

## MARTRADE-GROUP PORTS GENERAL TERMS & CONDITIONS

### 1. Definitions and Interpretation

1.1. Below definitions shall apply to Services provided by or on behalf of the Terminal Operator to the User

<b>'Agent'</b>	shall have the meaning given to it in Section 8.	
<b>'Cargo'</b>	means goods of any kind, size or weight/measurement whatsoever including solid, liquid, or gaseous substance, product or Hazardous Cargo transported to, from, in or through the Terminal irrespective the mode of transport and involving the use of the Services. Without limiting the definition, Cargo includes further any Container, Cargo transported in a Container (including on an Out of Gauge Container), as break bulk, bulk, liquid, sto-ro/ro-ro, general, heavy lift and project cargo.	for the Cargo under the bill of lading or other transport document if one has been issued and of which a copy has been provided to the Terminal Operator; ii) in respect of export Cargo the period which begins when the Cargo is physically lifted off from the truck by the Terminal Operator's cargo handling equipment for stacking at the yard of the Terminal and ends when the Cargo is laid to rest on the ship's deck, hold or on top of another container on the ship; for liquid cargos the period while the liquid cargo is flowing through the Terminal Operator's pumping station; and iii) in respect of transshipment Cargo the period which begins when the Cargo is physically lifted off from one ship's deck, hold or from the top of the Cargo on one ship and ends when the Cargo is laid to rest on another ship's deck, hold or on top of another Cargo on another ship.
<b>'Confidential Information'</b>	means the provisions of these GTC's and all information in any form or medium which is secret or otherwise not publicly available (either in its entirety or in part including the configuration or assembly of its components) including commercial, financial, marketing, or technical information, know-how, trade secrets, business methods and other information in any form or medium whether disclosed orally or in writing, together with any reproductions of such information in any form or medium or any part(s) of this information.	<b>'Cyber Event'</b> means when unauthorised acts or activities occur on a computer system, computer network or a computer service which is owned, leased, or used by the Terminal Operator or its parent and sister company(ies).
<b>'Container'</b>	means any standard ISO Container, suitable for stacking and transportation of dry, liquid gas or refrigerated Cargo constructed of metal, fibreglass, plastic or wood, which confines its contents and must be capable of being handled as a unit and lifted by means of a container spreader. The definition includes, but is not limited to, dry, flat-rack, open top, artificial 'tween-deck, pallet-wide, platform, reefer and tank containers with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers).	<b>'Fees'</b> means the Terminal Operator's fees imposed by the Terminal Operator pursuant to law and/or agreement with User.
<b>'Custody'</b>	means i) in respect of import Cargo: (a) the period which begins when the Cargo is physically lifted off from the ship's deck, hold or from the top of other Cargo on the ship and ends when the Cargo is mounted onto the withdrawing truck by the Terminal Operator's cargo handling equipment for delivery to consignee, or if shorter, (b) the period during which the User is responsible	<b>'GTC's'</b> mean these General Terms and Conditions as may be amended from time to time by the Terminal Operator without prior notice.
		<b>'Hazardous Cargo'</b> means Cargo of any kind classified by the International Maritime Organization or local laws/regulations as hazardous cargo and shall include "dangerous goods" as defined in the International Maritime Dangerous Goods (IMDG) Code. Hazardous Cargo further includes items or goods which are or may become of a dangerous, inflammable, radioactive or damaging nature and items or goods likely to harbour or encourage vermin or other pests. The terms Hazardous Cargo includes any empty uncleaned packaging which previously contained Hazardous Cargo unless the packaging has been sufficiently cleaned of residue.
		<b>'H.S.E. rules'</b> means the health, safety & environmental rules of the Terminal Operator notified to the User from time to time.
		<b>'IMSBC and IBC'</b> International Maritime Solid Bulk Cargo code and Chemical Bulk Code

<b>'IQD'</b>	means the official currency of the Republic of Iraq.		
<b>'ISPS'</b>	means international ship and port facility security code		
<b>'Liabilities'</b>	means all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature.	<b>'USD'</b>	means the official currency of the United States of America.
<b>'MSDS'</b>	means Material Safety Data Sheet and is a technical document provided by the manufacturer of the goods. It provides detailed and comprehensive information on a controlled product related to (1) health effects of exposure to the product (2) hazard evaluation related to the product's handling, storage, or use (3) measure to protect workers at risk of exposure and (4) emergency procedures.	<b>'User'</b>	means i) any person or entity using the Terminal Facilities or to/from whom any Service, work or labour is furnished, performed, done or made available by the Terminal Operator or any other person using the Terminal, ii) any person or entity owning or having custody of Cargo moving in, over or through the Terminal; iii) all vessels and their owners, operators, charterers, crew and agents, and iv) any other person, firm or corporation that conducts business at the Terminal, including but not limited to the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; and any person who drives or operates such vehicle and any person who uses and/or enters the Terminal.
<b>'Out of Gauge Container'</b>	means a Container where Cargo protrudes beyond the standard dimensions of the Container, which must be handled with the use of special attachments to a container spreader.		
<b>'Port Act'</b>	means the Iraqi Law No. 21 of 1995 and any instructions issued pursuant to that law.		
<b>'Reefer Container'</b>	means a Container used for the transportation of refrigerated or otherwise temperature-controlled Cargo.		
<b>'Services'</b>	means any services that are provided by or arranged by the Terminal Operator.		
<b>'Terminal'</b>	means the container terminal/ terminal facilities at Berth 8 and/or Berth 9 at Khor Al Zubair, Iraq and/or terminal facilities at Berth 16 at Umm Qasr, Iraq or such extensions awarded from time to time to the Terminal Operator.		
<b>'Terminal Operator'</b>	means "each separately and both together" including their successors, legal heirs, executors, administrators and permitted assigns: Berth 8 Khor Al Zubayr-Marlog LBG Logistics GmbH and its subsidiary KaZ Yard for container, general and project cargo handling, transport, and marine services limited. Berth 9 Khor AL Zubayr-Marlog LBG Logistics GmbH and its Iraqi Partners Berth 16 Um Qasr-Marlog LBG Logistics GmbH and its Iraqi Partners.		
<b>'TEU'</b>	means twenty feet equivalent unit and in calculating TEUs, a 20' Container comprises one (1) TEU and a 40' and a 45' Container each comprises two (2) TEUs respectively;		
<b>'Ton'</b>	unless otherwise specified, all Tons shall be regarded as Freight Tons and shall be		

1.2. If the Port Act is compulsorily applicable to any Services, these GTC's shall as regards such Services be read subject to the Port Act and nothing in these GTC's shall be construed as a surrender by the Terminal Operator of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under the Port Act. If any part of these GTC's contravenes the Port Act to any extent, such part shall as regard such Services be void to that extent and no further.

1.3. In these GTC's i) a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made done under the statutory provision or under such re-enactment, ii) a person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership, iii) a person includes a reference to that person's legal personal representatives, successors and permitted assigns, iv) the singular includes the plural and vice versa (unless the context otherwise requires), v) any words following the word "including" shall be interpreted without limitation to the generality of the preceding words, and vi) a reference to a condition, unless the context otherwise requires, is a reference to a clause of these GTC's.

1.4. The ISPS security level 1 is in force in and around the Terminal premises. It is the Users obligation to enter the premises only with valid permissions, passes and identity cards which need to be presented at all times upon request by the Terminal Operators representatives or guards.

## 2. Services

2.1. The Terminal Operator will i) provide the Services subject to and in accordance with these GTC's, ii) provide the Services using reasonable care and skill, iii) comply with all laws and regulations in force and applicable to the relevant Services, and iv) obtain all

necessary licenses and permits required to operate as a terminal operator and provide the Services.

2.2. Subject to specific, clear, and executable written instructions given by the User and accepted by the Terminal Operator in writing before the Services are provided, the Terminal Operator reserves to itself complete freedom in respect of the means and procedures to be employed in the provision of the Services. The Terminal Operator may deviate from the User's instructions (whether accepted by the Terminal Operator) in any respect if the Terminal Operator considers it is in the interest of the User, the safety of Cargo and/or personnel of the Terminal Operator and the User shall reimburse the Terminal Operator with all expenses incurred thereby.

2.3. The Terminal operates , 24/24 and 7/7 except for the period during Ramadan, when terminal operating hours may be reduced in observance of Ramadan.

### **3. Scope and application of these GTC's**

These GTC's shall apply to i) all Services provided to the User, ii) the use by any User of the Terminal and/or the facilities at the Terminal, iii) all vessels which berth at the Terminal, iv) and shall also be binding on all Users who receive or benefit from the Services, use and/or enter the Terminal including their vehicles, trucks and trailers.

### **4. Request for a berth (Vessel) or Terminal Service (Truck)**

4.1. Berths will be provided on a first come first served basis, subject to any berthing arrangements agreed with other Users of the Terminal.

4.2. The User shall give the Terminal Operator notice of its requirement to berth at the Terminal at least ninety six (96) hours before the estimated time of arrival of the vessel, and thereafter regular updates and twenty-four (24) hours-notice prior to estimated time of arrival.

The User shall give a 24-hour notice for arrival of its trucks(s). Later notices might result in waiting times for the trucks to be serviced.

4.3. If a vessel arrives at the Terminal within twelve (12) hours of the agreed time of arrival, the Terminal Operator shall use reasonable endeavours to provide a berth within six (6) hours of the agreed time of arrival.

4.4. In respect of each vessel, the User shall also give the Terminal Operator all the relevant details of the Cargo in respect of which the Services will be required at least 48 hours before the estimated time of arrival of the vessel (see further clause 5.1.) ). The Terminal and the User will agree the maximum number of moves or tonnage per day required prior to arrival of the ship. Based on the agreed maximum number of moves or tonnage per day , the Terminal Operator will allocate the ship a berthing window during which the Services will be provided The Terminal Operator can declare a vessel as "non-productive" and exchange the non productive vessel with a higher productive vessel after the berthing window has expired, unless the User proves the lower production is solely due to the Terminal Operator.

### **5. User's Obligations**

5.1. The documents (as per 4.4 above) to be handed over to the Terminal Operator include, but are not limited to:

5.1.1. Ships or truck manifest in EDI format for Containers, in PDF, Word or Excel for dry breakbulk and bulk cargoes.

5.1.2. Packing lists of named Cargoes with its clear commodity description, UoM, marks, numbers and maximum length, width and height, unit weights in nett and gross in tons.

5.1.3. Stowage plan or loading plan with (hatch wise) distribution of Cargo.

5.1.4. MSDS for IMDGO-IMSBC and IBC listed Cargo.

5.1.5. Lifting plan for OOG and H/L cargo showing CoG and lifting points

5.1.6. Vessel or crane valid gear and tackle certificates.

5.1.7. Certificates of User's own supplied lifting equipment

5.1.8. Certificates of carriers' pre-slings attached to Cargo and meant to be used for lifting by the Terminal Operator.

5.2. At all times when a vessel is berthed at the Terminal, the User shall ensure:

i) adequate lighting and safe access and exit for the Terminal Operator's personnel.

ii) appropriate qualified and experienced officers and crew aboard to maintain an alert watch and respond to emergencies and to enable the Terminal Operator to provide the Services. lii) Vessel to always stay parallel to the berth tightly secured against the berth fenders.

An STS checklist to be issued and handed over by Master / Chief Officer to the Terminal Representatives.

iv) maintaining engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth.

v) its crew members to exercise a high awareness of the HSE standards and wearing their PPE in the operating areas.

vi) complying with all applicable laws and legal requirements related to the Cargo, the Containers, ,the handling operations and the proper use of the Terminal.

Terminal Operator reserves the right to abort operations in case vessels agent or crew do not adhere to these conditions, safety standards and procedures applicable at the Terminal.

5.3. At all times when a truck uses the Terminal, the User shall ensure:

i) Agents and hauliers to comply with HSE standards and to wear their PPE at all times in the operating areas.

ii) Agents and hauliers to follow the instructions of the Terminal representatives for safe parking, execution of an accurate documentation process and a safe and effective loading-discharging operation.

The Terminal Operator can always abort the operations if agents or hauliers do not adhere to the safety standards and procedures applicable at the Terminal.

5.4.1. The User will be solely responsible for complying with all formalities, procedures and regulations prescribed by the relevant port authority, customs authority and any governmental authority or other agency having legal jurisdiction over the relevant matter and which arises in connection with the Cargo, vessel or truck and for obtaining all necessary licenses, and authorizations required for the transportation, exportation or importation of the Cargo, vessel or truck. The User shall have an appropriate insurance in place covering the common insurable risks of loss and/or damage suffered by the Terminal Operator in connection with all User's Liabilities under these GTC's.

### **5.5. User's Warranties**

5.5.1. The User warrants and represents that:

i) it is authorized to contract with the Terminal Operator on the terms of these GTC's in respect of the Cargo, vessel and truck , and that it is accepting these GTC's not only for itself, but also for and on behalf of the owners of the vessel, truck, Cargo and/or Containers or any other person who is linked to the User.

ii) all the documentation and information provided by the User or its representatives in relation to any Cargo and/or Containers is full and accurate

iii) that it shall provide the documents as per 5.1 on time

iv) the vessel and trucks shall in all aspects be ready and fit for loading or discharging Cargo at the Terminal and shall comply with all laws and regulations in force.

v) Vessels holds to be checked before entry by ship screw if oxygen levels are ok (minimum 19.50 %) and applicable LEL-UEL levels of previous cargoes are not exceeded. Leakages on deck, pipes, terminal floor, or areas caused by Users' vessels or trucks need to be cleaned immediately for Users' time and account. shore pipelines of cargo. The Terminal shall not be responsible for any admixture (if more than one quality of oil is loaded), nor for leakage, contamination, or deterioration in quality of the cargo unless the admixture, leakage, contamination, or deterioration results from gross negligence of the Terminal.

5.5.2. In respect of all Cargo, the User warrants and represents that:

i) it is properly packed, stowed, lashed, labelled, marked, and corresponds its description documented before arrival at the terminal. In case deficiencies found the Terminal Operator has the right to refuse the handling of the Cargo or be entitled for extra compensation for the additional services to be rendered.

ii) do not give off any injurious dust, gas, fumes, liquid, or radiation.

iii) are not infested, verminous, rotten, or subject to fungal attack and not liable to become so while at the Terminal.

iv) are not over-heated or under-heated or liable to become so while at the Terminal.

v) will not contaminate or cause danger, injury or pollution or damage to any person, the Terminal, any other cargo, equipment or ship or the environment adjacent thereto or generally.

vi) require for their safekeeping no special protection (other than as may be agreed in writing between the parties) arising from vulnerability to heat, cold, moisture, salt, dust, pilferage, or proximity to other cargo or from in flammability but will remain safe if left standing in the open or in covered accommodation at the Terminal if and how agreed in writing with the Terminal Operator.

vii) contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter.

viii) are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by the Terminal Operator.

(ix) respect all applicable local laws and regulations.

#### **5.6. Reefer Containers**

5.6.1. The Terminal Operator will check and record the temperature of the Reefer Containers stored at the Terminal subject to instructions being given in writing to the Terminal Operator at least two (2) business days in advance of receipt of a specific Reefer Containers by Terminal Operator and such instructions are accepted in writing by the Terminal Operator, the

Terminal Operator may check and report the temperatures of the Containers as mutually agreed.

5.6.2. The Terminal Operator shall not be responsible or liable in any way for any Reefer Containers or the refrigeration of refrigerated Cargo if the User fails to give written instructions or provides wrong or inadequate instructions concerning the handling thereof.

5.6.3. If the Terminal Operator is instructed in writing in accordance with this Section 5, the Terminal Operator will, within a reasonable time of receipt, connect the Reefer Containers to a power supply. The Terminal Operator shall not be obliged to maintain an auxiliary power supply and Terminal Operator shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the mains power supply howsoever arising.

5.6.4. The Terminal Operator shall have the right to disconnect the Reefer Containers from the power supply provided the Reefer Container is not claimed by its owner within the period specified in Customs Law No. 23 of 1984 (as amended).

#### **5.7. Stripping of Containers**

The Terminal Operator shall have no obligation to strip the Containers, however if it carries out an instruction to open the doors of a Container or to unpack a Container for any purpose whatsoever, this shall be at the sole risk of the User and the Terminal Operator shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Cargo by reason of such deterioration. The User shall ensure compliance with the rules and regulations of the customs authorities for opening and unpacking of any Container. The Terminal Operator may but shall be under no obligation to do so close, reconnect, or connect to a power supply for Reefer Containers, repack or otherwise deal with any such Container and/or its contents at the sole cost and expense of the User.

#### **5.8. Hazardous Cargo**

5.8.1. The Terminal Operator is not obliged to handle Hazardous Cargo and therefore only accepts the handling of such cargo after receiving from the User a written service request together with the documentation as per clause 5.1 above.

5.8.2. If the User fails to provide such information and the Terminal Operator is unaware of the dangerous nature of the Cargo and the necessary precautions to be taken and if, at any time, it is deemed to be a hazard to life or property, it may be destroyed or rendered harmless, as circumstances may require, without compensation, and the User shall be liable for any and all liabilities arising out the Services, the destruction or rendering the Cargo harmless. The burden of proof that the Terminal Operator knew the exact nature of the danger constituted by the carriage of the Cargo shall rest upon the User.

#### **6. Indemnity**

The User shall indemnify and hold harmless the Terminal Operator against any liability howsoever arising from any breach of the provisions of the GTC's.

#### **7. Terminal Operator's rights**

7.1. The Terminal Operator may at any time inspect any ship, vehicle, Cargo, Container, equipment or other property in the User's possession or control for the purposes of ensuring compliance with these GTC's.

7.2. The Terminal Operator reserves the right to suspend the provision of any Services in the event of any breach of these GTC's.

7.3. The Terminal Operator may refuse acceptance of damaged or distorted Containers or of any Container, which in its opinion is in an unsatisfactory condition.

7.4. The Terminal Operator may refuse to handle any container or Cargo with a weight, which exceeds its stated weight or the safe working load of any cargo handling equipment. Should any of the Terminal Operator's cargo handling equipment be used in handling an overweight Cargo, the User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any loss or damage to property or death or personal injury arising out or caused by the handling of the overweight Container or Cargo.

7.5. The Terminal Operator has the right to refuse to handle Cargo, which, upon inspection, is found not to comply with the applicable rules, regulations, ordinances, or laws and to reject and/or return such Cargo at the sole expense and risk of the User.

7.6. The Terminal Operator may install and operate any surveillance device to protect the safety and security of its property and that of its customers and third parties and to assist in the investigation and/or prosecution of any illegal act or any alleged breach of these GTC's.

#### **8. Agent**

The User may, subject to prior notification in writing to the Terminal Operator, appoint an agent in respect of the Services (the "Agent"), in which event the User shall be deemed to have authorized the Agent to act on the User's behalf in respect of all matters hereunder including to pay to or receive from the Terminal Operator all sums due under these GTC's unless the User notifies the Terminal Operator to the contrary at any time hereafter and:

- i) the Terminal Operator shall be entitled at any time and from time-to-time hereafter, to act upon any instruction, request, notice or other communication from the Agent without prior reference to the User and to receive from and to pay to the Agent any sums due under these GTC's (including any rebate);
- ii) any payment made by the Terminal Operator to the Agent pursuant to these GTC's shall be held by the Agent in trust for the User and the receipt by the Agent of such payment shall be a full and sufficient discharge of the Terminal Operator in respect of such payment; and
- iii) the power granted to the Terminal Operator under this Section 8 shall continue until the Terminal Operator receives written notice from the User to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Agent thereafter.

#### **9. Rates and payment**

9.1. In consideration of the provision of the Services, the User will pay the charges calculated in accordance with the Fees. The Terminal Operator shall be entitled to vary its Fees at any time by giving thirty (30) calendar days' written notice to the User. In case of immediate changes to applicable tariffs and/or units used to apply the tariff by state bodies, agencies and/or authorities of the republic of Iraq (especially the port authority) the Terminal Operator shall be entitled to change the Fees with immediate effect by giving a notice in writing to the User.

9.2. All Fees are payable as per terms agreed in the terminal or logistic service contracts. However, following fees need to be received by irrevocable cheque, in cash or by bank transfer before departure of truck or vessel from the Terminal:

- A pro-forma disbursement handled by a ship agent which included the Cargo related stevedoring and handling charges,
- Shifting and delivery charges for account of consignees.

All other Fees and in absence of a separate terminal or logistic service contract, are due within 5 days from invoice date.

9.3. Any payment balances due to deviation between manifested and actual quantities to be settled 5 banking days after final delivery or completion of operations.

9.4. Any disputed invoice shall be dealt with separately independent of the advance deposit. Should User dispute any items on any invoice in whole or in part, or if the invoice is prepared or submitted incorrectly in any respect, User must provide Terminal Operator detailed reasons for such rejection within 7 days following the invoice date, no representation shall be entertained thereafter, and the invoice becomes final. Terminal Operator shall have the right to unitarily amend the substantive part of any invoice, if the substance thereof is disputed, and issue a credit note for the rejected part or whole of the invoice as applicable. Upon receipt of such amended invoice or credit note by User, User shall pay the undisputed part of a disputed invoice.

9.5. All Fees are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority which shall be paid by the User at the rate and in the manner prescribed by law.

9.6. All payments due from the User under these GTC's shall be made in full without any set-off, abatement, restriction, or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counter claim.

9.7. The Terminal Operator reserves the right to charge interest at a rate of zero-point five (0.5) percent per calendar day, calculated daily, on all amounts not received by the due date for payment.

9.8. All offers are based on the rate of exchange (hereafter "ROE") between in-country local currency and USD, as published by the Central Bank of the country of operation on the date of the offer. If on the day of completion of the services the ROE differs more than 5%, the new rate of exchange applies. Should a User fail to pay any invoice (including but not limited to FDA's) until the due date it shall bear the consequences of any impact of the rate of exchange. Company reserves the right to adjust its invoice to reflect the higher value.

#### **10. Lien**

10.1 Without prejudice to any other rights and remedies Terminal Operator may have under these GTC's or otherwise and unless otherwise agreed, Terminal Operator shall have a particular and general lien on all Cargo and any documents relating thereto for all sums whatsoever due at any time. The User shall not pledge rights of surety, lien or any other type of security related to such Cargo to a third party without Terminal Operator's prior written consent.

10.2. Where any sum due to the Terminal Operator from the User remains unpaid, Terminal Operator on giving 28 (twenty-eight) days' notice in writing to the User, shall be entitled (without liability to the User) to sell or dispose of such Cargo or documents by public auction or by private treaty at the risk and expense of the User and

to apply the proceeds of any such sale or disposal in or towards the payment of the sums due.

## **11. Liability**

### **11.1. Ship and Trucks**

11.1.1. The Terminal Operator shall be liable for personal injury or death, damage to property and assets to the extent the same was caused by the gross negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.

11.1.2. The Terminal Operator's liability under Section 11.1.1 shall be limited to the lesser of: (a) the reasonable repair costs based on the market value at the date of the damage (b) two million (2,000,000.00) US-Dollars per incident or series of connected incidents.

### **11.2. Containers**

11.2.1. The Terminal Operator shall be liable for loss or damage to Containers to the extent the same was caused by the gross negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.

11.2.2. The Terminal Operator's liability under Section 12.2.1 shall be limited to the lesser of:

- i) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Container; and
- ii) seven thousand five hundred (7,500.00) US-Dollars per Container, unless the Container is either (a) a Reefer Container, in which case the limit shall be twenty thousand (20,000.00) US-Dollars per Reefer Container or (b) a tank Container, in which case the limit shall be fifteen thousand (15,000.00) US-Dollars per tank Container.

### **11.3. Cargo**

11.3.1. The Terminal Operator (or any other party for whom Terminal Operator is responsible) shall be entitled to avail itself of the defences, limitations and exclusions of liability which are available to the User under the bill of lading or other transport documents, evidencing a contract of carriage, which has been issued in respect of Cargo carried by the User.

11.3.2. Where no bill of lading or other transport document as aforesaid has been issued in respect of the Cargo, the Terminal Operator shall only be liable for loss of or damage to any Cargo to the extent the same is caused by gross negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible, and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Cargo; and (b) two (2) US-Dollars per kilo of gross weight of the Cargo lost or damaged, or in case of steel products (such as coils, sheets, plates, slabs, pipes, tubes, beams, bars, blooms, billets, wire rods and cast iron pipes) one thousand (1,000.00) US-Dollars per package or per customary freight unit.

### **11.4. Delay**

11.4.1. The Terminal Operator accepts no responsibility whatsoever and howsoever arising (including negligence and events beyond the Terminal Operator's control) about any failure to adhere to any timeframe or any delay in the performance of the Services (including to Containers, Cargo, vessels and/or).

11.4.2. Without prejudice to Section 11.4.1, if the Terminal Operator is found liable for loss or damage caused by delay or if the

Terminal Operator fails to adhere to timeframes agreed under Section 11.4.1, the Terminal Operator's liability for the same shall not in any circumstances whatever exceed a sum equal to the amount of the fees in respect of the Services provided in relation to the relevant Containers, Cargo, vessels and/or trucks.

### **11.5. Exclusions**

11.5.1. The Terminal Operator shall not be liable for any loss or damage to personnel, cargo or assets if the User or its Agents/representatives contributed to such loss or damage, such contribution can include without limitation a complete or partly wilful act, act of negligence or omission, wrong documentation etc;

11.5.2. The Terminal Operator shall not be liable for any third-party damage or loss of personnel, cargo, and assets caused by a Cyber event or attack.

### **11.6. Limitation of liability**

Notwithstanding any other provision of these GTC's, under no circumstances shall the maximum aggregate liability of the Terminal Operator towards all Users arising under or in connection with the Services provided in relation to the relevant Containers, Cargo, vessels or trucks exceed three million (3,000,000.00) US-Dollars during any calendar year which shall include all claims which relate to any event or series of events which occurred, commenced or had their originating cause or source in such calendar year.

### **11.7. General liability**

Notwithstanding any other provision of these GTC's, the Terminal Operator shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, Third-Party claims (in each case whether direct or indirect) or for any indirect or consequential loss in respect of all claims, losses or damages, whether arising from tort (including negligence and events beyond the Terminal Operator's control), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these GTC's, performance or any failure or delay in performance of the Services or any obligation under these GTC's (including delay to a ship, truck or Cargo) or termination of the agreement constituted by these GTC's.

### **11.8. Applicability to actions in tort**

The defences, exclusions and limits of liability provided for in these GTC's shall apply in any action against the Terminal Operator whether the action be found in tort, bailment, contract, breach of express or implied warranty or otherwise.

### **11.9. Notice of loss**

11.9.1. Any claim by the User against the Terminal Operator arising in respect of any Service provided for the User, or which the Terminal Operator has undertaken to provide must be made and notified in writing to the Terminal Operator within a reasonable time, but in any event latest three (3) calendar days from the date of the event or occurrence alleged to have given rise to a cause of action against the Terminal Operator.

11.9.2. The Parties agree that any claim not made and notified in accordance with Section 11.9.1. shall be deemed to be waived and absolutely barred.

### **11.10. Time Bar**

11.10.1. Notwithstanding the provisions of Section 11.9, the Terminal Operator shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Service provided for the User, or which the Terminal Operator has

undertaken to provide, unless legal proceedings be brought and written notice thereof given to the Terminal Operator within nine (9) months from the date of the event or occurrence alleged to have given rise to a cause of action against the Terminal Operator.

#### **11.11. De-Minimis**

The User shall not be entitled to bring any claim howsoever arising (including negligence) unless and until the amount of any such individual claim exceeds seven hundred fifty (750.00) US-Dollars.

#### **11.12. Indemnity for excess liability**

The User shall promptly indemnify the Terminal Operator against any and all liabilities howsoever assumed, incurred or suffered by the Terminal Operator, its employees, servants, agents, insurers or re-insurers as a result of or in connection with any claim made by any third party (including without limitation a claim made by the owner of the cargo or any other person who is or may become interested in the cargo or any customs authority) (hereafter a "Third-Party Claim"):

- i) when the Third-Party Claim arises from or in connection with the services (whether caused by the Terminal Operator's negligence or otherwise); and
- ii) to the extent the Third-Party Claim exceeds the Terminal Operator's liability to the User under the GTC's.

**1.13.** Without prejudice to any other provisions of these GTC's, the User shall incorporate into the Bill of Lading and other transport documents evidencing contracts of carriage issued in respect of cargo carried by the User, a clause to the effect that while acting in the course of or pursuant to these GTC's, the Terminal Operator shall be entitled to the benefit of all provisions or clauses in the bill of lading or other transport document to the extent such provisions and clauses benefit the User, but no further, and the Terminal Operator for itself and any party for whom it is responsible hereby accepts such benefit. The User shall indemnify and hold harmless the Terminal Operator against any liabilities howsoever arising from any breach of the provisions of this Section 11.13.

**11.14.** The Terminal Operator authorizes, empowers, and directs the User to act, and the User hereby agrees to act, as the Terminal Operator's trustee and/or agent for the limited purpose only of complying with Section 11.13.

#### **12. Insurance**

The Terminal Operator is under no obligation to maintain property insurance for containers, cargo, vessels, and trucks. It is the responsibility of the User to procure such insurance coverage. Terminal Operator encourages the User to take out such insurance.

#### **13. Force majeure**

13.1 Neither party shall be liable to the other for any loss or damage to any Cargo or Container, delay or non-performance of its obligations under the Agreement to the extent that such loss, damage, delay or non-performance is due to any circumstance beyond the reasonable control of the party relying on the force majeure including but not limited to acts of God, flood, severe weather condition, storm, tempest, epidemic, pandemic, compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light), criminal acts, cyber-attacks, computer

viruses, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce) shortages of labour, materials and services and inability or delay in obtaining supplies or any other force majeure event, including events defined in paragraph 3 of the ICC Force Majeure Clause (Long Form).

13.2 Storage and demobilization/re-mobilization costs to be on the account of the User in the event of a force majeure event.

13.3 Either Party may terminate the Agreement if a force majeure event continues for more than 180 calendar days.

13.4. The ICC Hardship Clause is incorporated in these GTC's with paragraph 3C.

#### **14. Assignment and subcontracting**

14.1. The Terminal Operator may assign any or all its obligations under these GTC's.

14.2. The User may not assign, novate, or otherwise dispose of its rights or obligations under these GTC's or any part thereof without the prior written consent of the Terminal Operator.

14.3. The Terminal Operator may sub-contract any part of its obligations under these GTC's.

#### **15. Miscellaneous**

##### **15.1. Entire Agreement**

These GTC's (together with any document expressly incorporated by the parties (if any)) comprises the entire agreement between the parties with respect to the provision of the Services and any representations or statements whether made orally or written elsewhere are hereby excluded (including without limitation where such representations or statements were made negligently). If the User's documentation contains terms or conditions additional to or at variance with these GTC's every such additional or varying term or condition shall be of no effect.

##### **15.2. Representation**

The User acknowledges that it does not enter into these GTC's in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of these GTC's and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

##### **15.3. Severability**

(i) If any provision of these GTC's is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction, then these GTC's will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the GTC's, valid and enforceable. If a court declines to amend these GTC's as provided herein, the invalid, illegal or unenforceable provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if these GTC's had been executed with the invalid, illegal or unenforceable provision eliminated.

(ii) In the event of any such severance as described in this section, the parties will negotiate in good faith with a view to replacing the provisions so severed with legal and enforceable provisions that have similar economic and commercial effect to the provisions so severed.

##### **15.4. Waiver**

The failure of the Terminal Operator to insist upon strict performance of any provision of these GTC's, or the failure of the Terminal Operator to exercise any right or remedy to which it is

entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by these GTC's. A waiver of any breach of contract shall not constitute a waiver of any subsequent breach of contract. No waiver of any of the provisions of these GTC's shall be effective unless it is expressly stated to be a waiver and communicated to the User in writing in accordance with the provisions of Section 15.8.

**15.5. Non exclusivity of right or remedies**

Except as expressly stated in these GTC's, no right or remedy conferred upon any party by these GTC's shall be exclusive of any other right or remedy howsoever arising, and all such rights and remedies shall be cumulative.

**15.6. Amendments**

Any modification, variation, amendment, or addition to these GTC's must be in writing and signed by a duly authorized representative of the Terminal Operator.

**15.7. Independent Contractor**

The Terminal Operator is an independent contractor under these GTC's. Nothing in these GTC's shall be construed or interpreted to constitute a partnership, association, or joint venture between the parties, or to make one party an agent or representative of the other party. User shall hold itself out as an agent of or in a joint venture with the Terminal Operator. The User shall have no authority to act on behalf of the Terminal Operator, and the Terminal Operator shall have no authority to act on behalf of the User, except to the extent necessary for the Terminal Operator to accomplish its obligations under these GTC's.

**15.8. Notices**

Notifications shall be made in writing, by mail, via e-mail or by fax according to the data exchanged between the parties. Any notice served by mail shall be deemed to have been given on the third day following the day on which it was mailed.

**15.9. Headings**

Headings of clauses or groups of clauses in these GTC's are for indicative purposes only.

**15.10. Legislation**

If any legislation is compulsory applicable to Services undertaken – in whole or in part - these GTC's shall, as regards such Services, be subject to such legislation. However, nothing in these GTC's shall be construed as a surrender by Terminal Operator of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these GTC's is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

**15.11. Dispute resolution and applicable law**

(i) These GTC's and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

(ii) Any dispute, controversy or claim arising out of or relating to this Agreement, including its conclusion, interpretation, performance, breach, termination, or invalidity, shall be finally settled under the rules of the London Court of International Arbitration by three (3) arbitrators appointed in accordance with the said rules. The place of arbitration shall be London, United Kingdom. The language of the arbitration shall be English.

(iii) The Terminal Operator shall be entitled to bring legal proceedings against the User in the courts of country of operation or in any other jurisdiction (including jurisdiction(s) where the User has a place of business or assets) and legal proceedings by the Terminal Operator in one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.