

APM Terminals Itajai Version 1.1

## APMT Standard Terms of Business

### Definitions:

APM Terminals: APM TERMINALS ITAJAI S.A;

Customer: any person or entity requesting receiving or benefiting from the delivery of services by APM Terminals. including, without limitation: (i) the owner of, charterer (of whatsoever nature) of, or any other person who is or may become interested in a Vessel calling at APM Terminals, the Vessel's master and any person who has control of the operation of such Vessel; (ii) the owner or any other person who is or may become interested in the Goods; (iii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; (iv) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; and (v) any person who drives or operates such vehicle and any person who visits, uses and/or enters the Terminal.

Container: (a) any container, whether laden or empty, 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other container developed for standard use in liner shipping at any time whilst these Terms are in force including, but not limited to, dry, open top, flat-racks, platforms, reefer and container tanks, with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a standard 20', 40' and 45' spreader;

(b) Non-standard Container; and/or

(c) Out of Gauge Container;

Goods: the whole or any part of the cargo of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container and includes non-containerized cargo and Hazardous Goods carried on a Vessel

Hazardous Goods: Goods which are, or which may become, of a dangerous, noxious, toxic, poisonous, hazardous, explosive, flammable, or otherwise damaging nature (including radioactive material), or which may, or may become liable to, damage any persons or property whatsoever, and whether or not so listed in any official or unofficial, international or national code, convention, listing or table;

Non-standard Container: any Container which APM Terminals cannot handle as a normal lift with a container spreader but can handle with alternative means;

Out of Gauge Container: any Container whose Goods exceed the dimensions of a standard Container as specified in section (a) of the definition of Container;

Terminal: the terminal facilities at Itajai Port, Santa Catarina, Brazil.

Vessel: a ship fitted for the carriage of Containers, whether above or below deck, including all lashing equipment required for the proper securing of Containers, its gear and all other equipment or other property on board.

**A. Scope**

1. These standard terms of business (the “Terms”) shall apply to any provision of services [of any nature whatsoever] by APM Terminals to the Customer and all Vessels which call at the Terminal and otherwise to any Customer. By requesting the delivery of services, the Customer warrants to be authorized to enter into an agreement with APM Terminals not only for itself but also as agent for the owners of the Vessel (if chartered), Goods and Containers. The Customer and APM Terminals are collectively referred to as the “Parties” and each individually as “Party”.

2. APM Terminals shall only be bound and an agreement for the provision of services between APM Terminals and the Customer on these Terms shall only be concluded once APM Terminals confirms any request by Customer for the provision of services (the “Confirmation”). Notwithstanding the foregoing, the use of the Terminal or the Container Terminal Services by the Customer, entry into the Terminal or berthing of any Vessel at the Terminal, shall be treated as acceptance of these Terms. 3.

Notwithstanding any language to the contrary in any Customer documents, any correspondence or any other form of acknowledgement, the Customer shall be bound by these Terms and any other terms and conditions are hereby expressly excluded and rejected. 4. No variation to these Terms shall be binding unless agreed in writing by an authorized representative of APM Terminals. Prior dealings, usage of trade or a course of performance shall not be relevant to determine the meaning of these Terms even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection. 5. If not otherwise agreed in writing between the Parties, the scope of services (kind of services, service description, rates) shall be as set out in the applicable tariff of APM Terminals as published at [www.apmterminals.com.br](http://www.apmterminals.com.br) (“Tariff”). The terms and conditions of the applicable Tariff are incorporated herein. In the case of inconsistency between these Terms and the Tariff, the Tariff shall prevail. The services are referred to here after as “Container Terminal Services”.

3. Notwithstanding any language to the contrary in any Customer documents, any correspondence or any other form of acknowledgement, the Customer shall be bound by these Terms and any other terms and conditions are hereby expressly excluded and rejected.

4. No variation to these Terms shall be binding unless agreed in writing by an authorized representative of APM Terminals. Prior dealings, usage of trade or a course of performance shall not be relevant to determine the meaning of these Terms even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

5. If not otherwise agreed in writing between the Parties, the scope of services (kind of services, service description, rates) shall be as set out in the applicable tariff of APM Terminals as published at [www.apmterminals.com.br](http://www.apmterminals.com.br) (“Tariff”). The terms and conditions of the applicable Tariff are incorporated herein. In the case of inconsistency between these Terms and the Tariff, the Tariff shall prevail. The services are referred to here after as “Container Terminal Services”.

## **B. Payment and Rates**

1. The rates for the provision of Container Terminal Services shall be the rates agreed in writing between the Parties or, where no such rates have been agreed, the rates listed in the Tariff at the date of the Confirmation.
2. If not otherwise agreed in writing between the Parties, the rates shall be paid in accordance with the following payment terms:
  - (i) All sums payable to APM Terminals are due on demand by APM Terminals.
  - (ii) (ii) All payments shall refer to the invoice number and amount. If no reference to the respective invoice number and amount is indicated by the Customer APM Terminals reserves the right to allocate such payments to the oldest outstanding payment by the Customer. APM Terminals will inform the customer accordingly. Any payments to be made from APM Terminals to the Customer shall only become due when the Customer is in compliance with its contractual obligations towards APM Terminals.
  - (iii) (iii) All payments due shall be made without any set off, counter claim, deduction or stay of execution.
  - (iv) Overdue amounts will be subject to a fine of Two percent (2%) and an interest of One percent (1%) per month or fraction of the delay period calculated upon the amount owed.

## **C. Provision of Container Terminal Services**

Any provision of Container Terminal Services shall be subject to the conditions set forth in these Terms.

### **1. Information Exchange**

- (i) If not otherwise agreed between the Parties or specifically outlined in the Tariff, the Customer shall provide the information requested by APM Terminals as set forth in these Terms.
- (ii) If not agreed otherwise, the Customer shall, or shall procure that the Customer's customer shall, provide APM Terminals as requested with
  - a. either the verified gross mass obtained in accordance with IMO International Convention for the Safety of Life at Sea (SOLAS) Chapter VI, Part A, Regulation 2 ("SOLAS Regulations"). for all:
    - i. packed Containers for export when gated in; and
    - ii. packed transshipment Containers 24 hours prior vessels berthing, or
  - b. the confirmation that the packed Container for export carry a verified gross mass in accordance with the "SOLAS Regulations".

- (iii) The Customer warrants that all information requested by APM Terminals contained in the Tariff or these Terms, including but not limited to any permits, the verified gross mass and custom clearance documents, is complete and accurate and, where appropriate, is valid and in full force and effect and APM Terminals can rely on any such information without endangering safe and secure provision of the Container Terminal Services in line with applicable laws, rules and regulations.
  - (iv) APM Terminals is not obliged to provide any Container Terminal Services unless complete information has been provided.
  - (v) The Customer shall inform APM Terminals about any change to the initial submitted information as early as possible but not later than 2 hours before the change shall become effective. Any change request will only become effective upon (a) written confirmation by APM Terminals and (b) written acceptance by the Customer of any additional payments or rate adjustments requested by APM Terminals.
  - (vi) In cases of: (a) unannounced or not timely announced changes or (b) in the absence of an acceptance in accordance with clause C.1(v) and no cancellation of the change request; APM Terminals shall be entitled at its discretion to accommodate the changes or provide the Container Terminal Services as initially agreed. In case APM Terminals accommodates the change, the rates as agreed between the Parties or, in the absence of such agreement, as published in the Tariff subject to and additional charge (“Change Request Surcharge”), shall apply. APM Terminals reserves the right to claim reimbursement of any additional costs that result from the provision of the Container Terminal Services in excess of the Change Request Surcharge.
2. Operations at the Terminal
- (i) At the Terminal the Customer and its agents, employees or any third parties acting on behalf of or at the request of the Customer shall comply with laws, rules and regulations, relating to them, the Goods, the Containers, the Vessels and the use of the port and the Terminal and any policies and instructions given by APM Terminals if not agreed differently between the Parties or otherwise stated in the Tariff.
  - (ii) APM Terminals shall not be obliged to provide any services which are not permitted under, or are not in line with, the laws, rules or regulations as set forth by the authorities of the port where the Terminal is located (“Port Guidelines”) or other mandatory applicable laws, rules and regulations. In particular, APM Terminals shall not load any packed Container on board a Vessel to which the SOLAS Regulations apply without a verified gross mass either provided by the Customer or the Customer's customer or obtained by APM Terminals by weighing the packed Container. If there is any discrepancy between a verified gross mass provided by the Customer or the Customer's customer and that obtained by APM Terminals by weighing the packed Container, the verified gross mass obtained by APM Terminals shall be used as the verified gross mass in accordance with the SOLAS Regulations. APM Terminals will inform Customer of a missing verified gross mass requesting the Container to be removed from the terminal. The Customer shall pay the rates outlined in the Tariff as if such yard space was fully occupied by the Customer for the time between information and removal.

- (iii) APM Terminals does not give any warranty or representation that the Vessel will not ground whilst approaching, leaving or lying alongside the APM Terminals premises. Each Vessel whilst approaching, leaving and lying alongside APM Terminals premises does so at the sole risk and responsibility of the Customer. The Customer shall indemnify APM Terminals for any loss, damage, expense, cost or injury, including loss of business, arising as a consequence of a Vessel causing an obstruction to the approach channel or berth due to grounding or otherwise.
- (iv) The Customer is solely responsible for compliance with all applicable laws, rules and regulations in force relating to the Vessel and all matters whatsoever relating to the Vessel.
- (v) APM Terminals shall permit the Customer to bring trucks alongside Vessels and to load and discharge Vessels' stores at such times as may be agreed and shall allow access to the Container Terminal to personnel to proceed on board a Vessel for the purpose of carrying out repairs. APM Terminals shall not be responsible or liable in any way for any loss, damage, cost, expense or injury arising in any way howsoever to any person or thing granted access in accordance with this Clause. The Customer will indemnify APM Terminals for any loss, damage, cost, expense or injury arising in any way howsoever caused by reason of APM Terminals permitting access under this clause C.2. (v).
- (vi) In order to ensure safe working practices, APM Terminals may inspect the Vessel work areas and gear to determine that all applicable laws, rules and regulations have been satisfied. The Customer shall ensure that the Vessel furnishes adequate lighting and safe ingress and egress for APM Terminal's personnel; maintains appropriately qualified and experienced officers and crew aboard.
- (vii) The Customer agrees to allow APM Terminals to inspect Vessels, including valid registers and certificates applicable to all gear, prior to the commencement of the provision of Container Terminal Services and as required under applicable laws, rules and regulations.
- (viii) APM Terminals shall not be required to provide Container Terminal Services if the applicable terminal manager at the Terminal, at his sole discretion and after informing the issue to the Vessel's master, reasonably believes that safety violations or deficiencies exist relating to the Vessel. The preceding sentence will not preclude the applicable terminal manager at the Terminal from suspending the provision of Container Terminal Services on a temporary basis prior to informing the issue to the Vessel's master.
- (ix) All equipment on a Vessel for loading and discharging Containers must technically be compatible with ISO standard equipment provided by APM Terminals. The Customer warrants that all Vessels are fitted with twist locks which are in good working order.
- (x) The Customer's masters, crew and agents shall exercise due care when mooring, departing or occupying a berth or navigating in the vicinity of the Terminal.
- (xi) Container Terminal Services will only be provided during local "Standard Gate Move Hours".
- (xii) The closing time for receipt by APM Terminals of Containers at the Terminal and the verified gross mass of those Containers on any given day shall be in accordance with APM Terminals' procedures in force at that time according to local rules ("Cargo Cut Off Time").

3. Condition of Containers

- (i) If not agreed otherwise, APM Terminals shall only be required to handle Containers which are (a) nominated to APM Terminals, (b) located at the Terminal and (c) ready for operation within the Cargo Cut Off Time. Unless otherwise agreed, Containers for export shall be customs cleared when gated in.
- (ii) The Customer warrants and undertakes that each Container which it delivers or causes to be delivered to APM Terminals is upon delivery secure, in a good state of repair, appropriately certified and suitable for its purpose. APM Terminals reserves the right at its own and sole discretion to refuse to accept any Containers or Goods which appear to be damaged or are in its opinion in an unsatisfactory condition.
- (iii) In respect of all Goods and Containers, the Customer warrants and represents that they:
  - a. are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the Containers;
  - b. are not liable to give off any injurious dust, gas, fumes, liquid or radiation;
  - c. are not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Terminal;
  - d. are not over-heated or under-heated or liable to become so while at the Terminal;
  - e. will not contaminate or cause danger, injury or pollution or damage to any person, the Terminal, any other goods, equipment or vessel or the environment adjacent thereto or generally;
  - f. require for their safekeeping no special protection (other than as may be agreed in writing between the Parties) but will remain safe if left standing at the Terminal;
  - g. contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and
  - h. are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by APM Terminals.
- (iv) APM Terminals shall inform the Customer of any damage to any Container, its contents or packaging which comes to the attention of APM Terminals, and may refuse to load or handle such Containers. If APM Terminals gives notice to the Customer of damage to a Container, its contents or packaging, the Customer shall be entitled, immediately after such notice being dispatched, to inform APM Terminals in writing that an inspection of the relevant items is required. APM Terminals will thereafter permit the Customer or its duly appointed agents upon reasonable notice to inspect the Container, its contents or packaging. For storage and handling of any such Container, its contents or

packaging the rates as agreed between the Parties or, in the absence of such agreement, as set forth in the Tariff, shall apply.

- (v) All Containers under the Customer's control, and to be handled under these Terms, shall at all times be in conformance with the International Convention for Safe Containers, 1972 (CSC) as may be amended from time to time.
- (vi) With respect to the Customer's Containers laden with, or labelled as containing Hazardous Goods, which are being transported pursuant to a Customer's or Vessel's bill of lading, the Customer shall ensure that such shipments are documented, labeled, packed and secured in accordance with current International Maritime Organization (IMO) requirements for international freight appearing in the International Maritime Dangerous Goods Code and in accordance with current applicable laws, rules and regulations promulgated by any governmental authority with jurisdiction over same. If not otherwise agreed, the Customer shall inform APM Terminals of Hazardous Goods at least 48 (forty-eight) hours before arrival at the Terminal including the data as requested by terminal.
- (vii) The Customer shall pay any costs and expenses which may be incurred by APM Terminals in the clean-up of any leaking Container or in complying with any applicable laws, rules and regulations requiring the movement, treatment, removal or destruction of waste material of Goods or infested, contaminated or condemned Goods or the treatment of the Terminal as a result of any infestation or contamination arising from handling such. In the event that a part of the Terminal cannot be occupied as a result of APM Terminals complying with such applicable laws, rules or regulations. The Customer shall pay the rates outlined in the Tariff as if such yard space was fully occupied by the Customer.
- (viii) If APM Terminals carries out an instruction to open the doors of a Container or to unpack a Container for any purpose whatsoever, this shall be at the sole risk of the Customer and APM Terminals shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Goods by reason of such deterioration. The Customer shall provide appropriate instructions to APM Terminals to ensure compliance with the rules and regulations of customs for opening and unpacking of any Container.
- (ix) Subsequent to the initial opening of the Container or the unpacking of a Container, APM Terminals may (but under no obligation to do so) close, reconnect, or connect to a power supply (in the case of a reefer Container), repack or otherwise deal with any such Container and/or its contents at the request of and at the sole cost and expense of the Customer or its agent or any such authority as may have jurisdiction.
- (x) Notwithstanding the aforesaid, APM Terminals shall be entitled, but under no obligation, to open and/or scan any package or Container at any time and to inspect the contents. If it appears at any time that the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measures in relation to the Container or the Goods, APM Terminals may without notice to the Customer take any measures and/or sell or dispose of the Goods and/or to abandon further services and/or to store them ashore or afloat, under cover or in the open, at any place, whichever APM Terminals in its absolute discretion considers most appropriate,

which sale, disposal, abandonment or storage shall be deemed to constitute full delivery under these Terms. The Customer shall indemnify APM Terminals against any reasonable additional expense so incurred. APM Terminals in exercising the liberties contained in this Clause shall not be under any obligation to take any particular measures and shall not be liable for any loss, delay or damage howsoever arising from any action or lack of action under this Clause.

#### 4. Delays

- (i) Any unlash time extending beyond the scheduled Vessel operation start time caused by the Customer or Vessel shall incur gang hour detention charges as agreed between the Parties or in the absence of any agreement in accordance with the gang hour detention charges set forth in the Tariff.
- (ii) The Vessel shall maintain its engines in a state of readiness to respond to emergency situations and to avoid delays in leaving the Terminal as soon as APM Terminals informs the Customer that the Container Terminal Services have been completed. The Customer shall pay the applicable rates for each day that the Vessel is berthed at the Terminal for any reason, including for the avoidance of doubt, if a Vessel is berthed at a Terminal due to engine failure.
- (iii) Shipment delays, charges and/or costs, including any civil fines, associated with noncompliance with the terms of this Clause C shall be the responsibility of the Customer. Any idle time incurred by APM Terminals due to non compliance by the Customer of this Clause C shall be charged at the "Detention Rate" as agreed between the Parties or set forth in the Tariff.

#### D. Compliance

- 1. The Customer and APM Terminals shall comply with all applicable federal, state and local laws, rules and regulations. The Customer shall ensure that its employees and agents follow the applicable international, national, and local health, safety and environmental laws, rules and regulations and comply with the respective procedures set forth by APM Terminals.
- 2. The performance of any obligations under these Terms is conditional upon no hindrances attributable to applicable local, United Nations (UN) or United States of America (US) or otherwise applicable national, European Union or international rules of foreign trade law or any sanctions or any embargoes existing. The Customer shall not take any action which could place APM Terminals or any other associated company in jeopardy of breaching or violating any such laws, rules, regulations, sanctions or embargoes.
- 3. The Customer agrees to comply fully with all applicable anti-corruption laws and regulations, including (but not limited to) those in the jurisdiction in which the Customer is incorporated or resident, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

4. The Customer will appraise and follow the principles set forth in APM Terminals Code of Conduct, a copy of which is available upon request.

## E. LIABILITY

### 1. Loss or damage to Goods

- (i) APM Terminals shall only be liable for loss of or damage to, any Goods whilst in the custody or control of APM Terminals to the extent the same is caused by the negligence or willful misconduct of APM Terminals and such liability shall be limited to the lesser of:
  - a) the value of the Goods actually lost or damaged, namely the reasonable repair cost or replacement cost (with Goods of the same age and in the same condition) of the Goods lost or damaged;
  - b) the limits of liability upon which the Customer could rely in a claim brought against it in accordance with the bill of lading or other transport document, evidencing a contract of carriage which has been issued in respect of Goods carried by the Customer ("Carriage Contract"); and
  - c) 2 SDRs per kilo of gross weight of the Goods lost or damaged.
- (ii) The Customer shall ensure that all Carriage Contracts incorporate a clause to the effect that APM Terminals will have the benefit of the provisions, including the law and jurisdiction provisions of that Carriage Contract to the extent such provisions benefit the Customer. APM Terminals authorizes, empowers and directs the Customer to act, and the Customer hereby agrees to act, as trustee and/or agent for APM Terminals for the limited purpose only of complying with this Clause.
- (iii) In addition to being able to rely on these Terms, APM Terminals has the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defense, right, remedy and/or law and jurisdiction clause contained in the Carriage Contract as if APM Terminals were the carrier and Customer were the merchant referred to in the Carriage Contract.

### 2. Loss or damage to Container

- (i) APM Terminals shall only be liable for loss of, or damage to, any Container or other Customer equipment whilst in the custody or control of APM Terminals to the extent the same was caused by the negligence or willful misconduct of APM Terminals and such liability shall be limited to the lesser of:
  - a) the reasonable repair cost of the Container or other equipment damaged; and
  - b) the depreciated value of the Container or other equipment lost or damaged, provided that in no circumstances shall the liability exceed:
    - (A) two thousand nine hundred US Dollars (USD 2,900) per Container in the case of any regular 20' dry Container;
    - (B) four thousand six hundred US Dollars (USD 4,600) per Container in the case of any regular dry Container of more than 20' in length;

- (C) twenty-five thousand US Dollars (USD 25,000) per Container in the case of any 20' reefer Container;
  - (D) twenty-eight thousand US Dollars (USD 28,000) per Container in the case of any reefer Container of more than 20' in length;
  - (E) five thousand US Dollars (USD 5,000) per Container in the case of any 20' Container which is not a regular dry or reefer Container;
  - (F) nine thousand US Dollars (USD 9,000) per Container in the case of any Container of more than 20' in length which is not a regular dry or reefer Container;
  - (G) twelve thousand US Dollars (USD 12,000) per chassis in the case of any chassis;
  - (H) fourteen thousand US Dollars (USD 14,000) per genset in the case of any genset; and
  - (I) Five thousand US Dollars (USD 5,000) per piece of other equipment not outlined above.
- (ii) The depreciated value of the Container or other equipment shall be calculated on the basis of the respective values in Clause E.2(i) with a straight-line depreciation of five per cent. (5%) per annum from the date of manufacture (as evidenced for Containers in the container safety certificate) until the day before the incident.

### 3. Loss or damage to Vessels

APM Terminals shall only be liable for loss of, or damage to, any Vessel whilst at the Terminal to the extent the same was caused by the negligence or willful misconduct of APM Terminals and liability shall be limited to the lesser of:

- (i) the reasonable repair cost of the Vessel damaged;
- (ii) the replacement cost (with a Vessel of the same age and in the same condition) of the Vessel lost or damaged; and
- (iii) twenty million US Dollars (US\$20,000,000) per Vessel.

### 4. Proof of liability

APM Terminals shall not be liable under Clauses E.1, E.2 or E.3 unless the Customer can establish that the loss or damage was caused by the negligence or willful misconduct of APM Terminals. If the loss or damage was contributed to by the act or omission of the Customer or any other person, APM Terminals shall be exonerated from liability under Clauses E.1, E.2 or E.3 to the extent that such act or omission contributed to the loss or damage.

### 5. Limitation of liability per incident

The maximum aggregate liability of APM Terminals for losses and/or damages under Clauses E.1, E.2 or E.3 which arises out of a single incident or series of connected incidents, and whether such losses and/or damages are sustained by more than one person, shall in no circumstances exceed twenty million US Dollars (US\$20,000,000) ("Overall Liability Cap"). Where, in respect of a single incident or series of connected incidents, the losses and/or damages 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).

#### 6. Delay

- (i) Except under special arrangements made previously in writing between APM Terminals and the Customer, in no circumstances shall APM Terminals have any liability whatsoever or howsoever arising (including negligence and willful misconduct) with regard to any failure to adhere to any timeframe or any delay.
- (ii) If APM Terminals fails to adhere to timeframes agreed with the Customer or if (without prejudice to Clause E.6(i) APM Terminals is found liable for loss or damage caused by delay, the liability of APM Terminals for such loss or damage shall not in any circumstances whatsoever exceed a sum equal to the amount of the rates in respect of the Container Terminal Services provided in relation to the relevant Goods, Container(s) and/or Vessel.

#### 6. Entire liability

Save as set out in this Clause E, APM Terminals or any other person or party shall not be liable for loss of or damage to any Goods, Container(s) or Vessel howsoever arising (whether caused by negligence or otherwise).

#### 7. Exclusion of liability for certain losses

- (i) APM Terminals shall have no liability for loss of or damage to any Goods, Container(s) or Vessel howsoever arising (whether caused by negligence or otherwise) if such loss or damage has been caused by matters beyond the control of APM Terminals including, without limitation to the generality of this exclusion:
  - a) any failure of the Customer, or any third party, to comply with the advice and recommendations of the IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units (CTU Code); or
  - b) any failure of the Customer, or any third party, to comply with the SOLAS Regulations; or
  - c) insufficient, inadequate or defective packing or marks; or
  - d) incorrect setting of any thermostatic, ventilation or other special controls of the Container; or
  - e) inherent vice of the Goods; or
  - f) instructions of the Customer; or
  - g) the delivery of Goods, Containers or equipment to incorrect persons where delivery has been made against a fraudulent or stolen bill of lading or similar document of title.
- (ii) Notwithstanding any other provision of these Terms, APM Terminals shall have no liability for any loss of profit, loss of revenue, loss of business, loss of goodwill or reputation or for any special, indirect, consequential or penal loss.

8. General liability limit

Notwithstanding any other provision of these Terms, but subject to Clause E.10, the liability of APM Terminals in respect of any claim shall be limited to the rates payable in respect of that part of the Container Terminal Services to which the claim relates.

9. Exceptions

Nothing in these Terms shall exclude or restrict the liability of APM Terminals for death or personal injury caused by its negligence or any other act or omission, for which liability may not be excluded or limited under applicable law. The general liability limit contained in Clause E.8 shall not apply to the liability of APM Terminals under Clauses E.1, E.2 or E.3.

10. Notification of claims

Any claim by the Customer against APM Terminals arising in respect of any Container Terminal Service provided to Customer, or which APM Terminals has undertaken to provide shall be made in writing, stating in reasonable detail the nature of the claim, and notified to APM Terminals within a reasonable time, but in any event within thirty (30) days from the date upon which the Customer became, or ought reasonably to have become, aware of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred.

11. Time limit for claims

Notwithstanding the provisions of Clause E.10, APM Terminals shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Container Terminal Service provided to the Customer, or which APM Terminals has undertaken to provide, unless legal proceedings are commenced and written notice thereof given to APM Terminals within twelve (12) months from the date of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to a claim.

12. Minimum claim threshold

Customer shall not be entitled to bring any claim howsoever arising (including negligence and willful misconduct) unless and until the amount of any such claim exceeds one thousand five hundred United States dollars (USD 1,500).

13. Joint and several liability

These Terms are between APM Terminals and the Customer. Every person defined as the Customer is jointly and severally liable to APM Terminals for all of the Customer's undertakings, responsibilities and liabilities under or in connection with these Terms and to pay the rates agreed or listed in the Tariff.

14. Application to claims in tort

The defenses, exclusions and limits of liability provided for in these Terms shall apply in any claim against APM Terminals whether the claim be founded in tort, bailment, contract, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of negligence, willful misconduct or fundamental breach of contract.

#### 15. Indemnity for excess liability

The Customer shall indemnify APM Terminals against any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by APM Terminals, as a result of, or in connection with:

- (i) any claim (including without limitation a claim made by the owner of the Goods, the Containers or the Vessel or any other person who is, or may become, interested in the Goods, the Containers or the Vessel or any customs authority) when such claim arises from or in connection with the Container Terminal Services (whether caused by the negligence of APM Terminals or otherwise) and to the extent such claim exceeds the liability of APM Terminals under these Terms;
- (ii) any breach by Customer of the obligations or warranties given in Clause C.3 (or any combination of the foregoing);
- (iii) any costs associated with the weighing, non-loading, storage, demurrage, release or return to the Customer or the Customer's customer of any packed Container which does not have a verified gross mass provided by the Customer or the Customer's customer;
- (iv) APM Terminals acting in accordance with Customer's instructions; and
- (v) any death or personal injury of any person or damage to any property whatsoever arising from the presence of the Customer at the Terminal, the use by the Customer of the Terminal, the presence of the Vessel at the Terminal or the presence of the Goods on the Vessel (whilst the Vessel is at the Terminal) or within the Terminal but only to the extent that such is caused by a breach of contract, default or negligence of the Customer or its customers.

#### 16. Insurance

- (i) APM Terminals is under no obligation to maintain property insurance for Goods, Containers or Vessels.
- (ii) APM Terminals shall, at its own expense, procure and maintain policies of insurance covering:
  - (i) any liabilities assumed by it under these Terms; and
  - (ii) any requirements by law, including public and third-party liability.
  - (iii) the Customer shall maintain or shall cause Vessels and their equipment, appurtenances, gear and machinery to be maintained in a thoroughly fit and seaworthy condition at all times. Vessels shall be kept continuously in class in accordance with the rules of their classification society. The Customer shall, and shall procure that third party owners of Vessels shall, maintain the following insurances and shall furnish to APM Terminal's representative certificates or copies of policies (or in the case of P&I cover, a certificate of entry) evidencing such insurance:
    - (i) Hull and Machinery insurance, in accordance with ITC hull clauses 1983 or equivalent conditions, in an amount no less than the full market value of the Vessel;

- (ii) (ii) P&I cover on standard terms and customary limits with a member of the International Group of P&I Clubs; and

With 4/4th running down cover provided through the insurances at (i) and (ii) above.

- (iv) The Customer shall provide APM Terminals with written notice at least thirty (30) days prior to cancellation, non-renewal or material change in any policy. Insurance must be maintained without any lapse in coverage. Failure by APM Terminals to demand certificates or other evidence of full compliance with these insurance requirements, or failure to identify any deficiency or noncompliance with coverage requirements, shall not be construed as a waiver of Customer's obligation to maintain the required insurance.

#### **F. Force Majeure**

1. A Party (the "Affected Party") shall be relieved from liability for any delay in the performance or failure to perform part or all of its obligations under these Terms if such delay or failure is caused by or results from Force Majeure for so long as the event of Force Majeure or the delay in the performance or failure to perform continues. Provided however that an event of Force Majeure shall not release any Party from its payment obligations arising under these Terms.
2. "Force Majeure" means an event or circumstance beyond the reasonable control of the Affected Party including, but not limited to, any act of God, act of public enemies, war, warlike acts, terrorism, restraint of governments, princes or peoples of any nation, riots, strikes, lockouts or other labour or industrial disputes, failure of a utility service, insurrections, civil commotion, civil disobedience, floods, fire, restrictions due to quarantines, sanctions or radioactivity, epidemics, storms, tempest, typhoon, tsunami or any other event or circumstance beyond the reasonable control of the Affected Party. Notwithstanding the aforesaid the following shall be considered as Force Majeure within the meaning of these Terms: (i) Restrictions on imports imposed by the Port Authorities or any other authority, organ or instrumentality of [jurisdiction]; (ii) Confiscation, expropriation or nationalization of Terminal assets; (iii) Commandeering or requisition of Terminal assets; (iv) any law or governmental order, rule, regulation or direction, in each case outlined in (ii), (iii) and (iv), by the Government of the country where APM Terminals has its registered office or primary place of business; or (v) any event or circumstance of a nature analogous to any of the foregoing.
3. The Affected Party shall use all reasonable efforts to mitigate and overcome the effects of the occurrence of Force Majeure in order to maintain or resume performance. Provided that no Party shall be required under this provision to settle any strike, lockout, or other labor or industrial dispute under terms it considers as being unfavorable to itself.
4. If an event of Force Majeure occurs, the Affected Party shall notify the other Party (the "Nonaffected Party"), as soon as reasonably practicable and in any event within seven (7) Business Days after the Affected Party has reasonably determined that the

occurrence of the event of Force Majeure may affect the performance of part or all of its obligations in a material way, of:

- (i) the occurrence and nature of the event of Force Majeure;
- (ii) (ii) its expected duration (so far as can be reasonably assessed);
- (iii) the obligations of the Affected Party, which cannot be fully performed as a result;
- (iv) the mitigating actions and remedies, which the Affected Party proposes to take.

5. The Affected Party shall keep the Non-Affected Party fully informed of developments, including the performance by it of the mitigating actions and remedies, and the results thereof.

#### **G. Use of EDI (Electronic Data Interchange) Communication**

1. This Clause shall apply (without prejudice to the other Clauses in these Terms) where partial or exclusive transmission and interchange of information between the Parties happens by means of an EDI Communication.
2. Upon such agreement, the Customer and APM Terminals shall use EDI Communication and shall exchange all details and information required to enable the other Party to fulfill its obligations related to the provision of Container Terminal Services.
3. APM Terminals shall determine and monitor the progress of the development, implementation and priority of EDI Communication
4. All messages submitted via EDI Communication must properly identify the sender and recipient and comply in all respects with the global standards of EDIFACT, ANSI X13 and any other formats agreed by both parties. APM Terminals reserves the right to amend these standards from time to time, such amendment to be notified to the Customer indicating the time the amendment shall become operative.
5. The service mailbox or any other receiver, receiving date and time of the transmitted message (or of the first or original transmission in case of repeated transmission of the same message) shall be treated as the receiving date and time of the message by the recipient.
6. The Parties shall maintain (without modification) a message data log containing dates and times of transmission of all EDI messages ("Message Data Log"). Data contained in the Message Data Log shall be retained by way of record for a period of not less than twelve (12) months. The Message Data Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the data must be capable of being readily retrieved and presented in human readable form. 7
7. The Parties acknowledge that in the event of any complete or partial breakdown or failure of the system supporting EDI communication, they will take all necessary steps to ensure the continued transmission and receipt of relevant messages, notices and information by alternative and/or additional means such that the performance of the obligation under these Terms is not adversely affected.
8. Each of the Parties shall:
  - (i) take reasonable care in so far as it is within its power to do so to ensure that the transmissions of messages are secure and prevent unauthorized access to its EDI Communication and the Message Data Log;

- (ii) ensure that messages containing confidential information as designated by the sender of the message are maintained by the recipient in confidence and are not disclosed to any person not otherwise authorized or used by the recipient outside the terms imposed by the sender. Any authorized disclosure to a third party shall be made only after getting a prior written approval of APM Terminals;
  - (iii) apply special protection, where permissible, by encryption or by other agreed means unless the Parties agree otherwise.
9. APM Terminals and the Customer accept the integrity of all messages and agree to accord these the same status as would be applicable to notices or information sent other than by electronic means, unless such message can be shown to have been corrupted as a result of technical failure on the part of any machine, system or transmission by the Customer. Where there is evidence that a message has been corrupted or if any message is identified or capable of being identified by the sender as incorrect, it shall be re-transmitted as soon as practicable with a clear indication that it is a corrected message.
10. The sender is responsible and shall use its best endeavors to ensure that messages are complete and correct. Notwithstanding the foregoing, the recipient must immediately inform the sender if it is, or should in all the circumstances, be reasonably obvious to the recipient that the transmission of such message is incomplete, incorrect or otherwise deficient and in no event shall any of the Parties be liable in accordance with these Terms for the consequences of any such deficiency.
11. If the recipient has reason to believe that a message is not intended for it, it should take reasonable action to inform the sender and should delete the information contained in such a message from its system apart from the Message Data Log.

## **H. Law and Jurisdiction**

1. These Terms their interpretation and any contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with the Laws of England and Wales without regard to any conflict of law rules.
2. Any dispute arising out of or connection with these Terms shall be referred exclusively to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof.
3. The arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association ("LMAA") terms current at the time when arbitration proceedings are commenced.
4. The reference shall be to three (3) arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified.
5. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may,

without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.

6. In cases where neither the claim nor a counterclaim exceeds the sum of USD 100,000 or such other sum as the Parties may agree, the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

## **J. General**

1. Should any term, covenant, condition or provision in these Terms be held invalid or unenforceable, the remainder of these Terms and the application of such term, covenant, condition or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant, condition or provision of these Terms shall be valid and enforceable to the extent permitted by law. However, if such term, covenant, condition or provision in these Terms is a material part of these Terms, the Parties shall use their best endeavors to agree a valid and enforceable replacement which achieves (so far as possible) materially the same effect.
2. Any party for whom APM Terminals is responsible shall have the benefit of the exclusions of liability contained in, and shall have the right to enforce, the provisions of these Terms in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
3. Except as stated in Clause J.2, the Parties do not intend that these Terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise. No consent of any person who is not a party to these Terms shall be required to amend any term of these Terms or release, settle or compromise any liability under it.
4. The relationship of APM Terminals and the Customer under these Terms is that of independent contractors, and neither Party is an employee, agent, partner or in a joint venture with the other. Each Party shall be solely responsible and liable for any employment-related taxes, insurance premiums or other employment benefits related to its respective performance under these Terms. Neither Party shall be responsible for the payment of any duties or taxes imposed on the income or profits of the other Party.
5. APM Terminals shall have the right to assign or otherwise transfer its right, title, interest and obligations under these Terms to any affiliate, provided such entity operates in the Port. The Customer shall not be entitled to assign, or otherwise transfer or subcontract all or any of its rights, title, interest or obligations under these Terms without the prior written consent of APM Terminals.
6. APM Terminals may sub-contract the Container Terminal Services but sub-contracting shall in no way relieve APM Terminals of any of its obligations under these Terms and APM Terminals shall remain responsible for its sub-contractors and their performance.
7. All Containers and Goods and all documents relating to Containers and Goods shall be subject to a particular and general lien respectively for charges due to APM Terminals in respect of such Containers or Goods from the Customer. If any charges are not paid within [one (1)] calendar month after notice requiring payment has been given to the

Customer, the Containers or Goods subject to such lien, may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by APM Terminals in such sale. Any sale of Containers or Goods by APM Terminals pursuant to these Terms, may be conducted by private treaty, by public auction or otherwise in such manner as APM Terminals shall in its sole discretion determine and APM Terminals shall not be liable for any loss and/or damage to any person whatsoever as a result thereof. This lien shall be in addition to any allowed by law.

8. The failure to exercise or delay in exercising a right or remedy provided for in these Terms or by law does not constitute a waiver of the rights or remedies. No single or partial exercise of a right or remedy provided for by these Terms or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
9. The Customer undertakes that no claim or allegation in respect of the Container Terminal Services whether arising in contract, bailment, tort or otherwise shall be made against any member of the APM Terminals Group, subcontractor or any of their employees, servants, agents. If any claim or allegation should nevertheless be made against any member of the APM Terminals Group, subcontractor or any of their employees, servants, agents, the Customer agrees to indemnify and hold harmless APM Terminals against all consequences thereof. Without prejudice to the foregoing, all defenses, exemptions, immunities, limitations, liberties and rights of APM Terminals hereunder, including the right to enforce any law and jurisdiction clause, shall be available and extend to all members of the APM Terminals Group, subcontractors and their employees, servants, agents who shall be entitled to enforce them against the Customer. APM Terminals Group being understood as all legal entities, that own, are directly or indirectly owned by or are under the common ownership of APM Terminals. For the purpose of the foregoing "own" or "ownership" shall mean majority ownership or controlling interest.
10. Any notice hereunder shall be deemed to have been duly given if sent by registered post or fax to the Party concerned at its principal place of business. Notices sent by registered post shall be deemed to have been given seven (7) days after dispatch and notices sent by fax shall be deemed to have been given twenty-four (24) hours after dispatch.
11. If there is any conflict between the English version of these Terms and any translation thereof into any other language, the English language version shall prevail.