



PORT  
OF NEOM

15 April 2024

# PORT OF NEOM

## STANDARD TERMS AND CONDITIONS

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# 1. DEFINITIONS AND INTERPRETATION

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- 1.1. Defined terms are identified throughout these Standard Conditions by the capitalization of the initial letter of a word or phrase. Unless otherwise required grammatically, where capitalization of the initial letter is not used, an expression has its natural meaning.

The following defined terms have the meanings given below:

**Abandoned Vessel** has the meaning given to it in Condition 18.2;

**Additional Charge** has the meaning given to it in Condition 9.1;

**Affiliate** means in relation to a body corporate, any subsidiary or holding company thereof and any subsidiary of any such holding company or any entity which Controls, is Controlled by, or is under the common Control of such body corporate; and in relation to an individual, any other individual, partnership, trust, company or other entity in relation to which that individual has Control, and any spouse or child of such individual;

**Anti-Bribery Laws** means the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the US Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010, the Anti-Bribery Law of KSA promulgated pursuant to Royal Decree M/36 dated 29/12/1412H (as amended), and all other applicable anti-corruption and anti-bribery Laws;

**Applicable Laws** means all laws, rules, regulations, by-laws, guidelines, codes of practice, standard operating procedures, directions by the Authority, and international conventions ratified and adopted by KSA which are applicable to the Port, the Services, the Terminal Operator and port activities in general, including any amendment thereto;

**Authority** means any government, statutory, public or other authority or body having jurisdiction over the Terminal Operator, the Port, customs, immigration, emigration and related activities for the Port (or anything in connection with any of them);

**Ballast Water Management Convention** means the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, as amended from time to time;

**Berth** means a berth, quay, pier, jetty, docks, landing place and any wall at the Terminal adjoining the foreshore or sea-bed and to which a Vessel can be moored;

**Cargo** means goods of any kind, size, or weight/measurement whatsoever including, but not limited to, any Container, General Cargo, solids, liquids, live animals, livestock, people, or whatever is carried on a Vessel;

**Carrier** means any transportation, mobility and logistics operators, charterers, owners and operators of Vessels, groupage operators, road and rail operators, air transport service operators or forwarding agents;

**Change in Law** means with respect to a law governing these Standard Conditions:

- (a) its introduction; or
- (b) its amendment, change, modification or repeal,

after the start of the Services which has a material adverse effect on either Party's performance of its obligations under these Standard Conditions and which such Party could not reasonably have foreseen prior to the start of the Services;

**Charges** has the meaning given to it in Condition 25.1;

**Confidential Information** means all information, documentation, data and IP Rights (including information stored or transmitted into a computer, database, or any other device by electronic means) relating to the Terminal Operator, its Affiliates, agents and contractors or these Standard Conditions which is provided to or obtained by the User including any document or data marked "Confidential" or any information, document or data which the User has been informed is confidential or which the User ought reasonably to believe that the Terminal Operator would regard as confidential;

**Consignee** means a person or entity who is entitled to receive the Cargo as stated on the Contract of Carriage;

**Consignor** means a person or entity who is in charge of sending the Cargo to its destination who acts on his own behalf or on behalf of the Cargo;

**Container** means any fully loaded, partly loaded or empty container with standard ISO dimensions, including but 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 safety requirements of CSC (Convention for Safe Containers), and which can be handled by means of a conventional spreader;

**Contract of Carriage** means a bill of lading or a contract between a Carrier of Cargo or passengers and a Consignor, Consignee or passenger defining the rights, duties and liabilities of parties to the contract;

**Controlled** and **Control** means the holding of power to direct or cause the direction of management, policies, and decisions of a company, corporation, partnership or other entity including, without limitation, through control by direct or indirect means of more than fifty percent (50%) of the voting rights in such company, corporation, partnership or other entity and **Controlling Interest** shall be construed accordingly;

**Custody** means:

- (a) in respect of import Cargo, either (i) the period which begins when the Cargo is lifted from the Vessel and ends when the Cargo is mounted onto the withdrawing truck for delivery to the Consignee or (ii) the period during which the User is responsible for the Cargo under the Contract of Carriage (whichever is shorter);
- (b) in respect of export Cargo, the period which begins when the Cargo is lifted off from the truck for stacking at the yard of the Terminal and ends when the Cargo is laid on the Vessel; and
- (c) in respect of transshipment Cargo, the period which begins when the Cargo is lifted from the Vessel and ends when the Cargo is laid on another Vessel.

**Cybersecurity Requirements** means all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions, applicable to either Party and relating to security of network and information systems and security breach and incident reporting requirements, as amended or updated from time to time;

**Damaged Cargo** has the meaning given to it in Condition 9.1;

**Dangerous Cargo** means Cargo which is or may become dangerous (whether or not listed in international codes or manuals) and includes but is not limited to, dangerous Cargo listed under each IMCO Class, explosives, gases (whether compressed, liquefied, or dissolved under pressure), flammable liquids,

flammable solids/substances liable to spontaneous combustion, oxidizing substances and organic peroxide, poisonous and infectious substances, radioactive substances, corrosives, miscellaneous dangerous substances, or which is or may become liable to damage any property or person whatsoever;

**Data Protection Legislation** means any Applicable Law in any jurisdiction in force from time to time relating to privacy or the processing of personal data provided under or in relation to the provision of Services;

**Dispute** has the meaning given to it in Condition 33.3;

**General Cargo** means Cargo not transported in a Container;

**Good Industry Practice** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timelines as would be expected from a leading company within the relevant industry or business sector;

**GOSI** means the General Organization for Social Insurance in KSA;

**ILO** means International Labour Organisation;

**IMCO** means the Inter-governmental Maritime Consultive Organisation;

**IMCO Class** means the IMCO classification of dangerous goods, marine pollutants and material hazardous, as amended from time to time;

**IMDG Code** means the International Maritime Dangerous Goods Code;

**IP Rights** means all intellectual property rights including, without limitation, patents, utility models, rights to and in inventions, (whether patentable or not), copyrights and neighbouring and related rights, trademarks, service marks, logos, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information, know how, industrial designs, internet domain names, trade dress, URLs, social media handles and accounts, websites, fictitious business names, trade secrets and the designs contained within them and any other intellectual property rights, in each case, whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

**ISPS** means International Ship and Port Facility Security;

**KSA** means the Kingdom of Saudi Arabia;

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

**Lux** means one (1) lumen per square meter;

**MARPOL Convention** means the International Convention for the Prevention of Pollution From Ships 1973 as modified by the Protocol of 1978 (MARPOL 73/78), as amended from time to time;

**Out of Gauge Container** means a Container whose contents exceed the standard dimensions of the Container;

**Overall Liability Cap** has the meaning given to it in Condition 20.2;

**Overweight Cargo** has the meaning given to it in Condition 19;

**Passenger Vehicle** means a vehicle driven by a passenger using the Terminal as the point of embarkation or disembarkation in connection with travelling on a Vessel;

**Perishable Cargo** means Cargo which due to its nature will deteriorate, lose value or be irreparably harmed if not unloaded, stored or otherwise processed;

**Port** means the Port of NEOM with the UN/LOCODE SANEO;

**Port Access Channel** means the navigable body of water connecting the Terminal to the territorial waters;

**Port Authority** means the Saudi Ports Authority, also referred to as Mawani;

**Prohibited Act** means any one or more of the following:

- (a) directly or indirectly offering to, or giving to, or accepting from (or agreeing to offer, give or accept from) any person retained or employed by or on behalf of the Terminal Operator, an Affiliate of the Terminal Operator, any Authority or any third party, any bribe, gift, gratuity, commission or consideration of any kind as an influence, inducement or reward:
  - (i) for doing or not doing (or agreeing to do or not do the same) any act in relation to the obtaining, or performance, of these Standard Conditions, or any other agreement or arrangement relating to the Services; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to these Standard Conditions or any other agreement or arrangement relating to the Services;
- (b) acting fraudulently or dishonestly, including committing any offence under any Applicable Laws relating to fraudulent or dishonest acts, or defrauding or attempting to defraud or conspiring to defraud the Terminal Operator, an Affiliate of the Terminal Operator or any Authority;
- (c) doing anything which would breach any Anti-Bribery Laws; or
- (d) any act or omission which is reasonably likely to, or in fact does, cause damage to the reputation of the Terminal Operator, an Affiliate of the Terminal Operator or any Authority.

**Regulation for Ship Chandlers** means the regulations for ship chandlers (except for all types of fuel) issued by the Port Authority pursuant to its Board of Directors Decision No. (7/G1/DA) dated (10/03/1440 AH) and modified by virtue of its Board of Directors Decision No. (62/G7/D1) dated (03/11/1441 AH), as amended from time to time;

**Regulation for Shipping Agents** means the regulations for shipping agents issued by the Port Authority pursuant to its Board of Directors Decision No. (144/G15/D2) dated (07/11/1443 AH), as amended from time to time;

**Rules** has the meaning given to it in Condition 33.3.1;

**Sanctions** means any economic sanctions, trade embargo or restrictive measures administered, enacted or enforced by KSA, the United Nations Security Council (as a whole and not its individual members), the United States (including the Department of the Treasury's Office of Foreign Assets Control, the United States Department of State and sub-agencies, and the U.S. Department of Commerce's Bureau of Industry and Security), the Council of the European Union or the Government of the United Kingdom (including HM Treasury's Office of Financial Sanctions Implementation and the Department for Business and Trade's Export Control Joint Unit);

**SCCA** has the meaning given to it in Condition 33.3;

**SCCA Arbitration Rules** means the arbitration rules published by SCCA, as adopted on 1 May 2016 and revised from time to time, including on 1 May 2023;

**SCCA Expedited Procedure Rules** means the arbitration rules for expedited procedure published by the SCCA, as adopted on 15 October 2018 and revised from time to time, including on 1 May 2023;

**Services** means any services that are provided by or arranged by the Terminal Operator;

**Ship Chandler** means a person or entity who is licensed by the Port Authority under the Regulation for Ship Chandlers to carry out chandelling services except for all types of fuel inside the ports of KSA including the Port;

**Ship Chandler Bank Guarantee** means a bank guarantee provided by a Ship Chandler in favour of the Terminal Operator pursuant to the Ship Chandler's licence under the Regulation for Ship Chandlers;

**Shipping Agent** means a person or entity who is licensed by the Port Authority under the Regulation for Shipping Agents to carry out maritime agency services and authorised by a Carrier to act on its behalf in performing its duties towards the Port and/or the Terminal Operator;

**Shipping Agent Bank Guarantee** means a bank guarantee provided by a Shipping Agent in favour of the Terminal Operator pursuant to the Shipping Agent's licence under the Regulation for Shipping Agents;

**Site Conditions** has the meaning given to it in Condition 13.1;

**SOLAS** means the International Convention for the Safety of Life at Sea 1974, as may be amended from time to time;

**Standard Conditions** means these standard terms and conditions entered between the Terminal Operator and each User;

**Tariff** means the table of fees and charges for port services approved by the Port Authority in respect of the Port, as may be updated from time to time; with the latest versions available on the official website for the Port [here](#) (in English) and [here](#) (in Arabic), wherein in the event of inconsistency between the two versions, the Arabic version of the Tariff shall take precedence;

**Tax** means any tax (including any personal, Zakat, corporate, VAT, withholding tax, transfer pricing rules, payroll taxes, social insurance contributions, occupational hazard insurance, SANED unemployment insurance, real estate transaction tax, levy, impost, duty (including customs duty), registration fee or other charge) or withholding of a similar nature (including any interest or penalty payable in connection with any failure to pay or any delay in paying any of the same) whether levied by the Government of KSA or any government outside KSA;

**Taxable Supply** has the meaning given to it in Condition 26.4;

**Terminal** means the Terminal Operator's multi-purpose terminal and land and premises owned and/or used by the Terminal Operator at the Port;

**Terminal Facilities** mean all the quays, anchorage areas, loading/unloading areas, docks, storage areas, roads, paths, buildings and any other facilities operated or managed by the Terminal Operator at the Terminal;

**Terminal Operator** means: (i) NEOM Company, a company owned by the Public Investment Fund organised and existing under the laws of the Kingdom of Saudi Arabia, with commercial registration number 3550134238, having its address at NEOM City, Building 4758, Alkhuraibah 9136, Unit 2, PO Box 48643, Tabuk in the Kingdom of Saudi Arabia or (ii) OXAGON Company, a company owned by NEOM Company

organised and existing under the laws of the Kingdom of Saudi Arabia, with commercial registration number 3555101955, having its address at Duba, Tabuk Province, Kingdom of Saudi Arabia;

**Terminal Services Agreement** means an agreement entered into by the Terminal Operator and a User for the provision of terminal services;

**Transfer Pricing Rules** means the transfer pricing rules and/or regulations issued by the ZATCA pursuant to Board Resolution No. (6-1-19) dated 25/05/1440H corresponding to 31/01/2019 (wherein such is amended from time to time in accordance with the Applicable Laws of the KSA);

**User** means (a) any person who receives or benefits from the Services including, without limitation, each Carrier, Shipping Agent, Ship Chandler, Vessel, Consignee, Consignor (including, in each case, any agent thereof) and all other individuals or business entities that use and/or enter the Terminal, and (b) all individuals or business entities that use Vessels, trucks, any road, railroad cars or other means of conveyance and/or equipment that utilize the Services and/or enter the Terminal;

**US\$** means United States Dollars, the lawful currency of the United States of America;

**VAT** means value added tax as levied in accordance with the Applicable Laws of the KSA;

**Vessel** means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation of cargo, people, or equipment and material on water, or used, or capable of being used, as a means of steering, pulling, pushing or lifting other watercraft and equipment on water and that utilizes the services and facilities of the Terminal for the loading, unloading, storage, handling or transfer of Cargo; and

**ZATCA** means the Zakat, Tax and Customs Authority and its ancestor and successor entities responsible for regulating and administering Tax in KSA.

- 1.2. The headings of Conditions in these Standard Conditions are included only for the convenience of the reader and shall not affect the construction or interpretation of any of the provisions of these Standard Conditions.
- 1.3. In these Standard Conditions, unless expressly stated otherwise or the context otherwise dictates:
  - 1.3.1. "day" means a calendar day;
  - 1.3.2. the terms "herein," and "hereunder" are references to these Standard Conditions taken as a whole;
  - 1.3.3. the terms "include," "includes," and "including" mean "including, without limitation" or a variant thereof;
  - 1.3.4. "approval" and "consent" means, unless specified otherwise herein, written approval and written consent. Wherever in these Standard Conditions a provision is made for the giving or issuing of any consent by a Party, unless otherwise specified, such consent shall be in writing and the words "consent," "approve," "accept," or "certify" are to be construed accordingly;
  - 1.3.5. words importing the singular shall also include the plural and vice versa; and
  - 1.3.6. reference to a Condition shall be construed as a reference to a condition in these Standard Conditions.

## 2. SCOPE AND APPLICATION OF STANDARD TERMS AND CONDITIONS

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- 2.1. The Terminal Operator is authorised by the Port Authority to provide, manage, operate and maintain adequate and efficient services and facilities for all Users at the Port.
- 2.2. These Standard Conditions shall be read, taken and construed as part of any contract or agreement entered into with the Terminal Operator and shall govern any transaction for the Services offered and provided by the Terminal Operator to the User.
- 2.3. These Standard Conditions shall apply to:
  - 2.3.1. all Services provided, or made available, by the Terminal Operator;
  - 2.3.2. the use of or entry into the Terminal and/or the facilities at the Terminal by any User; and
  - 2.3.3. all Vessels which berth at the Terminal.
- 2.4. Notwithstanding the absence of any express acceptance by the User of these Standard Conditions, the User is deemed to have read, understood and agreed to these Standard Conditions (and any amendments thereto), upon:
  - 2.4.1. giving notification to the Terminal Operator of its intention to use the Services at the Port; or
  - 2.4.2. entering the Port Access Channel or the Terminal or entering into any business or transaction with the Terminal Operator whether by agreement or otherwise.
- 2.5. The User represents and warrants that it will bring these Standard Conditions (including the limits, defences, exceptions, liberties and exclusions herein) to the attention of any person whom the User may instruct to enter the Terminal or otherwise deal with the Terminal Operator including any subcontractor, agent, employee, or other party instructed by the User.
- 2.6. Notwithstanding anything to the contrary herein, the rights of any User to enter or utilize the Terminal shall be subject to the prior approval of the Terminal Operator.
- 2.7. A copy of these Standard Conditions currently in effect at any time will be made available to any User on request to the Terminal Operator.

## 3. SERVICES

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- 3.1. The Terminal Operator will:
  - 3.1.1. provide the Services subject to and in accordance with these Standard Conditions;
  - 3.1.2. provide the Services using reasonable care and skill;
  - 3.1.3. comply with all Applicable Laws; and
  - 3.1.4. obtain all necessary licenses and permits required to operate as a terminal operator and provide all Services.

- 3.2. 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 provision of the Services. The Terminal Operator may deviate from the User's instructions (whether or not accepted by the User) in any respect if the Terminal Operator considers it necessary in the interest of the User or to ensure the safe and/or efficient operation of the Port, and the User shall reimburse the Terminal Operator all reasonable expenses incurred as a result of such deviations.
- 3.3. The Terminal Operator reserves the right at any time to: (i) refuse to provide access to the Port; (ii) refuse to provide Services and/or to suspend the provision of any Services.

## 4. APPOINTMENT OF SHIPPING AGENT

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Each Carrier shall appoint a Shipping Agent in respect of the Services, subject to prior notification in writing to the Terminal Operator. The Carrier shall be deemed to have authorised the Shipping Agent to act on the Carrier'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 Carrier notifies the Terminal Operator to the contrary, in writing, at any time hereafter and:

- 4.1. 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 Shipping Agent without prior reference to the Carrier and to receive from and to pay to the Shipping Agent any sums due under these Standard Conditions (including any rebate);
- 4.2. any payment made by the Terminal Operator to the Shipping Agent pursuant to these Standard Conditions shall be held by the Shipping Agent in trust for the Carrier and the receipt by the Shipping Agent of such payment shall be a full and sufficient discharge of the Terminal Operator in respect of such payment; and
- 4.3. the power granted to the Terminal Operator under Condition 4.1 above shall continue until the Terminal Operator receives written notice from the Carrier to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Shipping Agent thereafter.

## 5. NOTICE OF ARRIVAL

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Each Carrier and/or Shipping Agent expecting to berth a Vessel at the Terminal for the purpose of loading and/or unloading Cargo shall give the Terminal Operator three (3) notices, the first notice being at least 72 hours prior to the arrival of such Vessel, and thereafter the second and third notices which shall be at least 48 hours and 24 hours, respectively, prior to the arrival of the Vessel. The aforementioned notices shall be furnished with such information as the Terminal Operator may request. The acceptance and berthing of each Vessel must be agreed in writing in advance by the Terminal Operator.

## 6. INSTRUCTIONS AND DOCUMENTATION

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At least 48 hours prior to a Vessel's arrival, the User shall provide the Terminal Operator the relevant documents and information and clear instructions in respect of all work to be performed on the Vessel. The Terminal Operator reserves the right to request any additional documents which it deems fit in its sole discretion. Failure by the User to provide the relevant documents and information may result in the Terminal Operator refusing to allow the Vessel to berth.

## 7. VESSEL BERTHING

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- 7.1. The Terminal Operator does not offer any berthing, access to the Terminal or productivity guarantees to the User.
- 7.2. The Terminal Operator reserves the right to accept only Vessels that comply with Applicable Law. A Shipping Agent applying for permission for a Vessel to enter the Port must ensure that the standard of the Vessel, master and crew certificates are no lower than the standards set by Applicable Law.
- 7.3. No Vessel shall berth or attempt to berth at a Berth at the Terminal until the Terminal Operator has notified the User that it is ready to receive the Vessel. All marine manoeuvres in the Port Access Channel shall be undertaken in compliance with Applicable Laws.
- 7.4. The Terminal Operator will provide mooring crew to render assistance to the Vessel. The mooring crew shall operate under the instructions and the responsibility of the master of the Vessel for the sole purpose of making fast or casting off the Vessel's hawsers and mooring ropes.
- 7.5. The User shall supply gangways from the Vessel to the Port and pilot ladders. Safety and illumination on board the Vessel (including gangways and pilot ladders) shall be the sole responsibility of the User and at a minimum should comply with the regulations laid down by SOLAS and ILO.
- 7.6. The Terminal Operator shall be entitled to recover idling charges in accordance with the Tariff.
- 7.7. The Terminal Operator shall not be responsible for any delays in berthing or un-berthing of Vessels.
- 7.8. If the Terminal Operator, in its sole discretion, determines that tugs and/or pilots are required during berthing and/or un-berthing of a Vessel, a charge shall be levied by the Terminal Operator on the User in accordance with the Tariff.

## 8. CARGO ACCEPTANCE AND HANDLING

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- 8.1. The Terminal Operator shall use its reasonable commercial endeavours to make available at the Terminal adequate Cargo handling equipment, comprising cranes and suitable handling vehicles. Notwithstanding the foregoing, the Terminal Operator does not guarantee the availability or capacity of such Cargo handling equipment at any given time for the loading and unloading of Cargo from Vessels and the handling of Cargo, including their transport from the quay to storage areas or vice versa.
- 8.2. Where a Vessel's gear is used, the User will allow the full use of all cranes, winches, derricks, runners, tackle and will supply full power to the Terminal Operator at all times without charge. The Terminal Operator shall not be liable for any accident directly or indirectly arising out of, caused by, or contributed to by any gear supplied by the User. The User shall indemnify the Terminal Operator against any Liability arising out of such accident. The User shall maintain all its Vessels' gear in good working order and before work commences shall provide the Terminal Operator with a current certificate of test of such gear that stipulates it meets the requirements of all Applicable Laws in force.
- 8.3. The User shall not, without the prior consent of the Terminal Operator, move or cause to be moved the Vessel's cranes, hatch covers or other gears.
- 8.4. In no event shall loading or unloading of Cargo occur until such time as the Vessel has been cleared by the Terminal Operator. If a Vessel fails to comply with any Applicable Laws, the Terminal Operator may order the Vessel to vacate the Berth. If the Vessel does not vacate the Berth when so ordered or, if directed by the Terminal Operator, within one hour of completion of loading or unloading (or such other time as directed by the Terminal Operator), the Vessel will be liable for all costs and expenses (including, but not limited to, legal fees) incurred in connection with the moving of and delay in moving of the Vessel, in addition to any applicable penalties.
- 8.5. The delivery of import Cargo and the loading of export Cargo from the Terminal shall be subject to the payment of all Port-related charges and relevant approvals from the relevant Authorities.
- 8.6. The User agrees that in the event that the Terminal Operator determines, in its sole discretion, that additional Cargo handling equipment and/or personnel are required to handle the User's Cargo (whether or not the User has supplied its own gear to the Terminal Operator for handling of its Cargo), a charge shall be levied by the Terminal Operator on the User in accordance with the Tariff.
- 8.7. Subject to the Terminal Operator's right to refuse or reject the Cargo, the User shall inspect the Cargo no later than fifteen (15) days from the date on which the Cargo has been cleared by the Terminal Operator.

## 9. CARGO HANDLING REFUSAL

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- 9.1. The Terminal Operator may, in its sole discretion, refuse acceptance of damaged, defective or distorted Cargo which in its opinion is in an unsatisfactory, unsuitable or unsafe condition ("**Damaged Cargo**"). In the event the Terminal Operator agrees (in its sole discretion) to handle such Damaged Cargo, a charge shall be levied on the User ("**Additional Charge**") in accordance with the Tariff. The Additional Charge is chargeable irrespective of whether any damage to the Cargo causing it to be Damaged Cargo has been caused wholly or in part by the Terminal Operator, its servants or agents, or of any damage that has arisen due to handling of such Damaged Cargo.
- 9.2. The Terminal Operator may refuse to handle any Cargo which exceeds the quantity stated in the corresponding Contract of Carriage. Should any of the Terminal Operator's Cargo handling equipment be used in handling excess quantities of a Cargo, the User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any loss or damage to the Cargo, the Port, the Terminal, the Terminal Facilities or any other property, or death or personal injury to any person, caused by the handling of such excess Cargo.

- 9.3.** The Terminal Operator and the Port Authority, at the risk and expense of the User, reserve the right to transport any Cargo to another location, and/or inspect or investigate any Cargo which in their judgment is likely to damage other Cargo or property in the Terminal.

## 10. DANGEROUS CARGO

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- 10.1.** The User must comply with regulation VII/1.3 of SOLAS 1974 which prohibits the carriage of dangerous goods by sea except when carried in accordance with the IMDG Code.
- 10.2.** Prior to accepting Dangerous Cargo bookings, it is the responsibility of the User to ensure that such Dangerous Cargo is permitted to be on board the Vessel and/or handled and stored at the Port, if the Dangerous Cargo is to be loaded or discharged at the Port.
- 10.3.** Vessel berthing confirmation will not be granted and Dangerous Cargo will not be provided with any service of any kind except when prior approval has been obtained from the Terminal Operator. It is the responsibility of the User tendering such Dangerous Cargo to the Terminal to:
- 10.3.1.** fully disclose in writing to the Terminal Operator, promptly and in advance, all of the Dangerous Cargo's characteristics, risks and requirements applicable to its safe loading, unloading, handling and storage in bulk as is necessary for the Terminal Operator to perform its obligations in connection with such Dangerous Cargo in accordance with Applicable Laws;
  - 10.3.2.** obtain all necessary special permits or permissions required by the Terminal and/or other local or federal authorities in connection with the loading, unloading, handling and/or storage of the Dangerous Cargo(es) at the Terminal; and
  - 10.3.3.** distinctly mark the Container or any other packaging as part of the User's Cargo on the exterior so as to indicate the nature and character of any such Dangerous Cargo, in compliance with Applicable Laws.
- 10.4.** If Dangerous Cargo is incorrectly declared, marked or found on board without the prior approval of the Terminal Operator, the Terminal Operator reserves the right to demand immediate departure of the Vessel, or destroy or render harmless, as circumstances may require, the Dangerous Cargo, without compensation to the User and the User shall be liable for any and all Liabilities arising out of the Services and the destruction or rendering harmless of the Dangerous Cargo.
- 10.5.** The User undertakes to fully indemnify, keep indemnified and hold harmless the Terminal Operator and its Affiliates, officers, directors, employees, agents, subcontractors and contractors from and against all claims, actions, proceedings, damages, demands, judgments, sums payable, Liabilities, losses, costs, charges and expenses which the Terminal Operator and its Affiliates may suffer or incur arising, directly or indirectly, out of or in connection with:
- 10.5.1.** Dangerous Cargo, including any injury to, or death or disease of, any person, or any damage to, or loss or destruction of, any property or the environment, caused by any Dangerous Cargo;
  - 10.5.2.** any damage to, or loss or destruction of, any property or the environment caused by any Dangerous Cargo; or
  - 10.5.3.** the User's failure to comply with its obligations under Conditions 10.1 to 10.4.

## 11. HOURS OF OPERATION

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- 11.1. Subject to local customs and traditions, the Terminal Operator shall operate the Terminal 24 hours per day, every day throughout the year. The working hours may be adjusted during the Holy Month of Ramadan and first day of Eid in accordance with Applicable Laws.
- 11.2. Notwithstanding Condition 11.1, the Terminal Operator shall, in its sole discretion, determine the working hours of the gate operations of the Terminal. The working hours of the gate operations of the Terminal shall be indicated at the entrance of the Terminal, which may be amended from time to time.

## 12. SAFETY, SECURITY AND ENVIRONMENT

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- 12.1. When a Vessel is berthing and/or is berthed at any of the Terminal Facilities, the User shall be solely responsible for its own safety, the safety of the Vessel and its crew and personnel. The User shall at all times maintain appropriate officers and crew on board the Vessel whilst it is alongside the Berth in order to maintain an alert watch, respond to emergency situations and to enable the Terminal Operator to provide the Services. The Vessel and its main engine must be maintained in a state of readiness to respond to emergency situations and to avoid delays in vacating the Berth.
- 12.2. The Vessel master should immediately notify the Port's harbour control tower in the event of his inability to manoeuvre the Vessel due to any defect, maintenance or repair operations. If the Vessel intends to carry out any major maintenance in the Port, the master must submit a written application to the Port's harbour master (along with any supporting documentation the harbour master may require) in order to obtain his approval before undertaking such maintenance.
- 12.3. The User shall ensure that the Terminal Operator's employees/contractors working on board the Vessel are provided with safe access and egress (including guardrails and fencing, where applicable) between the gangway and the holds, deck cargoes, lashing platforms and other relevant areas. If access is required during the hours of darkness, all access routes shall be lit with a minimum of twenty (20) Lux and all working areas shall be lit with a minimum of fifty (50) Lux. The Terminal Operator may in its sole discretion require the User to provide additional lighting.
- 12.4. The Vessel's master/crew shall calculate and monitor the stability of the Vessel while she is in the Port and be responsible for any incident caused due to trim or stability related issues on board the Vessel.
- 12.5. The User and the Vessel crew members shall comply with the environmental, safety and security regulations of the Terminal Operator and the Port Authority.
- 12.6. The User shall, in connection with the protection and prevention of pollution of marine environment, comply with the MARPOL Convention. The User shall comply with the procedures set forth in the MARPOL Convention in connection with its Vessel's stowing, handling, shipping and transferring of toxic waste and sewage and disposal of Vessel-generated hazardous waste. The User shall indemnify the Terminal Operator against all Liabilities arising in connection with the User's breach of the MARPOL Convention.
- 12.7. The User shall, in connection with the management of ballast water for its Vessel, comply with the Ballast Water Management Convention. The User shall, during the ballast water exchange process, comply specifically with Regulation B-4 Ballast Water Exchange of the Ballast Water Management Convention.
- 12.8. If the User is not able to comply with Regulation B-4 Ballast Water Exchange of the Ballast Water Management Convention, then it shall provide the Terminal Operator and the Port Authority with the reason for such non-compliance. The User agrees to comply with any further ballast management measures imposed by the Port Authority and/or the Terminal Operator which are required to ensure compliance with Ballast Water Management Convention including for the User to conduct the ballast water exchange process for its Vessel in an area designated by the Port Authority and/or the Terminal Operator. The User shall indemnify the Terminal Operator against all Liabilities arising in connection with the User's breach of the Ballast Water Management Convention.

## 13. NO WARRANTY AS TO SUITABILITY

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- 13.1.** The User will be deemed to have familiarised itself with and considered all conditions which could affect arrival, mooring, manoeuvring, unmooring and departure of any Vessel at the Terminal, including data relating to the Terminal and its surroundings, the minimum water depth (at any state of the tide) and any physical, surface and sub-surface condition and to have taken into account climatic condition (“**Site Conditions**”).
- 13.2.** The User agrees that the Terminal Operator gives no warranty whatsoever in respect of the Site Conditions and it shall have no liability whatsoever and howsoever arising in respect of the Site Conditions.

## 14. FITNESS AND SUITABILITY OF THE VESSEL

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- 14.1.** Each Carrier and/or Shipping Agent shall at all times remain responsible for the suitable condition of its Vessel and shall ensure that the Vessel is in compliance with Applicable Laws related to the fitness of the Vessel.
- 14.2.** The berthing of any Vessel or delivery of any Vessel to the Terminal shall constitute a warranty by the Carrier and/or the Shipping Agent to the Terminal Operator that there are no latent defects in the Vessel and that the same is capable of either being loaded with the Cargo that is to be loaded by the Terminal Operator or to be unloaded by the Terminal Operator using the equipment employed by the Terminal Operator.
- 14.3.** The Terminal Operator reserves the right and has absolute discretion to refuse any Vessel that it considers unseaworthy and not suitable for handling at the Terminal. The Terminal Operator shall not be responsible for the seaworthiness, maintenance, repair, or service of Vessels coming into a Berth at the Terminal and/or delivered to the Terminal.
- 14.4.** Each Carrier and/or Shipping Agent shall at all times maintain its Vessels clean and free of debris. Should a Carrier and/or Shipping Agent fail to promptly clean and remove any debris which renders the deck of its Vessel hazardous to the safety of any person, the Terminal Operator has the right but not the obligation to clean and remove the debris from the Vessel’s deck at the Carrier’s and/or the Shipping Agent’s cost.
- 14.5.** The Terminal Operator and/or the Port Authority may at any time inspect any Vessel, vehicle, Cargo equipment or other property in and around the Terminal for the purposes of ensuring compliance with these Standard Conditions. If, in the Terminal Operator’s judgement, any Vessel is likely to cause damage to the Terminal and/or to other Users of the Port, it shall have the right to pilot such Vessel out of the Terminal, at the risk and expense of the Carrier and/or the Shipping Agent.

## 15. STOWAGE

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- 15.1.** Notwithstanding any other provision in these Standard Conditions, including Condition 17.1, the User shall be solely responsible for the stowage of the Cargo.
- 15.2.** In the event a Vessel owned by a Carrier is required to be shifted or warped, the Carrier will be responsible for all expenses incurred in connection with the shifting and warping of such Vessel.

## 16. DIRECT DELIVERY

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The User shall obtain prior written approval from the Terminal Operator if the Consignee or any of its agents will take delivery of any Cargo directly from the Vessel without the assistance of the Terminal Operator. Notwithstanding the foregoing, the Terminal Operator reserves the right to supervise and/or manage any direct delivery and to levy a charge on the User in accordance with the Tariff.

## 17. DISPOSAL OF CARGO

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- 17.1. If any Cargo remains in the Terminal unclaimed for a period of more than thirty (30) days (or fifteen (15) days in the case of Perishable Cargo), the Terminal Operator reserves the right to remove the Cargo, without notice, to a bonded storage area or to dispose of the Cargo by auction or by any other means deemed appropriate by the Terminal Operator.
- 17.2. The User must clear any Damaged Cargo from the Terminal within 30 days from the date of unloading (or fifteen (15) days in the case of Perishable Cargo). The Terminal Operator shall not be liable for any loss or damage to any Damaged Cargo (including Perishable Cargo) that is not cleared by the User from the Terminal within the allotted time.
- 17.3. The User shall remain liable to make any outstanding payment owed to the Terminal Operator in connection with the Cargo and/or Damaged Cargo including, but not limited to, any costs incurred by the Terminal Operator in connection with the Cargo and/or Damaged Cargo's storage or disposal. The User shall indemnify the Terminal Operator against all Liabilities incurred in connection with the storage and disposal of the Cargo or Damaged Cargo.

## 18. ABANDONED VESSELS

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- 18.1. If the Terminal Operator has attempted to contact the captain of a Vessel, but the captain of the Vessel cannot be reached within one (1) hour, the Terminal Operator shall be entitled to move the Vessel or cause the Vessel to be moved at the User's cost. The Vessel shall be moved to a location within the Port identified by the Terminal Operator, in its sole discretion.
- 18.2. Following the movement of the Vessel in Condition 18.1 above, the Vessel shall be deemed an "**Abandoned Vessel**" if the User, Carrier or Shipping Agent, as applicable, has failed to:
  - 18.2.1. remove the Vessel from the Port; or
  - 18.2.2. enter into an agreement with the Terminal Operator for the overstay of the Vessel in the Port,in each case, within ninety (90) days of the date on which the Terminal Operator was unable to contact the captain of the Vessel in accordance with Condition 18.1.
- 18.3. The Terminal Operator may arrange for the removal of any Abandoned Vessel and dispose of such Vessel by auction or any other means deemed appropriate by the Terminal Operator in its sole discretion without the need to notify the Carrier and/or Shipping Agent.
- 18.4. The Carrier and/or the Shipping Agent of the Abandoned Vessel shall be liable for and shall indemnify Terminal Operator against all damages, charges, fees and amounts accrued and any Liabilities incurred in connection with the removal and disposal of the Abandoned Vessel.

- 18.5.** The Parties hereby agree that the Terminal Operator shall be entitled to offset any amounts owed to it against the proceeds of the sale or disposal of the Abandoned Vessel.

## 19. MISDECLARATION OF CARGO WEIGHTS

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The Terminal Operator shall not permit its equipment to be used in any way to lift, move, or transport any Cargo with a weight in excess of the safe working load (“**Overweight Cargo**”). Should the Terminal Operator’s equipment be used in handling Overweight Cargo, the User shall be held liable for all losses, claims, demands and suits for damages including death and personal injury, legal and court expenses, directly or indirectly resulting from such handling of Overweight Cargo. Notwithstanding the foregoing, mis-declared Cargo tendered to the Terminal Operator will be rejected and the User will be liable for any applicable fines.

## 20. LIMITATION OF LIABILITY

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- 20.1.** The Terminal Operator (and its Affiliates, officers, directors, employees, agents, subcontractors and contractors) shall only be liable for direct loss or damage caused by the gross negligence or wilful misconduct of the Terminal Operator (or any other party for whom the Terminal Operator is responsible), subject to a limitation of liability as follows:

**20.1.1.** for any loss or damage to any Vessel and equipment, the maximum compensation 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 equipment; and
- (b) US\$ 1,500,000 per incident or series of connected incidents;

**20.1.2.** for any loss or damage to the structural integrity of any Container in the Terminal Operator’s Custody, the Terminal Operator’s liability shall be limited to the lesser of:

- (a) the reasonable replacement cost (with an item of the same age and in the same condition) of the Container; and
- (b) US\$ 2,500 per Container,
- (c) US\$ 3,500 per Container of more than twenty foot (20’) in length,
- (d) US\$ 20,000 in the case of any reefer Container, and
- (e) US\$ 20,000 in the case of any tank Container.

**20.1.3.** for any loss or damage to any Cargo in the Terminal Operator’s Custody, the Terminal Operator’s liability shall be limited to the lesser of:

- (a) the reasonable replacement cost (with an item of the same age and in the same condition) of the Cargo; and
- (b) in the case of containerised Cargo, US\$ 10,000 per Container, and
- (c) in the case of non-containerised Cargo, US\$ 5,000 arising out of any single shipment.

**20.1.4.** for any loss of, or damage to, a Passenger Vehicle, the Terminal Operator shall only be held liable if:

- (a) such Passenger Vehicle is on land within the Terminal;
- (b) such loss or damage occurs before the Passenger Vehicle has crossed a Vessel’s loading ramp to embark that Vessel or after such Passenger Vehicle has left a Vessel’s loading ramp to disembark the Vessel;

- (c) any loss or damage to the Passenger Vehicle does not arise from the malfunctioning of any apparatus or equipment belonging to a Vessel and used for loading Passenger Vehicles; and
- (d) any loss or damage to the Passenger Vehicle does not arise from the instructions issued to the drivers of such Passenger Vehicles by or on behalf of the User or its appointed agent during the embarkation or disembarkation of such Passenger Vehicles.

**20.2.** Notwithstanding the limitation of liability under Condition 20.1, the maximum aggregate liability cap of the Terminal Operator in the case of any Liabilities under these Standard Conditions which arise out of a single incident or series of connected incidents, regardless of whether such loss and/or damage are sustained by more than one person, shall in no circumstances exceed US\$ 2,500,000 (“**Overall Liability Cap**”) Where, in respect of a single incident or series of connected incidents, the loss and/or damage are sustained by more than one person, the Overall Liability Cap shall be applied to all claims brought by each person on a pro-rata basis (i.e. based on the proportion each person’s claims bear to the total amount claimed by all such persons).

### **20.3. Contract of Carriage**

- 20.3.1.** 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 Contract of Carriage.
- 20.3.2.** Where no Contract of Carriage 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 the 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 in the manner set out above in Condition 20.1.3.

### **20.4. Exclusions**

- 20.4.1.** 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, arising from tort (including negligence), breach of contract, breach of statutory duty or otherwise under or in connection with these Standard Conditions.
- 20.4.2.** If any loss or damage was contributed to by an act or omission of the User or any other person, the Terminal Operator shall not be liable under this Condition 20 to the extent that such act or omission contributed to the loss or damage.
- 20.4.3.** The Terminal Operator shall not be liable for loss of or damage to any Vessel or Cargo under this Condition 20 unless the Terminal Operator’s Cargo handling equipment was used or if the loss or damage was due to the Terminal Operator’s gross negligence or wilful misconduct when operating the User’s Cargo handling equipment.
- 20.4.4.** Save as set out in this Condition 20, the Terminal Operator shall not be liable for loss of or damage to any Vessel or Cargo howsoever arising (whether caused by negligence or otherwise).
- 20.4.5.** 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 can be found in tort, bailment, contract, breach of express or implied warranty or otherwise.
- 20.4.6.** Nothing in these Standard Conditions shall exclude or restrict the Terminal Operator’s or User’s liability for death or personal injury caused by its negligence or any other act or omission, liability for which may not be excluded or limited under Applicable Laws.

## 21. CLAIMS AND TIME LIMIT FOR CLAIMS

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- 21.1.** Notwithstanding Condition 20, the Terminal Operator shall not be liable in respect of any loss of, or damage to, any Vessel, Cargo, equipment or any other matter unless notification of a claim in respect of such loss or damage is made in writing (in addition to annotation upon any of the Terminal Operator's documents at the Terminal) within fifteen (15) days from the date of the event or occurrence alleged to have given rise to a cause of action against the Terminal Operator or the date on which the inspection under Condition 8.7 has taken place, whichever comes first. The User agrees that any claim not made and notified in accordance with this Condition 21.1 shall be deemed to be waived and absolutely barred.
- 21.2.** Notwithstanding Condition 21.1, the Terminal Operator shall in any event be discharged of all Liabilities arising in respect of any Service provided to the User or which the Terminal Operator has undertaken to provide, unless legal proceedings are brought and written notice thereof is given to the Terminal Operator within twelve (12) months from the date of the event or occurrence alleged to have given rise to the cause of action against the Terminal Operator.
- 21.3.** The User shall not be entitled to bring any claim howsoever arising (including negligence) unless and until the amount of any such claim exceeds US\$ 5,000.

## 22. INDEMNITY

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- 22.1.** In addition to the specific indemnities provided in these Standard Conditions, the User undertakes to also indemnify, defend and hold harmless the Terminal Operator, its Affiliates, officers, directors, employees, agents, contractors, sub-contractors or advisors, against all Liabilities arising out of or in consequence of, but not limited to, the following:
- 22.1.1.** any breach by the User of Condition 10 and Condition 28;
  - 22.1.2.** any loss or damage caused to the Terminal, the Terminal Facilities or any other property of the Terminal Operator;
  - 22.1.3.** claims from any person or third party in respect of personal injury or death, loss or damage to any property;
  - 22.1.4.** loss, damage or costs arising from the carriage of the Cargo by the Carrier;
  - 22.1.5.** loss, damage or costs including loss of profit, cost of replacement of products, and service interruptions incurred by the Terminal Operator due to the User's usage of the Terminal;
  - 22.1.6.** any act or default of the master, or crew of the Carrier or of any engaged pilot in the navigation or in the management of the Vessel including the loading and unloading of ship's stores, fresh water and bunkers;
  - 22.1.7.** the stuffing of the Containers in excess of the rated gross capacity;
  - 22.1.8.** any incorrect declarations in respect of the weight of a Cargo;
  - 22.1.9.** the incorrect stuffing of Containers so as to affect the safe handling of any Container unless occasioned by the gross negligence of the Terminal Operator and such default not being the result of circumstances outside the Terminal Operator's direct control;

- 22.1.10.** structural defects in Containers;
  - 22.1.11.** any act, neglect or default of the User, its contractors, agents or their respective servants or any person whomsoever in or on the Berth in connection with the use of the Berth by the Carrier's Vessel with the Carrier's and/or Shipping Agent's express permission or implied or of any inherent quality or defect of any Cargo in or on the Berth or on any Vessel;
  - 22.1.12.** the Terminal Operator adhering to User's instructions; and
  - 22.1.13.** any breach by the User of these Standard Conditions which cause the Terminal Operator to breach the Cybersecurity Requirements and/or the Data Protection Legislation.
- 22.2.** The User shall also be liable to the Terminal Operator for all damage done to or suffered by the property or equipment operated by the Terminal Operator and arising including any consequential losses.
- 22.3.** Without prejudice to any other provisions of these Standard Conditions, the User shall incorporate into the Contract of Carriage 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 Contract of Carriage to the extent such provisions and clauses benefit the User, and that the Terminal Operator for itself and any party for whom it is responsible hereby accepts such benefit.
- 22.4.** 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 22.3.

## 23. ASSISTANCE WITH CLAIMS

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- 23.1.** In the event the Terminal Operator suffers loss or damage caused by a Consignee, Consignor or any other third party, including in respect of any Cargo handed over to it for shipment aboard any Vessel, the User shall provide all reasonable assistance to the Terminal Operator in recovering from such third party or other party responsible for such loss or damage. The User shall indemnify the Terminal Operator against all Liabilities incurred by Terminal Operator as a result of the User's failure to provide such assistance.
- 23.2.** In the event of a claim for any loss of or damage to any Cargo being made against the Terminal Operator, the User shall provide all reasonable assistance to the Terminal Operator in resisting or defending such claim where the Terminal Operator's liability is expressly or implicitly excluded or limited by the terms of the User's Contract of Carriage. The User shall indemnify the Terminal Operator against all Liabilities incurred by Terminal Operator as a result of the User's failure to provide such assistance.

## 24. INSURANCE

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- 24.1.** The Terminal Operator is under no obligation to maintain any insurance on behalf of a User for Cargo, Containers, any User entering or using the Terminal, or any Vessel.
- 24.2.** The Terminal Operator, shall at its own expense, obtain and maintain policies of insurance covering any liability assumed by it under these Standard Conditions.
- 24.3.** The User undertakes to obtain and maintain appropriate insurance or ensure that appropriate insurance has been arranged in relation to any Vessel, Cargo, vehicles, equipment, Shipping Agent, personnel, subcontractor, agent or any person which or who may, at the instruction or direction of or on behalf of the User, enter the Terminal.

- 24.4.** Each Carrier and/or Shipping Agent shall obtain and maintain in full force and effect insurance with the appropriate minimum limits having regard to its liabilities pursuant to these Standard Conditions, its obligations under Applicable Laws and Good Industry Practice including, without limitation, the following insurances:
- 24.4.1.** hull and machinery insurance, in accordance with Institute Time Clauses - Hulls (1983) or equivalent conditions, in an amount no less than the full market value of the Vessel; and
  - 24.4.2.** protection and indemnity (P&I) insurance on standard terms and with customary limits with a member of the International Group of P&I Clubs.
- 24.5.** The User shall provide certificates of insurance evidencing the coverage required under Conditions 24.3 and 24.4 upon request from the Terminal Operator.
- 24.6.** Failure by the Terminal Operator to demand certificates or other evidence of full compliance with this Condition 24, or failure to identify any deficiency or non-compliance with coverage requirements, shall not be construed as a waiver of a User's obligation to maintain the insurance required by these Standard Conditions. No insurances or the limits of such insurances shall be construed in any way as a limit of a User's liability hereunder.
- 24.7.** The User agrees to waive any statutory right to limit liability for personal injury or property damage by establishing a limitation fund under any Applicable Law governing the liability of owners and operators of Vessels, including the Convention on Limitation of Liability for Maritime Claims 1924, the Convention on Limitation of Liability for Maritime Claims 1957, the Convention on Limitation of Liability for Maritime Claims 1976 and the 1996 Protocol thereto.

## 25. CHARGES

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- 25.1.** The Terminal Operator will invoice the User, and the User will pay the charges for the Services, which shall be calculated in accordance with the Tariff prevailing at the time of the Services provided by the Terminal Operator ("**Charges**").
- 25.2.** The Charges are due on presentation unless otherwise agreed to in writing by the Terminal Operator.
- 25.3.** The Terminal Operator may in its sole discretion, request advance payment of some or all of the Charges.
- 25.4.** 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 the bank charges or otherwise or withholding for or on account of a counterclaim.
- 25.5.** Each Shipping Agent shall, on behalf of the Carriers that it represents, pay directly to the Terminal Operator the Charges imposed on the Carriers pursuant to the Tariff. In the event any Shipping Agent is in breach of its obligation to pay the Charges stated in the Tariff, the Terminal Operator will have the right to be compensated by drawing down on the Shipping Agent Bank Guarantee, held with the Terminal Operator. The Carrier and the Shipping Agent shall indemnify and be jointly and severally liable towards the Terminal Operator for all Charges and compensation for all damages suffered by the Terminal Operator arising from failure to pay the Charges on time or in full.
- 25.6.** In the event of the User's failure to pay amounts as they fall due, and without prejudice to any other rights available under these Standard Conditions, the Terminal Operator shall have a lien over all of the defaulting User's Cargo and all documents in respect of moneys due by the User and shall have the right to register such lien in accordance with Applicable Laws. The User confirms that it is duly authorised to establish security rights over the Cargo in favour of the Terminal Operator. If payment of amounts due is not made in full within one (1) month of the lien being exercised pursuant to a notice sent to the User, the Terminal Operator shall have a right of sale of all the Cargo without a judicial order, either by direct sale or public

auction and may dispose of the proceeds of sale in satisfaction of the moneys due to it. The User shall be liable to pay any outstanding amounts in excess of the sale proceeds.

## 26. TAX

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**26.1.** The User will be liable for and will pay in a timely manner:

**26.1.1.** all Taxes levied (whether directly or indirectly) in connection with these Standard Conditions;

**26.1.2.** all national insurance, social security, Zakat and other such withholdings or contributions which are payable in connection with the User carrying out its obligations under these Standard Conditions; and

**26.1.3.** all other costs, fees, commissions and royalties incurred directly or indirectly in connection with these Standard Conditions.

**26.2.** The User will be liable for meeting all the statutory Tax requirements in accordance with the relevant Authority, such as registering for Tax, filing all required tax returns with the relevant Authority, paying all applicable and/or payable Taxes, where such requirements are imposed by Applicable Law, in the KSA or otherwise.

**26.3.** The User undertakes to indemnify, defend and hold harmless the Terminal Operator and its Affiliates, officers, directors, employees, agents and contractors against all Liabilities arising in connection with any Taxes including those referred to under these Standard Conditions.

**26.4.** The Services in respect of the Charges shall be inclusive of all Taxes other than any applicable VAT. If VAT is applicable with respect to the Services or by virtue of these Standard Conditions ("**Taxable Supply**"), the User shall apply any VAT exemption or a zero rate which such is allowable by Applicable Law. If requested by the Terminal Operator, the User must promptly provide the Terminal Operator with details of its VAT registration and such other information as is requested in connection with the User's VAT reporting requirements in relation to such Taxable Supply or any part thereof. For the avoidance of doubt, any applicable Taxes (including, but not limited to Zakat, VAT or withholding tax, in each case as applicable) incurred pursuant to this Condition 26.4, and where KSA VAT is applicable, the relevant invoice must be in compliance with KSA Tax legislation and specific invoicing requirements and/or regulation applicable at the time of issuing the invoice. Where the User is required by these Standard Conditions to reimburse or indemnify the Terminal Operator for any actual cost, the User will reimburse or indemnify (as the case may be) the Terminal Operator for the full amount of the cost, including any VAT applicable on that amount.

### **26.5. Withholding Tax**

The Services made pursuant to these Standard Conditions in respect of the Charges, shall be inclusive of withholding tax (if withholding tax is applicable). If withholding tax is applicable, the User must pay an additional sum to the Terminal Operator whereby the Terminal Operator will receive the same and/or an equal amount that it would have received had no Tax been withheld or otherwise due as a result of the payment being made under these Standard Conditions by the User to the Terminal Operator.

### **26.6. Withholding Tax certificate**

If the User makes any payment under these Standard Conditions in respect of which it is required to apply applicable withholding taxes (if such is applicable), the User shall furnish to the Terminal Operator a withholding tax certificate or other evidence of such withheld taxes evidencing that such taxes have been withheld and paid to the relevant Authority, upon written request by the Terminal Operator. Where the Terminal Operator requires the withholding tax certificate to be attested by the applicable Authority, the User shall assist the Terminal Operator to obtain the certificate attested by the applicable Authority and

provide the same to the Terminal Operator within a reasonable time upon the Terminal Operator's written request to the User.

## **26.7. Double taxation and taxable presence**

**26.7.1.** For instances in which withholding taxes are applicable, and where payment being made by the User to the Terminal Operator under these Standard Conditions is subject to tax relief (i.e., zero rate or a reduced rate of tax) under the provisions of an applicable double tax treaty, the User shall apply withholding tax in accordance with the rate applicable on such payment under the Applicable Law and/or under the said double tax treaty (whichever is lower), unless the applicable double tax treaty provides that such payments made by the User to the Terminal Operator is not subject to tax (or subject to zero rate or a reduced rate of tax).

**26.7.2.** In the event that the User creates or has a taxable presence and/or permanent establishment in the KSA under the Applicable Law, then, at the end of each twelve (12) month period or as otherwise agreed with the Terminal Operator, but no more frequently than every twelve (12) months, the User will provide to the Terminal Operator a copy of the certificate:

- (a) issued to the User by the ZATCA, valid on the date of payment which confirms that the User has paid all Taxes due to the ZATCA; and
- (b) from the GOSI evidencing the User is registered with GOSI and has fulfilled all of its obligations towards GOSI during such period under these Standard Conditions.

**26.7.3.** The User agrees and acknowledges that the Terminal Operator will be entitled, without prior consent from the User, to disclose any information relating to these Standard Conditions to the ZATCA, following a request from the ZATCA to do so. However, should the User be required to disclose information pertaining to the Terminal Operator or these Standard Conditions to the ZATCA, the User must obtain the Terminal Operator's prior written consent before disclosing any information to the ZATCA.

## **27. BANK GUARANTEES**

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**27.1.** The User acknowledges that the Terminal Operator may require it to provide a bank guarantee from a reputable bank acceptable to the Terminal Operator, in a form, amount, and manner prescribed by the Terminal Operator, for the purpose of securing its obligations under these Standard Conditions. The User agrees that the Terminal Operator has the right to liquidate or draw down on such bank guarantee to recover any amounts owed to the Terminal Operator under these Standard Conditions.

**27.2.** Each Shipping Agent and Ship Chandler acknowledges that the Terminal Operator has the right to recover any amounts owed to the Terminal Operator under these Standard Conditions by liquidating or drawing down on the relevant Shipping Agent Bank Guarantee or the relevant Ship Chandler Bank Guarantee.

## **28. USER'S WARRANTIES**

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**28.1.** The User represents and warrants that:

**28.1.1.** it is authorised to contract with the Terminal Operator on the terms of these Standard Conditions in respect of the Vessel and/or the Cargo, 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), and any other person, who is, or may become, interested in the Cargo; and

**28.1.2.** all the documentation and information provided by the User or its representatives in relation to any Vessel and/or Cargo is complete and accurate.

**28.2.** In respect of any Cargo, the User represents and warrants that it:

**28.2.1.** is 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 in respect of the Cargo;

**28.2.2.** is not liable to give off any injurious dust, gas, fumes, liquid or radiation;

**28.2.3.** is not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Terminal;

**28.2.4.** is not over-heated or under-heated or at risk of becoming so while at the Terminal;

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

**28.2.6.** requires for its safekeeping no special protection (other than as may be agreed in writing between the parties);

**28.2.7.** contains no items, goods or substances which are illegal under Applicable Law; and

**28.2.8.** is in a fit and proper condition to be handled or otherwise dealt with by the Terminal Operator.

## 29. COMPLIANCE WITH LAWS AND REGULATIONS

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**29.1.** The User shall ensure that it and its Vessels, vehicles (including but not limited to trucks and trailers and their drivers) fully comply with Applicable Laws. For the avoidance of doubt, where any such Applicable Law imposes obligations that are more onerous than those provided in these Standard Conditions, the Vessels shall be required to comply with the more onerous obligations. The Terminal Operator reserves the right to prohibit the access to the Terminal to Users (including drivers) and/or transportation companies and/or their agent in the event of breach of Applicable Laws.

**29.2.** The User undertakes to comply with all formalities, procedures and regulations prescribed by any applicable Authority in connection with the Cargo and/or Vessel. The User undertakes to obtain all necessary licenses, and authorisations required for the transportation, exportation or importation of the Cargo.

**29.3.** The Terminal Operator reserves the right to refuse to handle any Cargo or provide storage which in its judgment is likely to breach any Applicable Law.

**29.4.** The User acknowledges and agrees that the Terminal is subject to the regulatory jurisdiction of the Port Authority and the Users of the Terminal are subject to the applicable rules and regulations prescribed by the Port Authority as well as any other Authority.

## 30. FORCE MAJEURE

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- 30.1. “Force Majeure”** means any event or circumstance not within the reasonable control of a party (the “Affected Party”) and which, by the exercise of due diligence and the level of skill, prudence and foresight generally expected of a person in the Affected Party’s position, that the Affected Party is not reasonably able to foresee, prevent, avoid, control or overcome, including:
- 30.1.1.** strikes at a national or regional level, or industrial disputes at a national or regional level, or strikes or industrial disputes by labour (excluding those occurring among the employees of the User or its sub-contractors) or other industrial disturbances of a general nature;
  - 30.1.2.** acts of a public enemy, wars, terrorism, blockades, insurrections, riots, rebellion or sabotage, invasion, acts of foreign enemies, hostilities, civil war, revolution, insurrection of military or usurped power (whether war be declared or not);
  - 30.1.3.** epidemic or quarantine;
  - 30.1.4.** landslides, earthquakes, floods, sand storms, high winds, lightning, extreme heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light) and/or other natural physical disaster; or
  - 30.1.5.** civil disturbances, fire or explosions.
- 30.2.** The following matters will not constitute Force Majeure under these Standard Conditions:
- 30.2.1.** lack of finances or funds, or inability to borrow the same;
  - 30.2.2.** an obligation to pay any amount;
  - 30.2.3.** general economic conditions and exchange rate fluctuations;
  - 30.2.4.** the financial condition of the Consignee or any sub-contractor; or
  - 30.2.5.** failure of any sub-contractor to perform its obligations.
- 30.3.** The Affected Party will bear the burden of proving that the event or circumstance constitutes Force Majeure and that it is so affected by the same.
- 30.4.** If the Affected Party is unable to comply with its obligations under this Agreement as a result of Force Majeure, the Affected Party’s performance of the obligations affected by Force Majeure will be suspended in whole or in part to the extent that, and for the duration which, the Affected Party’s ability to perform those obligations is affected by Force Majeure.
- 30.5.** If the Affected Party is, or expects to be, unable to perform any obligation under these Standard Conditions by reason of Force Majeure it will:
- 30.5.1.** notify the other party of the occurrence of the Force Majeure as soon as possible but not more than two (2) calendar days after its occurrence, giving reasonably full particulars of the Force Majeure and details of the obligations that it is unable to perform by reason of the Force Majeure, the date of commencement of the Force Majeure and, where possible, the means to mitigate the effect of the Force Majeure;
  - 30.5.2.** resume full performance as quickly as possible after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of performance; and
  - 30.5.3.** notify the other party when the Force Majeure has ceased or abated to an extent which permits resumption of performance to occur.

- 30.6.** If the User is the Affected Party and the same Force Majeure prevents or inhibits its performance of its obligations under these Standard Conditions for a period of more than two (2) months, then either party may give the other party a notice requiring the parties to consult in good faith to decide what action should be taken to carry out the intentions of these Standard Conditions. If the parties are unable to agree on what action should be taken within ten (10) days of the date of such notice, then the Terminal Operator may immediately suspend these Standard Conditions upon notice to the User.

## 31. CHANGE IN LAW

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- 31.1.** If a Change in Law does or will adversely affect the Terminal Operator's performance of its obligations under these Standard Conditions, the Terminal Operator may give a notice to the User with respect to such Change in Law, and:
- 31.1.1.** where there is an increase in the Charges and/or Additional Charges, then the Charges and/or Additional Charges (as applicable) will be increased accordingly; and
  - 31.1.2.** where there is a delay or stoppage in the provision of the Services, the Terminal Operator will not be considered to be in breach of its obligations under these Standard Conditions.
- 31.2.** Where the Terminal Operator is affected by a Change in Law, it will use its reasonable endeavours to avoid or remove the circumstances constituting the Change in Law and to mitigate its effect. The User will co-operate and provide such assistance as the Terminal Operator may reasonably request.

## 32. PROHIBITED ACTS AND SANCTIONS

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- 32.1.** Without limiting the User's general obligations under these Standard Conditions, the User must:
- 32.1.1.** not commit any Prohibited Acts; and
  - 32.1.2.** ensure that none of the User's personnel or agents commits any Prohibited Acts.
- 32.2.** The User represents that it has not committed, and covenants that it will not commit, any Prohibited Act in connection with the entry into or operation of these Standard Conditions or the Services.
- 32.3.** The User further represents that:
- 32.3.1.** neither it nor any Affiliate, nor any officer or director or any person who (directly or indirectly) owns or controls it or any Affiliate, is the subject of any Sanctions;
  - 32.3.2.** neither it nor any Affiliate is located in, or organised under, the laws of a country or territory that is the target of, or subject to, comprehensive country-wide or territory-wide Sanctions; and
  - 32.3.3.** it has not and will not engage in activities, business or transactions in relation to the Services that constitute or may cause a violation of any Sanctions by the Terminal Operator, any Affiliate of the Terminal Operator or their personnel.
- 32.4.** The User shall give the Terminal Operator written notice as soon as reasonably practicable after it becomes aware of any breach or possible breach of this Condition 32 or if any of the representations in this Condition

32 cease to be true, and will provide the Terminal Operator with all information related to the breach or possible breach as the Terminal Operator may reasonably request.

- 32.5.** If the Terminal Operator determines, in its sole discretion, that the User: (i) has misrepresented its status or the status of any other person that owns or controls the User in relation to Sanctions; or (ii) becomes subject to any Sanctions, the Terminal Operator shall have the right to immediately refuse to release the User's Cargo to the User or any agent thereof and/or return the Cargo to the Cargo owner and/or submit any necessary or advisable report to any applicable authority responsible for the administration of any of the Sanctions.
- 32.6.** The User agrees that it shall not import or export any Cargo using Terminal or Terminal Facilities that would be prohibited under Sanctions or cause Terminal Operator or its personnel to breach Sanctions.
- 32.7.** The User shall indemnify and hold harmless the Terminal Operator, its Affiliates, and all their personnel against all Liabilities to the extent arising out of or in connection with any breach of this Condition 32.

## 33. GOVERNING LAW AND JURISDICTION

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- 33.1.** These Standard Conditions shall be governed by the laws of KSA.
- 33.2.** Where these Standard Conditions are silent on the rights and liabilities of the Terminal Operator and/or the User hereunder, these shall be determined according to the laws of KSA.
- 33.3.** Any dispute, controversy or claim between the User and the Terminal Operator arising out of or in connection with these Standard Conditions, including the breach, termination or invalidity thereof (a "**Dispute**"), will first be referred to a member of each party's senior management, who will use their reasonable endeavours to try and resolve the Dispute in an amicable manner. In the event the parties are unable to resolve the Dispute amicably within a period of thirty (30) days from the date of referring the Dispute to senior management, then the parties agree that the Dispute will be finally resolved by binding arbitration administered by the Saudi Center for Commercial Arbitration (the "**SCCA**"). Such arbitration:
- 33.3.1.** will be conducted in Riyadh, Kingdom of Saudi Arabia, under the SCCA Arbitration Rules, including the SCCA Expedited Procedure Rules (the "**Rules**"), which Rules are deemed to be incorporated by reference into this Condition 33;
  - 33.3.2.** will have its seat in Riyadh, Kingdom of Saudi Arabia;
  - 33.3.3.** will be conducted in English; and
  - 33.3.4.** will be settled by a sole arbitrator appointed in accordance with the Rules.
- 33.4.** Nothing in Condition 33.3 above will prevent the Terminal Operator from applying to the courts of the Kingdom of Saudi Arabia to seek interim or interlocutory relief.
- 33.5.** Notwithstanding a Dispute, the User will continue to perform its obligations under these Standard Conditions pending resolution of the Dispute.
- 33.6.** The User will not raise any claim, proceeding or action in connection with the formation, performance, interpretation, nullification, termination or invalidation of these Standard Conditions against any:
- 33.6.1.** part of the Government of the Kingdom of Saudi Arabia;
  - 33.6.2.** affiliate of the Terminal Operator; or

**33.6.3.** officer, director or employee of the Terminal Operator.

**33.7.** The User will not raise any claim, proceeding or action against the Terminal Operator for any:

**33.7.1.** loss, damage or cost; or

**33.7.2.** additional payment or extension of time under these Standard Conditions or at law,

**33.7.3.** to the extent that such claim, proceeding or action is based on any act or omission by any third party.

**33.8.** The obligations in this Condition 33 will survive the expiry or termination of these Standard Conditions for any reason.

## 34. AMENDMENTS

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These Standard Conditions are subject to change by the Terminal Operator at any time.

## 35. CONFIDENTIALITY

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**35.1.** The User shall:

**35.1.1.** not disclose any Confidential Information;

**35.1.2.** keep the Confidential Information in safe and secure custody and protected against theft, damage, loss or unauthorised access;

**35.1.3.** not, directly or indirectly:

35.1.3.1. use, exploit, copy or modify any Confidential Information other than for the sole purpose of performing its obligations under these Standard Conditions; or

35.1.3.2. authorise or permit any third party to do the same without the prior consent of the Terminal Operator; and

**35.1.4.** limit access to the Confidential Information to those of its Affiliates, officers, directors, employees, agents, contractors, sub-contractors or advisors who reasonably require such information and take reasonable steps to ensure that each of them will observe the restrictions as to confidentiality, disclosure and use set out in these Standard Conditions.

**35.2.** The obligations in this Condition 35 will not apply to any Confidential Information to the extent that the User is able to demonstrate that the Confidential Information was:

**35.2.1.** at the time of receipt by the User, in the public domain, or subsequently came into the public domain through no fault of the User, its Affiliates, officers, directors, employees, agents, contractors, sub-contractors or advisors; or

**35.2.2.** lawfully received by the User from a third party on an unrestricted basis.

**35.3.** The User shall not be in breach of this Condition 35 if it discloses Confidential Information to the extent required by Applicable Law provided that the User has disclosed such Confidential Information only to the extent practicable in the circumstances and the Terminal Operator has been given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

- 35.4.** To the extent requested in writing by the Terminal Operator, the User shall destroy the Confidential Information and confirm in writing to the Terminal Operator that it has complied with any such request.
- 35.5.** If so requested by the Terminal Operator from time to time, the User shall sign any additional forms relating to confidentiality which the Terminal Operator reasonably requires. Such forms may include obligations on the User to treat certain specific information in connection with these Standard Conditions, the Services, Port and/or Terminal, as Confidential Information or which extend the confidentiality obligations contained in these Standard Conditions.
- 35.6.** The User shall, at all times, comply with all of the Terminal Operator's confidentiality, social media and non-disparagement policies, directives and requirements applicable to consultants, service providers and contractors. The User will not advertise, publish, disseminate or communicate to any person, in any public forum, any defamatory, false, derogatory, disparaging, negative or adverse remarks, comments, or statements in spoken, printed, electronic, or any other form or medium, relating directly or indirectly to, or do anything which has or may have any negative impact on the reputation of, the Terminal Operator, including its Affiliates, businesses, or any of its employees, officers, or directors and its existing and prospective customers, suppliers, investors, and other associated third parties, now or in the future.
- 35.7.** The User shall procure that its directors, officers, employees, personnel and consultants are aware of and will comply with the obligations under this Condition 35, including mandating relevant provisions no less onerous than under this Condition 35, in any engagement or employment contract with any personnel.

## 36. ASSIGNMENT AND SUB-CONTRACTING

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- 36.1.** The Terminal Operator may subcontract its obligations or assign or novate any or all of its rights and/or obligations under these Standard Conditions without prior written consent from and notice to the User. The User agrees that it shall do and perform all things required or necessary to give effect to such assignment or novation.
- 36.2.** The User may not assign, novate or otherwise dispose of its rights and/or obligations under these Standard Conditions or any part thereof without the prior written consent of the Terminal Operator.

## 37. PUBLICITY

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- 37.1.** Subject to Condition 37.2, the User will not advertise, publicise or release statements regarding these Standard Conditions or the Services, Port and/or Terminal or any matters arising in relation to these Standard Conditions or the Services, unless the Terminal Operator has been furnished with a copy of the statement and provided prior written approval for such statement.
- 37.2.** The Terminal Operator may use the User's name and logo in the Terminal Operator's marketing materials solely for the purpose of indicating that the User is a User of the Terminal.

## 38. CYBERSECURITY REQUIREMENTS AND

# PERSONAL DATA PROTECTION

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- 38.1.** The User shall, at all times, comply with all applicable Cybersecurity Requirements in connection with the use and receipt of the Services and the use of, or entry into, the Terminal and/or the facilities at the Terminal.
- 38.2.** The User and the Terminal Operator will comply with the Data Protection Legislation in relation to the supply and receipt and use of the Services.
- 38.3.** This Condition 38 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 38.4.** Where, in relation to the provision of Services by the Terminal Operator to the User, the Data Protection Legislation requires the User or the Terminal Operator to put in place further contractual, organisational, or technical mechanisms for the transfer or processing of personal data (including information in relation to the nature, duration, and purpose of the processing of personal data), such information and requirements will be detailed by way of additional terms incorporated under these Standard Conditions.

## 39. IP RIGHTS

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- 39.1.** All IP Rights belonging to a party (or which it uses under a licence from a third party) prior to these Standard Conditions coming into effect, or developed by a party independently of these Standard Conditions, will remain vested in that party (or the relevant third party licensor).
- 39.2.** Subject to any additional or alternative provisions:
  - 39.2.1.** neither party will use the other party's IP Rights, and no IP Rights (including ownership or licence) are transferred or granted by any party to the other, expressly or impliedly; and
  - 39.2.2.** any IP Rights arising from or created, produced, or developed under or in connection with these Standard Conditions (including any feedback, comments, materials, or data in relation to the Services) will automatically vest in and remain the exclusive property of the Terminal Operator.

## 40. SUSPENSION

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- 40.1.** Notwithstanding anything in these Standard Conditions to the contrary, and without prejudice to any other rights of the Terminal Operator provided herein, the Terminal Operator reserves the right to cease providing Services at any time effective upon notice in the following circumstances:
  - 40.1.1.** if the User commits a material breach of the terms of these Standard Conditions; or
  - 40.1.2.** if the User ceases to carry on business as a going concern, is continuously unable to pay its debts as they fall due, or any distress or execution will be levied or threatened against it, or a receiver be appointed in respect of any of its assets, or it passes a valid resolution for ceasing operations; or
  - 40.1.3.** if any approval, consent, license or other approval granted by any regulatory or governmental body is withdrawn, cancelled or otherwise no longer applicable, making it impossible or illegal for the User to perform its obligations under these Standard Conditions; or

**40.1.4.** if the User fails to pay any sums due in accordance with the provisions of these Standard Conditions.

**40.2.** Notwithstanding Condition 40.1, in the event the User commits a material breach of these Standard Conditions, the Terminal Operator may, in its absolute discretion, suspend all or part of the Services until the breach has been remedied.

## 41. OBLIGATIONS ON SUSPENSION OR EXPIRY

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**41.1.** The expiry or suspension of these Standard Conditions pursuant to Clause 40, howsoever arising is without prejudice to the rights duties and liabilities accrued prior to suspension or which may thereafter accrue in respect of any act or omission prior to such suspension and shall be without prejudice to any provisions of these Standard Conditions which are expressed to remain in force thereafter. The Parties agree that the suspension or expiry of these Standard Conditions shall not be an exclusive remedy nor shall it serve as a waiver of any other claims by the Terminal Operator.

**41.2.** On expiry or suspension of these Standard Conditions, the User shall immediately pay to the Terminal Operator all of the User's outstanding unpaid invoices and, in respect of the Services supplied but for which no invoice has been submitted, the Terminal Operator may submit an invoice, which shall be payable immediately on receipt.

**41.3.** Any provision of these Standard Conditions that expressly or by implication is intended to come into or continue in force on or after expiry or suspension of these Standard Conditions shall remain in full force and effect.

## 42. GENERAL PROVISIONS

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**42.1.** These Standard Conditions comprise the entire agreement between the parties with respect to the provision of the Services or entry to the Terminal. Any representations or statements whether made orally or written elsewhere are hereby excluded and supersede all previous agreements and arrangements between the parties with respect to the provision of the Services (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. 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.

**42.2.** 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.

**42.3.** The User acknowledges that its rights to access or use of the Berth rest in contract only and these Standard Conditions do not create or confer upon the User any tenancy, estate or other interest in the Berth, the Terminal Facilities or the Terminal.

**42.4.** If any provision or part-provision of these Standard Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Standard Conditions. If any provision or part-provision of these Standard Conditions is deemed deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 42.5.** The failure of any party to insist upon strict performance of any provision of these Standard Conditions, or the failure of any 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.
- 42.6.** A waiver of any breach of these Standard Conditions shall not constitute a waiver of any subsequent breach of these Standard Conditions.
- 42.7.** 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.
- 42.8.** 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.
- 42.9.** 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. No 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.
- 42.10.** Any notice given to a party under or in connection with these Standard Conditions shall be in writing and shall be: (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or (b) sent by email to email addresses agreed between the parties. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; or (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second day after posting or (c) if sent by email, at the time of transmission as recorded by the Terminal Operator's server records, or, if the time falls outside business hours of the Terminal Operator, when business hours resume. This Condition does not apply to any service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.