

MOTUKEA INTERNATIONAL TERMINAL LIMITED (MITL)

TERMINAL SERVICES STANDARD TRADING CONDITIONS (STANDARD TERMS & CONDITIONS)

THE USER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE TERMINAL OPERATOR'S LIABILITY AND THOSE WHICH REQUIRE THE USER TO INDEMNIFY THE TERMINAL OPERATOR IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME, BEING CLAUSES 5, 6 AND 12

1. DEFINITIONS AND INTERPRETATION

1.1 In these Standard Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Agent" shall have the meaning given to it in Condition 10.1;

"Berth" means a safe mooring place along-side the quay used for stevedoring operations;

"Booking note or Pre-advice" means the declaration of the Customer, shipper, or packager in respect of the Container or Cargo being exported;

"Business day" means a day on which banks are open for business in Port Moresby, Papua New Guinea (PoM, PNG);

"Cargo" means goods of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container, or an Out of Gauge Container and includes any Non-containerized Cargo carried on a Vessel;

"Charges" shall have the meaning given to it Condition 12.1;

"Claim" means any claim by the User for the loss or damage arising out of or relating to any or all of the cargo, any container, any Vessel or Vessel's equipment, the Terminal Services or any delay or other failure in supplying the Terminal Services pursuant to these Standard Conditions;

"Commencement date" means the date when the services are performed by the terminal operator and these Standard Conditions shall commence and take effect.

"Confidential Information" means the provisions of these Standard Conditions 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.

"Container" means any full, partly loaded or empty standard ISO container with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers), and which can be handled by means of a container spreader;

"Container Ship" means a cellular ship fitted for the carriage of Containers, Out of Gauge Containers and/or Non-Containerized Cargo whether above or below deck, including all lashing equipment required for the proper securing of Containers on board.

"Custody" means:

- a. In respect of import Containers (laden or empty) or Non-containerized Cargo: (i) the period which begins when the Container or Non-containerized Cargo is physically lifted off from the Vessel's deck, hold or from the top of other Containers on the Vessel and ends when the Container or Non-containerized Cargo is mounted onto the withdrawing truck or rail wagon by the Terminal Operator's cargo handling equipment for delivery to consignee, or if shorter, (ii) the period during which the User is responsible for the Cargo under the bill of lading or other transport document if one has been issued;
- b. In respect of export Containers (laden or empty) or Non-Containerized Cargo the period which begins when the Container or Non-Containerized Cargo is physically lifted off from the truck or rail wagon by the Terminal Operator's cargo handling equipment for stacking at the yard of the Terminal and ends when the Container or Non-Containerized Cargo is laid to rest on the Vessel;
- c. In respect of transshipment Containers (laden or empty) or Non-Containerized Cargo the period which begins when the Container or Non-Containerized Cargo is physically lifted off from one Vessel's deck, hold or from the top of other Containers and ends when the Container or Non-Containerized Cargo is laid to rest on another Vessel's deck, hold or on top of another container on another Vessel;

- d. In respect of Transit Containers or Non-Containerized Cargo the period which begins when the Container or Non-Containerized Cargo is physically lifted off from the Vessel and ends when the Container or Non-Containerized Cargo is mounted onto the withdrawing truck or rail wagon by the Terminal operator's cargo handling equipment for delivery to consignee, or if shorter the period during which the User is responsible for the Cargo under the bill of lading or other transport document if one has been issued; or the period which begins when the Container or Non-Containerized Cargo is physically lifted off from the truck or rail wagon by the Terminal Operator's cargo handling equipment for stacking at the yard of the Terminal and ends when the Container or Non-Containerized Cargo is laid to rest on the Vessel.

"Dispute" means a dispute arising out of or relating to these Standard Conditions, including without limitation, a dispute about breach, termination, validity or subject matter of these Standard Conditions, or a claim in equity or in tort relating to the performance or non-performance of such Standard Conditions.

"EDI" means electronic data interchange between the Parties;

"EDIFACT" means the United Nations standards for Electronic Data Interchange for Administration, Commerce and Trade.

"Health and Safety Rules" means the health and safety rules of the Terminal Operator notified to the User from time to time.

"ISPS code" means the International Ship and Port Facility Security Code forming part of the Safety of Life at Sea (SOLAS) Convention of International Maritime Organization.

"Liabilities" means any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings, and judgements of whatsoever nature;

"Non-Containerized Cargo or General Cargo" means cargo not contained in a Container, accepted for transport/carriage on a Vessel which cannot be handled by means of normal use of a container spreader even with special attachments;

"Operations Regulations" means Terminal Operator's specific rules and regulations attached hereto as Appendix "A";

"Out of Gauge Container" 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;

"Planning Department" means the Operator's planning Department responsible for planning of the Port operations.

"Port or Terminal" (as the case may be) means such wharf area contained within the port presently owned, operated and managed by the terminal Operator and any other wharf area within the Port which the Terminal Operator may in future own, lease or have access to, together with adjacent area in which containers or cargo are received, handled and stored for the purpose of loading onto or discharging from a vessel. "Terminal" means Motukea International Terminal Limited or "MIT" in short, the international terminal facilities located in Motukea Island off Napanapa road, Port Moresby, Papua New Guinea.

"SDR" means Special Drawing Rights as defined by the International Monetary Fund;

"Services" means any services that are provided by or arranged by the Terminal Operator, including without limitation the handling of Containers and Cargo;

"Tariff" means the Terminal Operator's tariff of charge included herein as Appendix "B" and Appendix "C" respectively.

"Terminal" means the terminal facilities at Motukea, Port Moresby, Papua New Guinea;

"Terminal Operator" means Motukea International Terminal Limited or "MIT" in short.

"TEU" 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;

"TOS" means Terminal Operating System

"User" means (i) any person who receives or benefits from the Services, including, without limitation, the owner of, charterer (of whatsoever nature) of, or any other person who is or may become interested in a Vessel calling at the Terminal, the Vessel's master and any person who has control of the operation such as Vessel, the owner or any other

person who is or may become interested in the Cargo; (ii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; IMDG cargo (iii) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; and (iv) any person who drives or operates such vehicle and any person who uses and/or enters the Terminal.

“Vessel” means any Container Ship or vessel owned, chartered, operated, or leased by the User and notified in writing by the User to the Terminal Operator at any time during the application of these conditions.

1.2 In these Standard Conditions:

- 1.2.1 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 or other thing done under the statutory provision or under such re-enactment;
- 1.2.2 A person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership;
- 1.2.3 A person includes reference to that person’s legal personal representatives, successors and permitted assigns;
- 1.2.4 The singular includes the plural and vice versa (unless the context otherwise requires);
- 1.2.5 Any words following the word “including” shall be interpreted without limitation to the generality of the preceding words;
- 1.2.6 A reference to a condition, unless the context otherwise requires, is a reference to a clause of these Standard Conditions.

1.3 The headings in these Standard Conditions do not affect their interpretation.

2. SERVICES

2.1 The Terminal Operator will:

- 2.1.1 Provide the Services subject to and in accordance with these Standard Conditions;
- 2.1.2 Provide the Services using reasonable care and skill;
- 2.1.3 Comply with all laws and regulations in force and applicable to the relevant Services;
- 2.1.4 Obtain all necessary licenses and permits required to operate as a terminal operator and provide the Services.
- 2.1.5 When applicable, use EDI on terms and procedures agreed or to be agreed between the Parties, and when financially practicable keeping pace with the current industry standards and;
- 2.1.6 perform any other services agreed or to be agreed in writing between the Terminal Operator and the User based on the Tariffs stated in Appendix B and Appendix C, or as otherwise agreed upon in writing.

2.2 Subject to specific written instructions given by the User and accepted by the Terminal Operator in writing, the Terminal Operator reserves to itself complete freedom in respect of the means and procedures to be employed in the provisions of the Services. The Terminal Operator may deviate from the User’s instructions (whether or not accepted by the Terminal Operator) in any respect if the Terminal Operator considers it is necessary in the interest of the User and the User shall reimburse the Terminal Operator with all reasonable expenses incurred thereby.

2.3 The Terminal operates on vessel side every calendar day, twenty-four (24) hours a day, unless otherwise advised by the Terminal Operator. On landside the Terminal shall operate for twelve (12) hours a day and shall be closed on public holidays. Invoicing services are in operation every business day and Saturdays as indicated and shall be closed on public holidays. As follows:

Gate Operations (Receival/Delivery)	From	To	Remark
Day Shift – 7 days a week (Mon-Sun)	08:00	20:00	* Night shift is an overtime shift. Not a standard operating time. It is shown here for purposes of user understanding of overtime deployment being billed per

Night Shift * – Upon user request	20:00	08:00	shift basis irrespective of full shift utilization or part thereof, reflective of the labor commitment to the shift
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Vessel Operations	From	To	Remark
Day Shift – 7 days a week	08:00	20:00	Hot seat operation (no breaks)
Night Shift * – Upon user request	20:00	08:00	Hot seat operation (no breaks)

Billing Office (Invoicing)	From	To	Remark
Monday to Friday	08:00	17:00	
Saturdays	08:00	12:00	

- 2.4 Terminal Operating Times: Gate operation; Vessel Operations and Billing/Documentation office. Excludes public holidays as declared by the government of Papua New Guinea.
- 2.5 Any Services required outside the Terminal Operating Times shall be pre-agreed with the Terminal Operator prior to 15:00 (by 09:00 for Saturday billing office) on the day of requirement. Overtime rates shall apply as per the Tariff in Appendix C.
- 2.6 Users are informed that overtime requirements relating to PNGPCL where appropriate, must be separately communicated directly with PNGPCL with any charges also settled directly with PNGPCL as maybe required.

3 SCOPE AND APPLICATION OF THESE STANDARD CONDITIONS

3.1 These Standard Conditions shall apply to:

3.1.1 All services provided to the User including: (i) all Container Ships owned, chartered and/or operated by the User or any member of the User Group (in this clause "**User Container Ship**"); (ii) to all Containers and Out of Gauge Containers owned, leased, chartered, managed, operated and/or used by the User or any member of the User Group; and (iii) Cargo, whether transported on a User Container Ship or a VSA Container Ship and/or entering, remaining in or at, or leaving the Container Terminal;

3.1.2 The use by any User of the Terminal and/or the facilities at the Terminal;

3.1.3 All Vessels which berth at the Terminal;

3.1.4 And shall be binding on all Users who receive or benefit from the Services, use and/or enter the Terminal.

4 REQUEST FOR BERTH

4.1 Berths will be provided at the discretion of the Terminal Operator.

4.2 The User shall give the Terminal Operator notice of its requirement to berth at the Terminal at least 7 days before the estimated time of arrival of the Vessel, and thereafter 72 hours notice prior to estimated time of arrival.

4.3 The Terminal Operator follows a window system. If a vessel arrives at the Terminal after the agreed time of arrival, the berthing schedule will be provided at the operator's discretion, based on operational requirements.

4.4 In respect of each Vessel, the User shall also give the Terminal Operator all the relevant details of the Containers, Out of Gauge Containers and/or Non-Containerized Cargo in respect of which the Services will be immediately

required after departure from last port or no later than twenty-four (24) hours prior the estimated time of arrival of the Vessel (details to include number, type, weight, dimension, and IMDG).

The Terminal and the User will agree the maximum number of moves required prior to arrival of the Vessel. Based on the agreed maximum number of moves, the Terminal Operator will provide the estimated port stay. The User shall procure that the Vessel shall vacate the berth within one hour upon completion of vessel operations. User shall indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator in connection with the incapacity or inability to vacate at the end of the Berthing Window.

5 USER'S OBLIGATIONS AND WARRANTIES

- 5.1 The User shall provide all the [documents] and information at least before the indicated hours of the expected time of berthing.
- a. EDI Baplie before 24 hours
 - b. Creation of Preadvice and Submission of final list of empty containers before 24 hours
 - c. Special stowage instructions and special containers such as OOG and reefer before 24 hours of expected time of berthing
 - d. Free Pratique clearance from the National Agriculture and Quarantine Inspection Authority (NAQIA), along with all other required documentation from the Papua New Guinea Customs Service and other relevant government agencies before 1 hour
- 5.2 At all times when a Vessel is berthed at the Terminal, the User shall ensure that the Vessel:
- 5.2.1 furnishes adequate lighting and safe ingress and egress (for the Terminal Operator's personnel);
 - 5.2.2 maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Terminal Operator to provide the Services;
 - 5.2.3 maintains engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth;
 - 5.2.4 that its crew members adhere at all times to all Health and Safety Rules; and
 - 5.2.5 complies with all applicable laws and legal requirements relating to them, the Cargo, the Containers, their activities, and the use of the Terminal.
 - 5.2.6 Shall not drift away from the quayside while berthing or otherwise; and should this occur, it shall be the sole responsibility of the master of the ship and the user.
- 5.3 The User and the master of the ship shall be in sole charge of the Vessel while using any of the berths managed by the operator, and her safety shall be the sole responsibility of the User. The User shall be held responsible for any loss and/or damage that may arise from faulty navigation, or by reason of her breaking adrift from her moorings. No instruction or direction given, or act performed by the terminal operator or its officers, employees or sub-contractors shall place any responsibility upon the terminal operator, with respect to the security or safety of such ship.
- 5.4 The User will be solely responsible for complying with all formalities, procedures and regulations prescribed by the relevant customs authority and any governmental authority or other agency having legal jurisdiction over the relevant matter and which arises in connection with the Cargo, Containers and/or the Vessel and for obtaining all necessary licenses, and authorisations required for the transportation, exportation or importation of the Cargo. The Terminal Operator shall not be liable whatsoever in this regard. The User shall be solely responsible for taking actions to carry out the corresponding proceedings and obtaining the licenses and permits required by law. By virtue of the foregoing, the User agrees to hold the Terminal Operator harmless from any claims, fines, penalties, charges, payoffs or otherwise resulting from any breach to this provision.
- 5.5 The User shall:

- 5.5.1 takeout and maintain adequate hull and machinery and protection and indemnity (P&I) Insurance in respect of its Vessel/s, the latter from a Club being a member of the International Group of P&I Clubs, together with insurances adequate to cover its liabilities under this Standard Conditions.
- 5.5.2 if so requested, provide the Terminal Operator with a copy of the certificate of insurance confirming that these insurance requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the User's obligations to obtain insurance required by law or under this Standard Conditions.
- 5.5.3 The Terminal Operator reserves the right to not allow those vessels to berth, which have not complied with the insurance requirements herein.

5.6 User's Warranties

5.6.1 The User warrants and represents that:

- a. it is authorised to contract with the Terminal Operator on the terms of these Standard Conditions in respect of the Vessel, the Cargo and the Containers, and that it is accepting these Standard Conditions not only for itself, but also as agent for and on behalf of the owners of the Vessel (if it is chartered by the User), Cargo and Containers or any other person who is or may become interested in the Cargo;
- b. all the documentation and information provided by the User or its representatives in relation to any Cargo and/or Containers is full and accurate.

5.6.2 In respect of all Cargo and Containers, the User warrants and represents that they:

- a. are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling, and marking are appropriate to any operations or transactions affecting the Cargo and the Containers;
- b. are, for goods that need refrigeration, properly contained in reefer containers with the required temperature settings;
- c. are liable when the Cargo and/or the Container gives off any injurious dust, gas, fumes, liquid, radiation, or any other toxic, explosive, harmful or similar substance;
- d. are not infested, verminous, leaking, rotten, or subject to fungal attack and not liable to become so while at the Terminal;
- e. are not over-heated or under-heated or liable to become so while at the Terminal;
- f. 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;
- g. 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, pilferage or proximity to other cargo or from inflammability but will remain safe if left standing in the open or in covered accommodation at the Terminal if agreed in writing with the Terminal Operator;
- h. contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and
- i. are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by the Terminal Operator.

5.7 Indemnity

5.7.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator (including its wharf, port, fender, mooring bollards, quay cranes as well as other infrastructure and equipment), its customers (including other Users, Vessel and third parties) its employees, servants, agents, insurers or re-insurers as a result of or in connection with any of the following:

- a. any breach by the User of the obligations, representations and/or warranties given in Condition 5;
- b. the Terminal Operator acting in accordance with the User's instructions;

- c. any damage to the wharf and or/to the port, Terminal, equipment, fenders, mooring bollards, ships, vessels belonging to the Terminal or any third party, caused during or arising from the act of berthing or unberthing, whether by reason of incompetence or negligence of the pilot in-charge of the ship belonging to the User, or as a result of improper mooring of the ship while alongside the wharf/berths, and shall hold the Terminal Operator indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage, except it is solely and directly caused by gross negligence or wilful misconduct of the Terminal Operator, its servants or sub-contractors.

6 DANGEROUS CARGO

- 6.1 Except with the Terminal Operator's express prior consent in writing, the Terminal Operator will not accept to deal with Cargo which is or may become dangerous (whether or not so listed in international codes or manuals), inflammable, damaging, injurious (including radioactive materials), noxious or which are or may become liable to damage any property or person whatsoever. Where the Terminal Operator expressly accepts in writing to deal with Cargo of a dangerous nature:
 - 6.1.1 the User shall promptly provide the Terminal Operator with such information twenty-four (24) hours prior as is necessary for it to perform its obligation in connection with such Cargo in accordance with all applicable laws, regulations and/or requirements, including without limitation information about the nature of the Cargo, the appropriate manner and method of storage, handling and transportation; and
 - 6.1.2 the Container or the Cargo must be distinctly marked on the outside so as to indicate the nature and character of any such Cargo and so as to comply with all applicable laws, regulations and/or requirements.
 - 6.1.3 Dangerous goods maybe accepted by the user for shipment only after written confirmation by the Terminal Operator of its agreement and ability to handle such said dangerous goods.
- 6.2 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.
- 6.3 The User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any breach of the provisions of this Condition 6.

7 SAFETY OF LIFE AT SEA (SOLAS)

- 7.1 The International Maritime Organization (IMO) has amended the Safety of Life at Sea (SOLAS) Convention to require that a packed Container's gross weight be verified before the Container can be loaded on board a ship. The SOLAS amendment provides that no Container without a verified gross mass (VGM) can be loaded on board a ship.
- 7.2 The user must provide the terminal operator a final load list with confirmation that the user holds the appropriate VGM certification for all nominated container and uncontainerised general cargos to be loaded to the specified vessel. The user's submission of the final load list is accepted as the user's instruction to the terminal operator to load all listed cargo as being VGM certified to the satisfaction of the user.
- 7.3 The responsibility for obtaining and documenting the verified gross weight of a packed Container (for containerized cargo) and loose packages (for uncontainerised cargo) lies with the shipper. Unless otherwise directed by the relevant government authority, the shipper shall provide this information before or by the time the Container/cargo is delivered to the Container Terminal. The user shall indemnify and shall hold the Terminal Operator free and harmless from any liability, loss or damage arising from an erroneous VGM of a packed Container (or containerized cargo).
- 7.4 However, if the Terminal Operator addresses an uncertainty about the gross mass of a packed Container by weighing the Container, the weight obtained by the Terminal Operator shall be used for vessel stowage planning. The shipper recognizes that, if he fails to provide a verified container weight as called for by the SOLAS amendments, the Terminal Operator may refuse gate-in of the Container subject to the regulations of the local

port authority. In the event that the Terminal Operator is mandated to be the official VGM source by the relevant authority or is contracted to obtain a verified container weight, there shall be a cost for such services that the affected parties will need to address.

- 7.5 SOLAS regulation VI/5 requires that a Container not be packed to more than the maximum gross mass indicated on the Safety Approval Plate under the IMO's Convention for Safe Containers (CSC), as amended. A Container with a gross mass exceeding its maximum permitted gross mass may not be loaded onto a ship.

8 HEALTH, SAFETY AND ENVIRONMENT

- 8.1 The Terminal Operator will provide all Container Terminal Services and other services agreed hereunder in a manner that ensures adequate protection of:

- (a) employees and other individuals entering the premises of the Terminal Operator, such as but not limited to independent contractors and the public;
- (b) the environment;
- (c) the User's Container Vessels;
- (d) any equipment owned or operated by the User;
- (e) the User's Containers; and
- (f) the Cargo,

in full compliance with all Applicable Laws.

- 8.2 Each Party will be responsible for its employees', servants', agents' and subcontractors' compliance with health, safety, and environment requirements of this Agreement.
- 8.3 The Terminal Operator will provide its employees, servants, agents and subcontractors with the necessary and adequate health, safety, and environment training for performing the Container Terminal Services and other services agreed.
- 8.4 Each Party will ensure that any waste (including any hazardous waste) is being collected, stored, and disposed or recycled in an environmentally sound manner and as required by Applicable Laws.
- 8.5 Each Party will maintain an emergency response plan to deal with emergencies, such as but not limited to fire and explosion, and carry out drills periodically, including in such a manner and with such frequency as may be required under any Applicable Laws.
- 8.6 The Terminal Operator will provide to the User, its employees, servants, agents and subcontractors, clear health, safety, and environment instructions when entering the Container Terminal. The User will ensure that its employees, servants, subcontractors, and Agents follow such instructions as stated in Section 6.

9 TERMINAL OPERATOR'S RIGHTS

- 9.1 The Terminal Operator may at any time inspect any Vessel, vehicle, Cargo, Container, equipment (including vessel and gear) or other property in the User's possession or control for the purposes of ensuring compliance with these Standard Conditions safety standards.
- 9.2 The Terminal Operator reserves the right to suspend the provision of any Services in the event of any breach of these Standard Conditions.
- 9.3 The Terminal Operator may refuse acceptance of damaged or distorted Containers or of any Container which in its opinion is in an unsatisfactory condition.
- 9.4 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 Container or 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.

- 9.5 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 Standard Conditions.
- 9.6 Berthing order right – the terminal operator shall have the flexibility to modify the berthing schedule.

10 AGENT

- 10.1 The User may, subject to prior notification in writing to the Terminal Operator, appoint an agent in respect of the Services (in this Condition the "Agent"), in which event the User shall be deemed to have authorised 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 Standard Conditions unless the User notifies the Terminal Operator to the contrary at any time hereafter and:
- 10.1.1 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 Standard Conditions (including any rebate);
 - 10.1.2 any payment made by the Terminal Operator to the Agent pursuant to these Standard Conditions 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
 - 10.1.3 the power granted to the Terminal Operator under Condition 10.1.1 above 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.

11 PROVISION OF INFORMATION

- 11.1 The User, either directly or through its representatives or Agent, shall give the Terminal Operator all information reasonably required for the efficient conduct of the Container Terminal services.
- 11.2 The Terminal Operator shall provide the User with information as may reasonably be required by the User for the efficient planning and conduct of the User's services as it related to the use of the Container Terminal and the provision of Container Terminal Services and other services agreed.

12 RATES AND PAYMENT

- 12.1 In consideration of the provision of the Services, the User will pay the charges calculated in accordance with the Tariff ("Charges"), provided herein Appendix B and Appendix C, respectively. The Terminal Operator shall be entitled to vary its Tariff at any time by giving a minimum of thirty (30) days written notice to the User.
- 12.2 Unless otherwise agreed in writing with the User, all Charges are payable prior to the final delivery or receipt of the Cargo. All invoices are to be first settled, where thereafter a credit or debit note will be issued on settlement of Dispute, as the case may be.
- 12.3 All Charges are exclusive of GST and any other taxes, 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.
- 12.4 All payments due from the User under these Standard Conditions 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.
- 12.5 Any disbursement incurred by the Terminal Operator on behalf of the User and not related to a particular port call shall be computed and settled in the same currencies as those in which they were incurred. Any disbursement must be properly accounted for each port call and duly supported. All supporting vouchers and sub-vouchers shall be in English and shall clearly state the Services rendered and the purpose of same.
- 12.6 The Terminal Operator reserves the right to charge The User an interest at 4% rate, calculated on a daily basis, on all amounts not received by the due date for payment beyond the agreed credit term, if any, of maximum 30-days. Accumulated interest will be billed on a monthly basis, at the end of each month.
- 12.7 The User grants the Terminal Operator the right to perform the escalation of unpaid invoices and dunning of the debtor. In the event that the User accumulates an excessive (at the Terminal Operator's sole discretion)

outstanding amount of unpaid sums, the Terminal Operator may either: (a) require a payment security for all future Services; or (b) stop providing Container Terminal Services to the User (at the Terminal Operator's sole discretion).

- 12.8 Without prejudice to any other rights and remedies the Terminal Operator may have under these Standard Conditions or otherwise, the Terminal Operator shall have a general as well as a specific lien on the Cargo, the Containers and any documents relating thereto for all sums whatsoever due at any time to the Terminal Operator under these Standard Conditions or otherwise. To enforce and satisfy the Terminal Operator's lien, the Terminal Operator shall have the right, at the User's expense, to sell the aforementioned Cargo, Containers and documents by public auction or private treaty, without notice to the User and without any liability towards the User and to apply the proceeds in or towards the payment of such sums. The Terminal Operator shall, upon accounting to the User for any balance remaining after payment of any sum due to the Terminal Operator, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Cargo, Containers or documents.

13 COSTS AND EXPENSES

Without prejudice to any liability for loss or damages otherwise governed by the terms of this Agreement, each Party shall be liable to the other for documented costs and expenses incurred by the other arising out of the failure of a Party to observe the terms of this Agreement and any applicable Port procedures (including, but not limited to, the Authority's rules for Dangerous Cargo).

14 LIABILITY

14.1 Vessel

- 14.1.1 The Terminal Operator shall only be liable for loss of or damage to any Vessel including its gear and all other equipment to the extent the same was caused by the negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.
- 14.1.2 The Terminal Operator's liability under Condition 14.1.1 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 Vessel and (b) **US\$3,000,000** per incident or series of connected incidents.

14.2 Containers

- 14.2.1 The Terminal Operator shall only be liable for loss of or damage to any Container to the extent the same was caused by the negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.
- a. The Terminal Operator's liability under Condition 14.2.1 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 Container; and
 - (b) US\$1,700 per TEU per Container, unless the Container is either (i) a refrigerated Container, in which case the limit shall be US\$2,000 per refrigerated Container or (ii) a tank Container, in which case the limit shall be US\$2,000 per tank Container.

14.3 Cargo

- 14.3.1 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.
- 14.3.2 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 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) US\$100 per consignment covered under a single Bill of Lading.

14.3.3 However, Terminal Operator shall in no case be liable for the following Cargo: plants, trees, flowers, living creatures, Money, manuscripts, deeds, documents, lottery tickets, plans, designs, jewelry, precious stones, precious metals or objects made from them, works of art, when the Terminal Operator was not informed five (5) working days prior to arrival of the Vessel

14.4 Delay

14.4.1 The Terminal Operator accepts no responsibility whatsoever and howsoever arising (including negligence) with regard to any failure to adhere to any timeframe or any delay in the performance of the Services (including to Containers, Cargo or Vessels).

14.4.2 Without prejudice to Condition 14.4.1, 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 Condition 14.4.1, the Terminal Operator's liability for the same shall not in any circumstances whatever exceed a sum equal to the amount of the Charges in respect of the Services provided in relation to the relevant Containers, Cargo or Vessels.

14.4.3 All Vessel delays are for the User's account, including the decision to close the hatch due to weather conditions, the cost associated with such delays are indicated in the rates in the Tariffs in Appendix B and Appendix C, respectively.

14.5 Exclusions

14.5.1 The Terminal Operator shall not be liable for loss of or damage to any Vessel, Container or Cargo under the provisions of this Condition 13 unless the User can establish that the loss or damage was directly caused by the Terminal Operator or any other party for whom the Terminal Operator is responsible whilst (in respect of Cargo or Containers) the same was in the Custody of the Terminal Operator or any other party for whom the Terminal Operator is responsible. If the loss or damage was contributed to by the act or omission of the User or any other person, the Terminal Operator shall be exonerated from liability under Condition 13 to the extent that such act or omission contributed to the loss or damage.

14.5.2 The Terminal Operator shall not be liable for loss of or damage to any Vessel, Container or Cargo under the provisions of this Condition 13 unless the Terminal Operator's cargo handling equipment was used.

14.5.3 Save as set out in Condition 13, the Terminal Operator shall not be liable for loss of or damage to any Vessel, Cargo or Container howsoever arising (whether caused by negligence or otherwise).

14.6 General liability

14.6.1 Notwithstanding any other provision of these Standard Conditions, 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), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Standard Conditions, performance or any failure or delay in performance of the Services or any obligation under these Standard Conditions (including delay to a Vessel or Cargo) or termination of the agreement constituted by these Standard Conditions.

14.6.2 Nothing in these Standard Conditions shall exclude or restrict the Terminal Operator's liability for death or personal injury caused by its gross negligence or any other act or omission, liability for which may not be excluded or limited under applicable law.

14.7 Applicability to actions in tort

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

14.8 Notification of claims

14.8.1 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 within thirty (30) days from the date of the event or occurrence alleged to have given rise to a cause of action against the Terminal Operator. In the event that damage is observed; a real-time assessment at the time of the event must be undertaken by the User and the

Terminal Operator. The Terminal Operator may call on the assistance of a third-party assessor to provide a survey report of the incident.

14.8.2 The parties agree that any claim not made and notified in accordance with Condition 14.8.1 shall be deemed to be waived and absolutely barred.

14.9 Time limit for claims

14.9.1 Notwithstanding the provisions of Condition 14.8, 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 thirty (30) days from the date of the event or occurrence alleged to give rise to a cause of action against the Terminal Operator.

14.10 De-Minimis

14.10.1 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 US\$500.

14.11 Indemnity for excess liability

14.11.1 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) (in this Condition a "**Third Party Claim**"):

a. when the Third-Party Claim arises from or in connection with the Services (whether caused by the Terminal Operator's negligence or otherwise); and

b. To the extent the Third-Party Claim exceeds the Terminal Operator's liability to the User under the Standard Conditions.

14.12 Without prejudice to any other provisions of these Standard Conditions, 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 Standard Conditions, 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.

14.13 The Terminal Operator authorises, 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 Condition 14.12

15 INSURANCE

15.1 The Terminal Operator is under no obligation to maintain property insurance for Containers, Cargo or Vessel.

15.2 The Terminal Operator shall, at its own expense, procure and maintain policies of insurance covering:

15.2.1 any liabilities assumed by it under these Standard Conditions; and

15.2.2 any requirements by law, including public and third-party liability.

16 FORCE MAJEURE

16.1 A Party shall not be liable for any failure of or delay in the performance of its obligations under this Agreement to the extent that such performance is prevented or delayed by Force Majeure.

16.2 An event of Force Majeure means any event which could not be foreseen or which is foreseeable but inevitable, including any act of God or man such as fire, flood, typhoon, earthquake, outbreak, strike or other grave labor problem, riot, war, or a change in law, order, rule or regulation by the government.

16.3 As soon as practicable but no less than 24 hours from the occurrence of the Force Majeure, the affected Party shall notify the other Party of the occurrence through a written notice, e-mail, or, if the affected Party has limited means of communication, by any available means of sending a notice; provided, however, that the affected Party

shall continue to use commercially reasonable efforts to remove or mitigate the cause and/or impact of the Force Majeure.

- 16.4 Within seven (7) days from the notice of Force Majeure, the affected Party shall submit to the other Party a written explanation on the (i) particulars of the Force Majeure and its connection with the failure or delay in the performance by the affected Party; (ii) actions being taken to remove or mitigate the cause and/or effect of the Force Majeure after its occurrence; (iii) expected duration of the Force Majeure; and (iv) undertaking to provide a notice of termination of Force Majeure and immediate resumption of the affected obligation or a notice of extension of Force Majeure, as the case may be.
- 16.5 The other Party shall review the explanation from the affected Party for satisfaction with the above requirements and when so satisfied, shall approve the same.
- 16.6 The payment of any invoices due and owing under this Agreement shall in no event be delayed by the affected Party.
- 16.7 If the Terminal Operator is prevented by Force Majeure from providing the Services either at all or to a substantial extent and the period of Force Majeure exceeds two (2) months, then at any time on or after the expiry of that period either Party may terminate this Agreement immediately by serving fourteen (14) days written notice on the other.
- 16.8 Irrespective of the affected party's obligations, if an event of Force Majeure is invoked by Terminal Operator, Terminal Operator shall not be entitled to charge for any Services whether such Services are provided by Terminal Operator during the event of Force Majeure including but not limited to fees for demurrages and re-nominations
- 16.9 During any period of Force Majeure, if the Terminal Operator incurs any additional costs in complying with its obligations under these Standard Terms and Conditions, the User shall pay the same to the Terminal Operator.

17 CONFIDENTIALITY

- 17.1 The parties undertake that they shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 17.2 and 17.4.
- 17.2 Each party may disclose the other party's Confidential Information:
- 17.2.1 to its employees, officers, agents, representatives, or professional advisers who need to know such information for the purposes of carrying out the party's obligations under these Standard Conditions; and
 - 17.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 17.3 If either party breaches this Condition 17, the other party shall have the right to immediately obtain an injunction to prevent the further disclosure of any confidential information, in addition to any other right it may have at law or otherwise.
- 17.4 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under these Standard Conditions.

18 ASSIGNMENT AND SUB-CONTRACTING

- 18.1 The Terminal Operator may assign any or all of its obligations under these Standard Conditions.
- 18.2 The User may not assign, novate, or otherwise dispose of its rights or obligations under these Standard Conditions or any part thereof without the prior written consent of the other party (such consent not to be unreasonably withheld or unduly delayed).
- 18.3 The Terminal Operator may sub-contract any part of its obligations under these Standard Conditions.

19 COMPLIANCE CLAUSES

- 19.1 Parties shall at all times comply with all laws, rules, regulations, and orders of any governmental authority as well as possession of all required permits, licenses, and other authorizations for the conduct of its business.
- 19.2 User acknowledges access to copies of ICTSI's Code of Business Conduct (https://cdnweb.ictsi.com/s3fs-public/inline-files/ictsi_-_code_of_business_conduct.pdf) and Global Principles on Human Capital

(https://cdnweb.ictsi.com/s3fs-public/2020-11/hcb1_10.23_0.pdf). The User agrees to inform each of its employees, sub-contractors (if any, as may be allowed herein), agents dealing with the Terminal Operator of these policies and undertakes that the performance of the Services shall be consistent with the same.

19.3 The User further represents and warrants that it has not, nor any of its directors, officers, employees or representatives, taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any government or public official/candidate or any officer or employee of the Terminal Operator to unlawfully influence official action or secure an unlawful advantage. The User conducts its business in compliance with applicable anti-corruption laws and maintains policies and procedures designed to promote and achieve compliance with such laws and, furthermore, the anti-bribery obligations under ICTSI's Code of Business Conduct.

19.4 The ICTSI Group is committed to uphold the principles of sustainable development in its operations and corporate stewardship of its people, customers, corporate resources, and the environment. These thrusts are documented in ICTSI's Annual Sustainability Report available at <https://www.ictsi.com/what-we-do/sustainability>. User undertakes to observe the foregoing or analogous principles and commitment and shall cooperate with the Terminal Operator in its sustainability efforts in the Terminal and its community.

19.5 The User in all its dealings with the Terminal Operator operate safely so as to protect person and property based applicable laws as well as the Health, Safety, Security and Environment (HSE) Policies of the ICTSI Group. User shall provide the CLIENT HSE documentations that may include:

19.5.1 Risk assessments;

19.5.2 Work methodologies;

19.5.3 Training records;

19.5.4 Licenses and certificates; and

19.5.5 Standard Operating Procedures.

The User shall immediately notify the Terminal Operator of any health and safety and/or environmental incident (e.g. injury, property damage, oil spill, etc.) by the quickest practicable means (e.g. by phone call). The User shall follow this notice with a formal incident report in writing within eight (8) hours from the occurrence.

19.6 Both Parties agree that each of their employees, directors, affiliates, subcontractors, and any other person or entity acting on their behalf (hereinafter referred to as the "Related Parties") shall comply with all applicable anti-corruption laws including but not limited to the Parties' respective codes of business conduct and anti-bribery policies, and where applicable the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010 (hereinafter referred to as "Anti-Corruption Laws").

20 GENERAL PROVISIONS

20.1 These Standard Conditions (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) provided always that this Condition shall not exclude or limit any liability or any right which any party may have in respect of pre-contractual statements made or given fraudulently supersedes all previous agreements and arrangements between the parties with respect to the provision of the Services. If the User's documentation contains terms or conditions additional to or at variance with these Standard Conditions every such additional or varying term or condition shall be of no effect.

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

20.3 If any provision of these Standard Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, then these Standard Conditions will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Standard Conditions, valid and enforceable. If a court declines to amend these Standard Conditions 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 Standard Conditions had been executed with the invalid, illegal or unenforceable provision eliminated.

- 20.4 In the event of any such severance as described in Condition 19.3, 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.
- 20.5 The failure of either party to insist upon strict performance of any provision of these Standard Conditions, or the failure of either party 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 Standard Conditions.
- 20.6 A waiver of any breach of contract shall not constitute a waiver of any subsequent breach of contract.
- 20.7 No waiver of any of the provisions of these Standard Conditions shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 20.8 Except as expressly stated in these Standard Conditions, no right or remedy conferred upon any party by these Standard Conditions shall be exclusive of any other right or remedy howsoever arising, and all such rights and remedies shall be cumulative.
- 20.9 Any modification, variation, amendment, or addition to these Standard Conditions must be in writing and signed by a duly authorised representative of each party.
- 20.10 Any party for whom the Terminal Operator is responsible shall have the benefit of the exclusions of liability contained in, and shall have the right to enforce, the provisions of these Standard Conditions in accordance with the Provision of the Contracts (Rights of Third Parties) Act 1999.
- 20.11 A person who is not a party may not enforce, or otherwise have the benefit of, any provision of these Standard Conditions under the Contracts (Rights of Third Parties) 1999.
- 20.12 The Terminal Operator is an independent contractor under these Standard Conditions. Nothing in these Standard Conditions 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. Neither party shall hold itself out as an agent of or in a joint venture with the other party. 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 Standard Conditions.
- 20.13 Notices which serve to alter or revise the terms of or to terminate the agreement constituted by these Standard Conditions, or notices in respect of claims or legal actions or which otherwise have a material impact on these Standard Conditions shall be in writing in English and served to the registered office of the other party by:
- 20.13.1 registered mail, or courier service, and shall be deemed served if sent by courier, on the date and at the time of signature of the courier's delivery receipt, or
- 20.13.2 fax (confirmed without undue delay by courier service or registered mail) and shall be deemed served when the sender receives one or more transmission reports showing the whole of the notice to have been transmitted to the correct fax number.
- 20.13.3 Electronic mail shall be deemed served when the recipient responds with non-automated confirmation that the notices have been received and read.
- 20.14 These Standard Conditions 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 Papua New Guinea.
- 20.15 Any claims against the Terminal Operator under these Standard Conditions or otherwise arising from the Services shall be determined exclusively by the courts of Papua New Guinea to which jurisdiction the User irrevocably submit.

The Terminal Operator shall be entitled to bring legal proceedings against the User in the courts of Papua New Guinea 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.