry; or will at any time whilst in the care or control of Santova constitute waste;
- 8.4.1.6 none of the Goods are considered illegal under the Applicable Laws;
- 8.4.1.7 it will comply with any reasonable request and rules laid down by Santova relating to the Services, which are notified in writing from time to time;
- 8.4.1.8 all information given by it or on its behalf is correct and complete, including but not limited weight and dimension of the Goods.
- 8.4.2 The Customer in addition to any other indemnities given under these STCs indemnifies and holds Santova, Santova Limited and the Santova Group, harmless against any and all losses, injuries, costs, legal action or damages which Santova, Santova Limited and the Santova Group, or any other party may incur or suffer as a result of any breach of the Customer's warranties and undertakings set out above.
- 8.4.3 Where Santova suspects a breach of clause 8, Santova may in its sole discretion refuse to provide the Services and, where applicable, demand the immediate removal of the Goods or arrange at the Customer's cost, for the removal, disposal or sale of the Goods and the Customer agrees to indemnify Santova against all and any costs, expenses, claims, losses or damage which Santova, Santova Limited and the Santova Group, the Customer or any third party may face or suffer as a result of the disposal, sale or removal of the goods, including any compensation in respect of the value of the Goods.

## 8.5 Disposal of Goods

- 8.5.1 In addition to its rights under clauses 8.2, 8.3 and 8.4.3 above, Santova has the right, which will be exercised in its sole discretion, to destroy, dispose of, or sell whether by private treaty, public auction or otherwise, all or any Goods, whether in bond or not, whether perishable or otherwise and which are in the care, custody or under the control of Santova, and without notice to the Customer, sender, owner or consignee, which disposal will be at the Customer's expense, where:
- 8.5.1.1 such Goods are not in compliance with Santova's requirements or conditions as per clauses 8;
- 8.5.1.2 where such Goods have begun to deteriorate or are likely to deteriorate;
- 8.5.1.3 if Santova has not provided Procurement Services, where such Goods are insufficiently addressed or marked;
- 8.5.1.4 where the Customer cannot be identified;
- 8.5.1.5 where the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 (twenty-one) calendar days from Santova notifying the Customer in writing to collect or accept such Goods, provided that if Santova has no address for the Customer, such notice period shall not be necessary.
- 8.5.2 A communication from any agent or correspondent of Santova or from any third party to the effect that the Goods cannot be delivered or have not been collected for any reason shall be conclusive evidence of that fact.
- 8.5.3 Where the Goods are sold in terms of clause 8.5.1 above, all charges and expenses arising in connection with the notification to the Customer if any, storage, removal and sale or disposal of the Goods shall be for the account of the Customer.
- 8.5.4 Where the Goods are removed, destroyed or disposed of, as the case may be as envisaged under this clause 8, these activities shall be equivalent to delivery of such Goods.
- 8.5.5 On conclusion of the sale as envisaged under clause 8.5.1:
- 8.5.5.1 Santova will tender payment of the net proceeds from the sale of the Goods, if any, after deduction of those charges and expenses incurred by Santova in respect of the handling and sale of the Goods; and
- 8.5.5.2 should the proceeds of the sale not be sufficient to discharge the liability of the Customer to Santova in terms of these STCs and the related Services and sale costs, then the Customer will not be released from the remainder of liability it has to Santova in terms of these STCs and the related Services, merely by virtue of the sale of the Goods and the deemed delivery, and all and any outstanding amounts will become due and payable immediately to Santova on receipt of notice by Santova to the Customer.

## 8.6 Inspection

- 8.6.1 Santova may, without notice and liability open any package or container in which the Goods are placed in order to inspect the Goods and / or for the purposes of determining the nature, weight, quality or quantity of the Goods, all of which will be at the risk and cost of the Customer and the Customer agrees to indemnify Santova against all and any costs, expenses, claims, losses or damage which Santova, the Customer or any third party may face or suffer as a result of the aforementioned inspection.

## 8.7 Santova's discretion in the absence of instructions

- 8.7.1 In the absence of any specific instructions, given timeously or at all, by the Customer in respect of the Goods or the Services, Santova will, which determination will be exercised within its sole discretion:

<p>8.7.1.1 decide at what time to perform or procure the performance of the Services, which may be necessary for the discharge of its obligations to the Customer;</p> <p>8.7.1.2 determine the means, route and procedure to follow in respect of the movement of the Goods;</p> <p>8.7.1.3 determine when it will raise a Fee and issue an invoice in respect of the Services or part thereof, regardless of whether the Services have been rendered in full or only in part;</p> <p>8.7.1.4 where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others, depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other persons, decide as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the carrier, warehousemen, underwriters or other persons.</p> <p>8.7.2 Notwithstanding the above, in the absence of any specific instructions, Santova will not be obliged to make any declaration for the purpose of any Applicable law, as to the nature or value of any Goods or as to any special interest in delivery, or insurance cover or arrange for any of the Goods to be stored, carried or handled separately from other Goods.</p> <p><b>8.8 Indemnities</b></p> <p>8.8.1 <u>Whilst Santova will use its utmost skill and care when acting on behalf of the Customer as per clause 8, such Services will be performed at the Customer's risk and the Customer hereby indemnifies and holds Santova, Santova Limited and the Santova Group, harmless from any costs, claims, losses, liabilities and expenses which may arise or be incurred by the Customer or any other party, as a result of any decision made by Santova in respect of a tariff, related rate and / or premium or any other matters referred to under clause 8.</u></p> <p><b>9 INSURANCE AND DECLARATIONS</b></p> <p><b>9.1 No insurance provided</b></p> <p>9.1.1 All Services are provided at the Customer's own risk and Santova has no obligation to take out and maintain any form of insurance cover on the Goods, regardless of whether they fall within the definition of Dangerous Goods or not, or whether such Goods are to be stored in the open, unless expressly requested to do so by the Customer in writing.</p> <p><b>9.2 Insurance to be provided by Customer using own insurance providers</b></p> <p>9.2.1 Where Goods are to be insured, and Santova is not instructed to insure the Goods on behalf of the Customer, then the insurance will be the sole responsibility of the Customer.</p> <p><b>9.3 Insurance that the Customer has instructed Santova to arrange</b></p> <p>9.3.1 <u>Where the Customer has requested that the Goods are insured Santova will introduce the Customer to a registered insurance broker and the necessary insurance cover will thereafter be agreed on as between the Customer and the insurance broker.</u></p> <p>9.3.2 <u>The insurance broker will thereafter use its best endeavours to effect any such insurance timeously, but the insurance cover shall always be subject to such exceptions and conditions as may be imposed by the insurance service provider or underwriter.</u></p> <p>9.3.3 <u>All costs in respect of the insurance may be paid by Santova on behalf of the Client direct to the insurance service provider, underwriter or broker, as the case may be and, in such case, will then be debited to the Customer's account and form part of the Fees.</u></p> <p>9.3.4 <u>In the event of an insurance claim or where the insurer disputes its liability, the Customer will only have recourse against the insurance service provider and / or underwriter and Santova, Santova Limited and the Santova Group, will have no responsibility or liability whatsoever in relation to such policy or claim, save that it will provide the required assistance which is necessary, in regard to the claim or dispute under the circumstances.</u></p> <p>9.3.5 <u>The insurance service as per this clause 9 will be performed at the Customer's risk and the Customer hereby indemnifies and holds Santova, Santova Limited and the Santova Group, harmless from any costs, claims, losses, liabilities and expenses which may arise or be incurred by the Customer or any third party, as a result of any decision made by Santova, Santova Limited, the Santova Group, the insurance broker, the insurance service provider or underwriter in respect of any insurance cover and related premiums, which may be effected on behalf of the Customer in respect of the Goods and related Services.</u></p> <p><b>10. TRANSPORT DOCUMENTS</b></p> <p><b>10.1 Types of documents</b></p> <p>10.1.1 Santova may issue in respect of the whole or any part of any contract for the movement of Goods, a combined transport document or bill of lading in a form that shall be within Santova's discretion, including a FIATA combined transport bill of lading, a warehouse and / or forwarding receipt, an air or sea waybill, a consignment or delivery note, a container movement or transport order, a groupage or house bill of lading or a receipt for shipment or dispatch bill of lading (any of which may reflect Santova or any other as the carrier in terms thereof) provided that where a combined transport document or bill of lading is issued, these STC's shall continue to apply as between Santova on the one part and the Customer and / or the Owner on the other part.</p> <p><b>10.2 Signature on behalf of Customer</b></p> <p>10.2.1 Where Santova signs or issues any Sea Transport Document, it does so only as agent and not as principal, common carrier, contractual carrier, depository or bailee.</p> <p><b>11. HANDLING, RECEIPT AND DELIVERY OF THE GOODS AND RISK</b></p> <p><b>11.1 Customer responsibilities</b></p> <p>11.1.1 Where the Customer provides the vehicle or rail truck, Santova shall not be responsible for the suitability of that vehicle or rail truck to transport the Goods properly or safely, or at all.</p> <p>11.1.2 Where the Customer or shipping line provides any container or any other transportation unit, Santova shall not be responsible for the suitability of that container or other transportation unit to carry or transport the Goods properly or safely, or at all.</p> <p>11.1.3 Where the Goods are in bulk or in break bulk, Santova will make reasonable efforts to maximise the quantity of the Goods to be loaded onto or into a vehicle, rail truck, container or other transport unit, but Santova will under no circumstances be liable or responsible to the Customer for any inability to fit the requested quantity of the Goods into the vehicles, rail trucks, containers or other transport units.</p> <p>11.1.4 Where the Goods are carried in shipping containers, the Customer must take note of and comply with the weight indication requirements set out under the Safety of Life at Sea (SOLAS) convention.</p> <p><b>11.2 Delivery of the Goods by Customer</b></p> <p>11.2.1 Unless otherwise agreed in writing, and subject to clause 11.2.2, the Customer shall deliver the Goods to, or take delivery of the Goods from such place as may be stipulated by Santova.</p> <p>11.2.2 Where Santova agrees to accept delivery of, or to deliver the Goods to any other place other than the place stipulated by Santova as per clause 11.2.1, then the following provisions will apply:</p> <p>11.2.2.1 the Customer will be liable for all the costs of delivery and shall pay such costs to Santova on invoice;</p> <p>11.2.2.2 Santova may, acting as the Customer's agent, arrange for someone to deliver the Goods to or for the Customer ("the carrier") on such terms as Santova decides,</p>	<p>and the Customer will be liable for all the carrier's charges;</p> <p>11.2.2.3 Santova may affect delivery in installments, and the Customer shall accept delivery of the Goods, in such installments.</p> <p>11.2.3 Santova is deemed to have satisfied its delivery obligations if it delivers the Goods to the address given by the Customer and obtains from the person at that address a receipt or signed delivery document in respect of the Goods.</p> <p>11.2.4 <u>If it is apparent to Santova that on receipt of the Goods by Santova, they are damaged or defective, or have been pilfered, Santova shall advise the Customer in writing and shall provide reasonable assistance to the Customer, at the cost of the Customer, to enable the Customer to make any claim whether for insurance or otherwise which the Customer considers necessary, the Customer accepting that it may not hold Santova, Santova Limited or the Santova Group, liable for any loss or expense occasioned as a result of such damage, defect or shortage to the Goods.</u></p> <p>11.2.5 If the Customer or any person situated at the address given by the Customer as the place for delivery, does not take delivery of the Goods from Santova or its agent, contractor or subcontractor at the agreed time or place, Santova may charge the Customer for all expenses incurred by Santova in attempting to make delivery, including any storage, warehousing or demurrage costs, which amounts will be debited to the Customer's account and form part of the Fees and which will be payable to Santova on demand.</p> <p>11.2.6 Where the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 (twenty one) calendar days from Santova notifying the Customer in writing to collect or accept such Goods, provided that if Santova has no address for the Customer, such notice period shall not be necessary and Santova has the right, which will be exercised in its sole discretion, to destroy, dispose of, or sell whether by private treaty, public auction or otherwise, all or any Goods, whether in bond or not, whether perishable or otherwise and which are in the care, custody or under the control of Santova, and without notice to the Customer, sender, owner or consignee, which disposal will be at the Customer's expense, and which sale will proceed in accordance with the provisions of clause 8 and in particular clause 8.5 detailed above.</p> <p><b>11.3 Indemnity</b></p> <p>11.3.1 <u>The Customer accepts that the Goods will be handled at the Customer's own risk and the Customer hereby indemnifies and holds Santova, Santova Limited and the Santova Group, harmless from all and / or any loss, costs, expenses, and / or damages which Santova, the Customer or any other party may incur or suffer as a result of Santova receiving, handling, delivering and/or financing the Goods, howsoever occurring, including without detracting from the generality thereof where:</u></p> <p>11.3.1.1 <u>the Customer provides the vehicle or rail truck for the transportation of the Goods;</u></p> <p>11.3.1.2 <u>the Customer or shipping line provides any container or any other transportation unit, for the holding and / or transportation of the Goods;</u></p> <p>11.3.1.3 <u>where the Goods are provided in bulk or in break bulk, which Goods Santova is required to place into the vehicles, rail trucks, containers or other transport units;</u></p> <p>11.3.1.4 <u>where the Goods are housed in shipping containers, which require weight indication requirements as set out under the Safety of Life at Sea (SOLAS) convention.</u></p> <p><b>12. TIME FOR PERFORMANCE</b></p> <p><b>12.1 Time of the essence for Customer</b></p> <p>12.1.1 <u>Notwithstanding anything to the contrary contained herein, time is of the essence for the performance by the Customer of all and any obligations, which it owes to Santova in terms of these STCs and in particular in respect of any instructions or directions.</u></p> <p><b>12.2 Time not of the essence for Santova</b></p> <p>12.2.1 <u>Notwithstanding any representations made by Santova regarding any times or delivery dates for performance by Santova or its contractors or subcontractors of the Services, TIME WILL NOT BE OF THE ESSENCE for the performance by Santova of all and any obligations, which it owes to the Customer in terms of these STCs.</u></p> <p>12.2.2 <u>Whilst Santova will make an effort to render the Services within any stated time, such stated time is approximate only and shall not be a material term of these STCs.</u></p> <p>12.2.3 <u>Unless otherwise agreed in writing, all Services to be rendered will be executed by Santova during business days and normal working hours.</u></p> <p>12.2.4 <u>Santova will not be liable for any delay in the performance of the Services no matter what the cause of that delay and the Customer hereby indemnifies and holds Santova, Santova Limited and the Santova Group, harmless from all and / or any loss, costs, expenses, and / or damages which it or any other party may incur or suffer as a result of any delays in the performance of the Services or non-compliance with any Santova stated time periods.</u></p> <p><b>13. LIABILITY</b></p> <p><b>13.1 Services provided at Customer's own risk</b></p> <p>13.1.1 <u>By virtue of the nature of the Services, the Customer accepts that the Services are provided at the Customer's own risk.</u></p> <p><b>13.2 Indemnity by Customer</b></p> <p>13.2.1 <u>Without limiting the effect of any other limitations of liability and / or indemnities contained under these STCs and to the full extent permitted by law, Santova, Santova Limited and the Santova Group, including their directors, employees, agents, contractors and subcontractors shall not be responsible for loss, actions, claim, damages or costs of any kind whatsoever whether actual, prospective or contingent, of any nature whatsoever, nor for the death or injury to any person, arising out of, or as a result of the provision of the Services, and regardless of whether caused as a result of negligence or willful default, and whether or not arising contractually, under or in terms of the common law or in delict, save where the Customer proves that the loss, damage, death or injury arose from the gross negligence of Santova, or any of its employees, its directors, agents, contractors, sub-contractors or any person for whom Santova is vicariously liable and in the event of such gross negligence having being argued and proved in a court of law, Santova, Santova Limited and the Santova Group's respective liability will be limited to those direct damages referred to under clause 13.4 only and will exclude in all respects Consequential loss or damages, non-patrimonial damages, special damages, aggravated damages, demurrage and / or loss of profits and the Customer acknowledges that it will have no right to bring any claim detailed above against Santova, Santova Limited or the Santova Group, or their directors, employees, agents, contractors and subcontractors, this being as a result of the Services being provided at the Customer's own risk.</u></p> <p><b>13.3 Force majeure</b></p> <p>13.3.1 <u>Santova, Santova Limited and the Santova Group, furthermore shall not be liable to the Customer for any breach or failure to perform its obligations or provide the Services under these STCs or for any damage or loss to the Goods or any harm or loss incurred by the Customer, or any other party, including the Customer's agents or other parties, and whether contractually, under the common law or in delict, where same has been occasioned as a result of:</u></p> <p>13.3.1.1 <u>perils, dangers and accidents of the sea or navigable waters, unsafe or poorly maintained aircraft, ship, train or vehicle, packaging container or pallets or any other container in which the Goods may be housed or placed and by</u></p>
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	<u>whomsoever;</u>	act beyond their control, whether collectively or singularly, including without detracting from the generality thereof the events described under clause 13.3.1 above, then Santova, its agents, contractors, subcontractors or third parties shall be relieved of performing their obligations for the period that such event continues and no liability whatsoever shall attach to Santova, its agents, contractors, subcontractors or third parties, for any inability to perform, as a result thereof, subject to the provisions of clause 15.2 below.
13.3.1.2	<u>acts of God;</u>	
13.3.1.3	<u>any acts of war or terrorism or acts of public enemies, riots or civil commotions, political or civil disturbances;</u>	
13.3.1.4	<u>any pandemic declared by the World Health Organisation, or by any Government;</u>	<b>15.2 Election to terminate</b>
13.3.1.5	<u>any declaration of a national disaster or state of emergency, in any country;</u>	15.2.1 Should the inability by Santova, its agents, contractors, subcontractors or third parties to perform the Services in whole or in part, extend beyond a period of 21 (twenty-one) calendar days, then Santova will have the election to either:
13.3.1.6	<u>any unrest in a country, arrest or restraint of authority;</u>	15.2.1.1 cancel the Services; or
13.3.1.7	<u>any industrial action, strikes, picketing, lockout or work stoppages or slowdowns;</u>	15.2.1.2 subject to clause 15.2.2, extend the time for performance of the Services until the cause preventing or delaying performance ceases to apply.
13.3.1.8	<u>any saving or attempting to save life or property;</u>	15.2.2 If Santova elects to extend the time for performance in terms of clause 15.2.1.2, the Customer shall be entitled to cancel the contract if Santova does not commence or recommence performance of the Services within a period of 90 (ninety) calendar days following the original date of prevention or delay of performance, which cancellation must be submitted in writing to Santova.
13.3.1.9	<u>the closure of an airport, road, port, labour, or delays in loading or transport;</u>	
13.3.1.10	<u>any act or omission of any port or other authority;</u>	
13.3.1.11	<u>any industrial dispute, action or labour issues, such as but not detracting from the generality thereof, lock-outs, shortened working hours, shortage of labour or materials;</u>	
13.3.1.12	<u>fire, explosion, earthquake, storms, hail, flood, landslide;</u>	
13.3.1.13	<u>accidents of any kind;</u>	<b>16. LIEN AND PLEDGE</b>
13.3.1.14	<u>any default or delay by any contractor / subcontractor of Santova;</u>	<b>16.1 Lien in favour of Santova</b>
13.3.1.15	<u>inclement weather or the elements;</u>	16.1.1 <u>All Goods, the assets and documents relating to the Goods including without limitation, any Sea Transport Document, holding certificate and import permit as well as all refunds, telex registries, repayments, claims and other recoveries, as well as any other document of title whatsoever, shall be subject to a special and general lien and pledge either for moneys due in respect of such Goods or for any other moneys due to Santova by the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any, in respect of the Services it provides to the Customer in terms of the STCs.</u>
13.3.1.16	<u>changes to the Applicable laws or additions thereto;</u>	16.1.2 <u>In delivering the Goods, the assets or documents, as referred to in clause 16.1.1 above, into the custody of Santova or its agents or contractors for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to Santova at that time or which become payable in the future. In the event of Santova utilising the services or premises of any third party for any purposes including the transportation or storage of any Goods or documents, such third party shall be the agent of Santova for purposes of exercising Santova's right to retention under lien and/or pledge.</u>
13.3.1.17	<u>any other cause beyond the reasonable control of Santova, its employees, agents and contractors or subcontractors.</u>	<b>16.2 Sale of Goods in the case of non-payment</b>
<b>13.4 Limitation of liability</b>		16.2.1 If any moneys due to Santova are not paid within 14 (fourteen) calendar days after notice has been given to the person from whom the moneys are due that such Goods or documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of Santova and at the expense of such person, and the net proceeds (if any) applied in or towards satisfaction of such indebtedness and such sale or disposal activity will be governed by the provisions of clause 8.5, mutatis mutandis.
13.4.1	<u>In respect of any Procurement Services (any Goods procured on behalf of the Customer):</u>	<b>16.3 No encumbrances</b>
13.4.1.1	<u>Santova's responsibility is limited to delivering Goods in conformity with any of the Good's information provided in terms of clause 8 above. In the event that a Good is found to be damaged or defective, the Customer must notify Santova in writing within 7 (seven) calendar days of delivery of the Good and shall bear the onus of proving to Santova that such Good is not in conformity with the Goods information provided in terms of clause 8 above.</u>	16.3.1 The Customer shall not affect or be entitled to effect or allow to be affected any form of security in respect of the Goods, the assets or the documents relating to the Goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of Santova. <b>Notwithstanding clause 1.3, for the purposes of this clause 16.3.1, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a Data message as defined in ECTA and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention by the Customer, a Santova Director and a member of Santova's Executive Committee.</b>
13.4.1.2	<u>Should such notice not be given within the stipulated time period or sufficient proof is not provided, Santova shall not be liable for any damaged or defective Goods.</u>	<b>16.4 Ranking</b>
13.4.1.3	<u>In the event that the Customer proves that a Good is damaged or defective, Santova shall be responsible only for the repair or replacement of that specific Good, by implementing logistical means in its own discretion, without any other form of recourse or compensation against Santova. Santova shall have the election to repair or replace any specific Good.</u>	16.4.1 The lien and pledge and right of retention in favour of Santova referred to above shall operate as a first and prior charge against the Goods, the assets and the documents and no other security shall rank prior to Santova's lien, pledge or right of retention.
13.4.1.4	<u>Any repair to a Good, including one found damaged or defective, done without Santova's prior consent, shall result in the loss of the Customer's right of recourse against Santova.</u>	<b>16.5 Without prejudice</b>
13.4.1.5	<u>Santova will not accept return of any Good without its prior written authorisation and all charges for transport, packing, assembly, disassembly, or other ancillary costs relating to such return shall be paid by the Customer.</u>	16.5.1 The exercise by Santova of any of the rights accorded to it by this clause 16 will be without prejudice to any other rights it may have under the STCs or at common law in respect of the non-payment by the Customer of the Fees.
13.4.2	<u>If Santova, notwithstanding the provisions of clause 13.2 and 13.4.1 above, is for any reason, including in the case of gross negligence, found to be liable to the Customer or to any other party, then notwithstanding anything to the contrary contained in these STCs or otherwise, Santova, Santova Limited and the Santova Group's liability, howsoever arising, within contract or in delict, in connection with the Services shall not exceed the lower of:</u>	<b>17. CESSION IN SECURITATEM DEBITI</b>
13.4.2.1	<u>the value of the Goods evidenced by the relevant documentation or declared by the Customer for Customs purposes or for any purpose connected with their transportation or handling;</u>	<b>17.1 Cession of rights</b>
13.4.2.2	<u>the value of the Goods declared for insurance purposes; or</u>	17.1.1 <u>As security for the due fulfilment of all its existing and future obligations due to Santova and arising from any cause whatsoever under the STCs, including without limitation to the payment of the Fees, the Customer cedes to Santova in securitatem debiti all its right title and interest in and to</u>
13.4.2.3	<u>double the amount of the Fees raised by Santova for the Services in connection with the Goods, but excluding any amount payable to contractors / subcontractors, agents and third parties.</u>	17.1.1.1 <u>any money held by Santova on behalf of the Customer;</u>
		17.1.1.2 <u>any claims the Customer has against the South African Receiver of Revenue (SARS) for a refund of Value Added Tax or duty refund which have or may in the future accrue to it from time to time; and</u>
		17.1.1.3 <u>all of the Customer's rights, title, interest and claims in and to all book debts and any other amounts due to the Customer of whatsoever nature and description and howsoever arising which the Customer may now and at any time hereafter have against any third party whomsoever, without exception, as a continuing covering security for any amount currently due or that might become due at any time hereinafter by the Customer to Santova; and</u>
		17.1.1.4 <u>any Goods, stock in trade and/or cargo, which Santova may have cleared for the Customer for the duration of the shipment over which Fees are due, owing and payable by the Customer to Santova.</u>
		17.1.2 <u>Notwithstanding any payment to Santova of all amounts owing from any cause whatsoever by the Customer, under the normal trading terms or in consequence of Santova exercising any rights in terms of the abovementioned securities, or those set out under clause 16, the abovementioned securities and cession in securitatem debiti shall continue in full force and effect as continuing covering security for all and any amounts due to Santova by the Customer until the Customer is released by Santova from said securities, which release will be done by way of a written release document signed by a Santova Director and a member of Santova's Executive Committee. Notwithstanding clause 1.3, for the purposes of this clause 17.1.2, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a Data message as defined in ECTA and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention by the Customer, by a Santova Director and a member of Santova's Executive Committee.</u>
		17.1.3 <u>The Customer will conclude, execute, sign and deliver to Santova upon demand all documents necessary to perfect the above securities.</u>
<b>13.5 Limitation of liability in the case of shrinkage</b>		<b>18. BREACH AND CANCELLATION</b>
13.5.1	<u>In addition to clause 13.4, in the case of shrinkage, Santova, Santova Limited and the Santova Group, will not be liable for any loss of the Goods, which is less than 2% of the value of the Goods, in respect of which Services are rendered by Santova.</u>	<b>18.1 Breach by Santova</b>
<b>13.6 Notice of claim and prescription</b>		18.1.1 <u>If Santova breaches any of its obligations under these STCs and fails to remedy such breach within 30 (thirty) business days of the date of receipt of written notice from the Customer requiring it to do so, then the Customer shall, subject to these STCs, be entitled to compel</u>
13.6.1	The Customer must give Santova immediate notice of any occurrence giving rise to any loss, damage, injury or death.	
13.6.2	<u>The Customer shall have no claim against Santova, Santova Limited and the Santova Group, and Santova, Santova Limited and the Santova Group, shall be discharged from all liability unless legal proceedings in connection with any occurrence, giving rise to any loss, damage, injury or death brought against Santova, Santova Limited or the Santova Group, within nine months of the date of the occurrence giving rise to an Inland Transport claim and within twelve months of the date of the occurrence giving rise to any other claim.</u>	
13.6.3	<u>The Customer in the event of it having any right to sue or pursue any action against any Santova, Santova Limited and the Santova Group directors or employees, in terms of these STCs, accepts that should it not follow and comply with clauses 13.6.1 and 13.6.2 above, that it will have no claim as against Santova, Santova Limited and the Santova Group and it hereby expressly waives all rights which it may have in respect of such action and any related claims.</u>	
<b>14. BUSINESS RESCUE</b>		
<b>14.1 Notice and Fees</b>		
14.1.1	In the event of the Customer resolving to go into Business Rescue, or where the Courts grant the appropriate order in respect of Business Rescue as anticipated under sections 128 - 154 of the Companies Act, 71 of 2008, the Customer undertakes to give Santova immediate notice of such Business Rescue and the steps which Santova may take in order to participate in such Business Rescue Proceedings and any decisions regards the election under section 137 of the aforementioned Companies Act.	
14.1.2	In the event of the Customer going into Business Rescue, all Fees in respect of the Services whether complete or not will become immediately due, owing and payable and any Value Added Tax and duty refunds paid by Santova in respect of rendering the Services to the Customer, shall be excluded from the Business Rescue Proceedings referred to in clause 14.1.1 above.	
<b>15. FRUSTRATION OF PERFORMANCE BY MATTERS BEYOND SANTOVA'S CONTROL (FORCE MAJEURE)</b>		
<b>15.1 Acts of force majeure</b>		
15.1.1	If any performance of the Services whether by Santova, its agents, contractors, subcontractors or third parties is prevented or delayed directly or indirectly as a result of force majeure or any	

<p><u>performance by Santova of the obligations it has defaulted in, but shall not be entitled to cancel any Service or these STCs.</u></p>	<p><b>22.3</b> Notwithstanding clause 1.3, for the purposes of clause 22.2, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a Data message as defined in ECTA and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention by the Customer, a Santova Director and a member of Santova's Executive Committee.</p>
<p><b>18.2 Breach by Customer and consequences</b></p> <p>18.2.1 Should the Customer:</p> <p>18.2.1.1 allow a final judgment to be granted against it which judgment remains unsatisfied for a period of 21 (twenty-one) business days or more;</p> <p>18.2.1.2 make any arrangement or composition with its creditors generally or ceases or threatens to cease to carry on business;</p> <p>18.2.1.3 fail to pay Santova any or all Fees which are due and owing as per the Santova account application and terms;</p> <p>18.2.1.4 commits a breach of any of the STCs,</p>	<p><b>23. NO IMPLIED WARRANTIES OR REPRESENTATIONS</b></p> <p>23.1 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.</p> <p>23.2 Santova makes no warranties and representations to the Customer save as may be specifically provided herein.</p> <p><b>24. WAIVER</b></p> <p>24.1 No indulgence which any of the parties ("the grantor") may grant to any other or others of them ("the grantee(s)") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.</p>
<p>then on the occurrence of any of the abovementioned events, Santova, without prejudice to any other rights which it may have in terms of these STCs or under the common law, shall be entitled to cancel the Services, or alternatively the STCs by written notice to the Customer, such cancellation furthermore being without prejudice to its right to demand payment of the Fees which are due and owing to Santova.</p> <p>18.2.2 On cancellation of the Services and / or the STCs, all Fees in respect of the Services whether complete or not will become due and owing and must be paid immediately.</p> <p>18.2.3 Any termination pursuant to the preceding provisions of this clause 18 shall be without prejudice to any other rights of any nature whatsoever that Santova may have in terms of these STCs.</p>	<p><b>25. CO-OPERATION, CCTV, INTERCEPTION AND INFORMATION</b></p> <p>25.1 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.</p> <p>25.2 The Customer acknowledges that Santova may from time to time intercept, monitor, download or copy the Customer and its employees, agents or contractors communications and movements, including electronic communications, telephone calls, and physical movements on the Santova sites, by way of CCTV and other interception and recording devices, and the Customer as is required under the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 ("RICA") acknowledges awareness and notice of same and gives Santova permission to carry out these functions, which are necessary for security and other business related purposes.</p> <p>25.3 In the event of the Customer requiring any confidential or sensitive information regarding the Services, and / or details of any personal information which Santova may hold in respect of the Customer, then it will be required to request this information using the Santova standard PAIA process which is described under the Santova PAIA manual, which is available on its website or by accessing it using this hyperlink: <a href="http://www.santova.com/wp-content/uploads/2016/02/Santova-Ltd-PAIA-Manual.pdf">http://www.santova.com/wp-content/uploads/2016/02/Santova-Ltd-PAIA-Manual.pdf</a></p> <p>25.4 <u>Santova will from time to time send communications to the Customer containing useful Services' related information, including variations to the Estimates of Fees, the Fees and tariffs, legal amendments or developments, closure of ports but expressly hereunder notifies the Customer that it cannot give any warranties as to the accuracy or reliability of this information as such information its obtained from a variety of sources and accordingly is submitted for general information purposes only.</u></p>
<p><b>19. DATA PRIVACY AND CONFIDENTIALITY</b></p> <p><b>19.1 Right to process personal information and processing notice</b></p> <p>19.1.1 Santova will for the purpose of the provision of the Services process certain personal information of the Customer, its directors and employees. The details pertaining to the use of this personal information is set out under the <a href="#">Santova section 18 Processing Notice</a> which is accessible via the following hyperlink: <a href="https://www.santova.com/about-santova/data-protection/">https://www.santova.com/about-santova/data-protection/</a></p> <p>19.1.2 The provision of the above-mentioned personal information indicates the Customer and its Directors consent to the use and processing of this personal information, which Santova undertakes to use and process strictly in accordance with the aforementioned <a href="#">Santova Customer section 18 Processing Notice</a>.</p>	<p><b>26. GOVERNING LAW AND JURISDICTION</b></p> <p>26.1 These STCs and any collateral agreements such as agreements concluded with third parties, where so ever concluded, shall be interpreted and implemented in accordance with the law of the Republic of South Africa.</p> <p>26.2 Santova shall be entitled, but not obliged, to institute any legal proceedings of any nature whatsoever against the Customer or owner of the Goods in the Magistrates' Courts where the value of the claim falls within the jurisdiction of the Magistrates Court alternatively, at Santova's absolute discretion, to proceed by way of arbitration which shall be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA"), as applicable at that time, by an arbitrator appointed by AFSA.</p> <p>26.3 <u>As an alternative to the above, where the value of the claim falls outside the jurisdiction of the Magistrates Court, and the claim is not against a Consumer, Santova at its election may institute legal proceedings in the High Court, and the Customer, excluding the Consumer, in this regard specifically consents to the jurisdiction of the Durban and Coast Local Division of the High Court.</u></p>
<p><b>19.2 Confidentiality</b></p> <p>19.2.1 The parties will keep private and confidential and not disclose to any other party the content of these STCs or any information arising in connection with the Services at any time during or after the term of the STCs, unless such disclosure is in relation to and for the purpose of the provision of the Services or where the disclosing party has the other party's written consent to do so.</p> <p>19.2.2 Notwithstanding the above, either party may disclose the required content of these STCs or any information arising in connection with the Services, including any personal information, where:</p> <p>19.2.2.1 it is under a legal obligation to disclose same under and in terms of the Applicable law or any other law in place from time to time;</p> <p>19.2.2.2 it is under a legal obligation to disclose same under and in terms of a court order or a request made by a regulator or governmental department including without detracting from the generality thereof, the South African Revenue Services (SARS), Customs and Excise, South African Police Services (SAPS), Department of Health (DOH), Department of Agriculture, Forestry and Fisheries (DAFF), the International Trade Administration Commission (ITAC), the National Regulator for Compulsory Specifications (NRCs) and any other lawful authority who have the powers to request or demand the disclosure of such information in terms of the Applicable Law, or any other law;</p> <p>19.2.2.3 it is necessary or it is required to disclose any of the personal information which belongs to the Customer, its directors or to Santova, whatever the case may be, under any of the circumstances described in POPIA;</p> <p>19.2.2.4 the information is manifestly in the public domain at the time of disclosure or such disclosure.</p> <p>19.2.3 Each party will ensure that where its employees, its directors, employees, agents, contractors, subcontractors, regulators or advisers and/ or third parties are provided with any confidential information housed under or related to these STCs, provide it with a written undertaking not to disclose any of the aforementioned information, save under the circumstances described above.</p> <p>19.2.4 The obligation of this clause 19.2 shall survive for a period of three (3) years after the expiry of the STCs.</p> <p>19.2.5 The Customer notwithstanding any duty of confidentiality, which is owed to it by Santova, expressly gives Santova the right to disclose details pertaining to it, when Santova is requested to do so for trade reference purposes.</p>	<p><b>27. LEGAL COSTS</b></p> <p>27.1 Any costs, including attorney and own client costs, incurred by Santova arising out of the failure by the Customer to fulfil its obligations under these STCs shall be borne by the Customer, save where such costs are determined by the Court under any legal proceedings anticipated under clause 26 above.</p> <p><b>28. CESSION AND ASSIGNMENT</b></p> <p>28.1 The Customer may not cede or assign any of its rights or obligations in terms of these STCs, including the assets, without the prior written consent of Santova, which approval will not be unreasonably withheld.</p> <p>28.2 Santova shall at any time be entitled to cede and/or assign any or all of its rights and obligations in terms of these STCs.</p> <p><b>29. SURVIVING TERMS</b></p> <p>29.1 All rights and obligations in relation to confidentiality, outstanding amounts due to Santova, indemnities, immunities, and limitations of liability contained under the STCs shall continue to have their full force and effect in all circumstances, notwithstanding:</p> <p>29.1.1 any breach of any terms of the STCs by Santova;</p> <p>29.1.2 the delivery of the Goods;</p> <p>29.1.3 payment of the Fees;</p> <p>29.1.4 termination or completion of the Service,</p> <p>29.1.5 cession or assignment of the Service or STCs,</p> <p>29.1.6 expiration or termination of the STCs, for whatsoever reason, whether through effluxion of time or otherwise.</p>
<p><b>20. THIRD PARTIES TO BENEFIT</b></p> <p>Notwithstanding anything to the contrary contained herein, the immunities, indemnities, rights and limitations of liability both as to cause and amount enjoyed by Santova, Santova Limited and the Santova Group, in terms of these STCs shall extend and apply to Santova, Santova Limited and the Santova Group directors, employees, agents, contractors and subcontractors, and in this regard these STCs will operate as a contract for the benefit of Santova as well as for the benefit of Santova Limited and the Santova Group, and for the benefit of Santova, Santova Limited and the Santova Group directors, employees, agents, contractors and subcontractors and shall be capable of acceptance by them at any time and whether before or after any cause of action may have arisen.</p>	<p><b>30. SEVERABILITY</b></p> <p>30.1 These STCs shall be severable, and, if any part or term thereof is held to be invalid, such invalidity shall not affect the validity or enforceability of any other part or term of the STCs.</p> <p>30.2 Following this, if any of the provisions of the STCs are held to be invalid and unenforceable, then Santova shall be entitled to elect, at any time that such term shall be severed from the remaining terms and conditions housed under these STCs, so as to allow the remaining terms and conditions to remain of full force and effect.</p> <p>30.3 To the extent that any of the provisions of these STCs, express or implied are repugnant to or are in conflict with any law, the STCs are deemed to be amended to comply with that law, and any such amendment shall not in any way affect the remaining provisions of these STCs.</p>
<p><b>21. NOTICES ADDRESS AND DOMICILIUM</b></p> <p>21.1 The Customer chooses as its domicilium citandi et executandi, at the addresses set out under the Santova account application and terms where all notices and legal process in connection with STCs and / or the Services may be sent.</p> <p>21.2 Santova chooses as its domicilium citandi et executandi, the addresses set out under the Santova account application and terms, where all notices and legal process in connection with STCs and / or the Services may be sent.</p> <p>21.3 Either party may change its domicilium citandi et executandi from time to time, provided that they provide at least 10 (ten) calendar days written notice of any new domicilium citandi et executandi and that any address selected by it shall be an address other than a box number in the Republic of South Africa, and any such change shall only be effective upon receipt of such change of notice by the other party.</p>	<p><b>31. CONSUMER PROTECTION CLAUSES</b></p> <p>31.1 <u>To the extent that any of the provisions of these STCs, express or implied are repugnant to or are in conflict with the CPA, the STCs in relation to a Consumer are deemed to be amended to comply with that law, and any such amendment shall not in any way affect the remaining provisions of these STCs.</u></p>
<p><b>22. WHOLE AGREEMENT</b></p> <p>22.1 These STCs constitute the sole record of the contractual relationship between the parties with regard to the Services.</p> <p>22.2 No addition to, variation, or agreed cancellation of these STCs shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorized representatives of the Customer, a Santova Director and a member of Santova's Executive Committee.</p>	