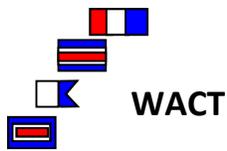


West Africa Container Terminal Nigeria Ltd  
Version 1 2018

## APMT Standard Terms of Business

### Definitions:

- WACT:** [West Africa Container Terminal Nigeria Ltd, Federal Ocean Terminal, Onne Oil and Gas Free Zone , Onne Seaport ];
- Customer:** any person or entity requesting receiving or benefiting from the delivery of services by WACT. 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 WACT, 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 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;
- CSC:** the International Convention for Safe Containers, 1972, as amended from time to time;
- 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-containerised cargo and Hazardous Goods carried on a Vessel;



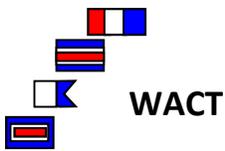
- Hazardous Goods:** Goods which are, or which may become, of a dangerous, noxious, toxic, poisonous, hazardous, explosive, flammable, or otherwise damaging nature (including radioactive material), or which may, or may become liable to, damage any persons or property whatsoever, and whether or not so listed in any official or unofficial, international or national code, convention, listing or table;
- Non-standard Container:** any Container which WACT 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;
- Shipper:** has the meaning assigned in the SOLAS Guidelines;
- SOLAS:** the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines and as may be amended or supplemented from time to time;
- SOLAS Guidelines:** the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization, as may be amended, supplemented or replaced from time to time;
- Terminal:** the terminal facilities at WACT Nigeria Ltd , Onne , Federal Ocean Terminal , Onne Seaport ;
- 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;
- Verified Gross Mass:** the total gross mass of a packed Container as obtained by one of the two methods prescribed by SOLAS;
- VGM Declarant:** the Customer, Shipper or another person on behalf of the Customer or Shipper providing the Verified Gross Mass to WACT.

#### A. Scope

1. These standard terms of business (the “**Terms**”) shall apply to any provision of services [of any nature whatsoever] by WACT 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 WACT not only for itself but also as agent for the owners of the Vessel (if chartered), Goods and Containers. The Customer and WACT are collectively referred to as the “**Parties**” and each individually as “**Party**”.
2. WACT shall only be bound and an agreement for the provision of services between WACT and the Customer on these Terms shall only be concluded once WACT 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 WACT. 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 WACT as published at time to time (“**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 WACT are due on demand by WACT.
  - (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 WACT reserves the right to allocate such payments to the oldest outstanding payment by the Customer. WACT will inform the customer accordingly. Any payments to be made from WACT to the Customer shall only become due when the Customer is in compliance with its contractual obligations towards WACT.



- (iii) All payments due shall be made without any set off, counter claim, deduction or stay of execution.
- 3. If as a result of a change in applicable laws, rules or regulations (including SOLAS), WACT's costs in order to comply with its obligations under such are increased, WACT may recover such additional costs from the Customer.

### **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 WACT as set forth in these Terms.
- (ii) If not agreed otherwise, the Customer shall, or shall procure that another VGM Declarant shall, provide WACT with the Verified Gross Mass as soon as possible and in any event, no later than:
  - a. 24hrs prior to vessel arrival OR as stipulated on the daily WACT berth schedule email for all packed Containers for export; and
  - b. [sufficiently in advance of outbound Vessel loading] OR [ 48 hrs advance of inbound Vessel discharge] OR [ 48 hrs prior to vessel arrival ] for all packed transshipment Containers, to be used by WACT to prepare and implement the Vessel stowage plan in accordance with SOLAS.
- (iii) The Customer warrants that all information requested by WACT 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 WACT can rely on any such information in good faith without further investigation and without endangering safe and secure provision of the Container Terminal Services in line with applicable laws, rules and regulations. To this end, Customer indemnifies WACT in full against any claim, loss, penalty or damage that may arise as a result of WACT's reliance on the information provided by Customer.
- (iv) WACT is not obliged to provide any Container Terminal Services unless complete information has been provided.
- (v) The Customer shall inform WACT about any change to the initial submitted information as early as possible but not later than [24] hours before the change shall become effective. Any change request will only become effective upon (a) written confirmation by WACT and (b) written acceptance by the Customer of any additional payments or rate adjustments requested by WACT.
- (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; WACT shall be entitled at its discretion to accommodate the changes or provide the Container Terminal Services as initially agreed. In case WACT accommodates the change, the rates as

agreed between the Parties or, in the absence of such agreement, as published in the Tariff subject to a minimum of 150 % surcharge (“**Change Request Surcharge**”), shall apply. WACT 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 WACT if not agreed differently between the Parties or otherwise stated in the Tariff.
- (ii) WACT 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, WACT shall not load any packed Container on board a Vessel to which the SOLAS applies without a Verified Gross Mass provided by a VGM Declarant in accordance with Clause C.1.
- (iii) [
- (iv) WACT shall not load a Container onto a Vessel if the Verified Gross Mass provided by a VGM Declarant exceeds the maximum gross weight indicated on the Safety Approval Plate under the CSC of the relevant Container (“**Overweight Container**”).
- (v) The Customer confirms as agent of the Shipper that WACT has authority from the Shipper to act on its behalf and perform all of the actions contemplated in the foregoing subclauses of this Clause C.2.
- (vi) WACT 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 receipt and removal.
- (vii) WACT does not give any warranty or representation that the Vessel will not ground whilst approaching, leaving or lying alongside the WACT premises. Each Vessel whilst approaching, leaving and lying alongside WACT premises does so at the sole risk and responsibility of the Customer. The Customer shall indemnify WACT 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.
- (viii) 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.
- (ix) WACT 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. This shall also apply to any Vessel bunkering whether by truck or bunker barge. WACT and the Customer agree that access as referred to in this clause is permitted by WACT on condition that the same is carried out in accordance with the rules and regulations of WACT and any other relevant authority including, but not limited to, customs authorities and the Port Authority. WACT 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 WACT for any loss, damage, cost, expense or injury arising in any way howsoever caused by reason of WACT permitting access under this clause C.2.(v).

- (x) In order to ensure safe working practices, WACT 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 WACT's personnel); maintains appropriately qualified and experienced officers and crew aboard
  - (xi) The Customer agrees to allow WACT 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.
  - (xii) WACT shall not be required to provide Container Terminal Services if the applicable terminal manager at the Terminal, after discussing the issue with 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 discussing the issue with the Vessel's master.
  - (xiii) All equipment on a Vessel for loading and discharging Containers must technically be compatible with ISO standard equipment provided by WACTWACT. The Customer warrants that all Vessels are fitted with twistlocks which are in good working order.
  - (xiv) 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.
  - (xv) The closing time for receipt by WACT of Containers at the Terminal and the Verified Gross Mass of those Containers on any given day shall be in accordance with WACT' procedures in force at that time [according to local rules] ("**Cargo Cut Off Time**").
3. WACT shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the power supply howsoever arising and WACT shall not be obliged to maintain an auxiliary power supply at the Terminal.
- Condition of Containers
- (i) If not agreed otherwise, WACT shall only be required to handle Containers which are (a) nominated to WACTWACT, (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. For the avoidance of doubt, Customer warrants that export containers have been duly cleared before they are gated in to the terminal and indemnifies WACT against all losses, claims, penalties that may arise as a result of breach or failure of this warranty.
  - (ii) The Customer warrants and undertakes that each Container which it delivers or causes to be delivered to WACT is upon delivery secure, in a good state of repair, appropriately certified and suitable for its purpose. WACT reserves the right 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 WACTWACT.
- (iv) WACT shall inform the Customer of any damage to any Container, its contents or packaging which comes to the attention of WACTWACT, and may refuse to load or handle such Containers. If WACT 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 WACT in writing that an inspection of the relevant items is required. WACT 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 CSC.
- (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 WACT in writing of Hazardous Goods at least 48 hours before arrival at the Terminal.
- (vii) The Customer shall pay any costs and expenses which may be incurred by WACT 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

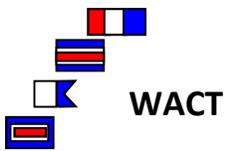
any infestation or contamination arising from handling such. In the event that a part of the Terminal cannot be occupied as a result of WACT complying with such applicable laws, rules or regulations. The Customer shall pay the rates outlined in the Tariff as if such yard space was fully occupied by the Customer.

- (viii) The Customer shall evacuate all containers excluding reefers which has exceeded a dwell time of 180 (One Hundred and Eighty) days from the day it was discharged and shall settle accrued terminal and storage charges to the Terminal.
- (ix) The Customer shall evacuate all containers which has exceeded a dwell time of 180 (One Hundred and Eighty) days from the day it was discharged and shall settle accrued terminal and storage charges to the Terminal. Where the Customer fails to evacuate same and the Federal Government of Nigeria; in exercise of its Statutory powers through the Nigeria Customs Service auctions the container as Longstanding/Abandoned containers, the Customer shall be liable for all accrued terminal charges and rent.
- (x) If WACT 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 WACT 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 WACT to ensure compliance with the rules and regulations of customs for opening and unpacking of any Container.
- (xi) Subsequent to the initial opening of the Container or the unpacking of a Container, WACT 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.
- (xii) Notwithstanding the aforesaid, WACT 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, WACT may without notice to the Customer under customs procedures 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 WACT 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 WACT against any reasonable additional expense so incurred. WACT 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.
- (xiii) Reefer Containers
  - a. The Terminal will check and report upon the temperature of Reefer Containers stored at the Container Terminal subject to instructions being given in writing to the Terminal at least two (2) working days in advance of receipt of a specific Reefer Container by the Terminal and such instructions are accepted in writing by the Terminal, Terminal may check and report upon the temperatures of Containers as mutually agreed.

- b. The Terminal shall not be responsible or liable in any way for any Reefer Container or the refrigeration of refrigerated Cargo if the Customer fails to give written instructions, or provides wrong or inadequate instructions concerning the handling thereof.
  - c. If the Terminal is instructed in writing in accordance with Clause D 4 (i) the Terminal will, within a reasonable time of receipt, connect the Reefer Container to a main power supply. The Terminal shall not be obliged to maintain an auxiliary power supply and the Terminal shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the mains power supply howsoever arising.
  - d. Abandoned Reefer Containers: Customer shall ensure that delivery of all reefer containers discharged unto the Terminal is taken within 90 days of discharge. Any reefer container exceeding 90 days post discharge shall be deemed abandoned and Customer shall evacuate the unit immediately. All terminal, plug-in and storage charges shall be paid immediately by Customer. Where Customer fails to evacuate the reefer container after 90 days, the Terminal reserves the right to evacuate the unit on Customer's behalf (Customer hereby authorises Terminal to carry out such evacuation on its behalf). All cost accrued in the course of evacuation including cost of cargo destruction shall be reimbursed by the Customer. In addition all terminal, plug-in, storage and related charges for evacuated containers shall be paid by the Customer.
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 WACT 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 non-compliance with the terms of this Clause C shall be the responsibility of the Customer. Any idle time incurred by WACT 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 WACT 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 WACTWACT.



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
3. could place WACT or any other associated company in jeopardy of breaching or violating any such laws, rules, regulations, sanctions or embargoes.
4. 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.
5. The Customer will appraise and follow the principles set forth in WACT Code of Conduct, a copy of which is available upon request.

#### **E. Liability**

##### **1. Loss or damage to Goods**

- (i) WACT shall only be liable for loss of or damage to, any Goods whilst in the custody or control of WACT to the extent the same is caused by the negligence or wilful misconduct of WACT and such liability shall be limited to the lesser of:
  - a) In the case of partial loss/damage to the cargo/goods, a sum which represents a proportion equivalent to the value of the damaged/lost cargo/goods; which shall be computed using the Form M, Customs declaration and packing list.
  - b) In the case of total loss/damage, a sum not exceeding the sum shown on the Form M and/or Customs declaration.And for the avoidance of doubt, in the absence of gross negligence or wilful default, the Terminal shall have no liability for such loss and/or damage.

PROVIDED ALWAYS that in no circumstances shall the Terminal's liability exceed:

- a) USD 40,000 in the case of any dry Container ; and
  - b) USD 40,000 in the case of any Reefer Container
- (ii) The Customer shall ensure that all Carriage Contracts incorporate a clause to the effect that WACT 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. WACT authorizes, empowers and directs the Customer to act, and the Customer hereby agrees to act, as trustee and/or agent for WACT for the limited purpose only of complying with this Clause.
  - (iii) In addition to being able to rely on these Terms, WACT has the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defence, right, remedy and/or law and jurisdiction clause contained in the Carriage Contract as if WACT were the carrier and Customer were the merchant referred to in the Carriage Contract.

##### **2. Loss or damage to Containers**

- (i) WACT shall only be liable for loss of, or damage to, any Container or other Customer equipment whilst in the custody or control of WACT to the extent the same was caused by

the negligence or wilful misconduct of WACT 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. USD 1,000 per Container in the case of any regular 20' dry Container;
    - B. USD 1,500 per Container in the case of any regular dry Container of more than 20' in length;
    - C. USD 7,000 per Container in the case of any 20' reefer Container;
    - D. USD 10,000 per Container in the case of any reefer Container of more than 20' in length;
    - E. And for the avoidance of doubt , in the absence of gross negligence or willful default, The Terminal shall have no liability whatsoever for such loss and /or damage.
- (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 Ten per cent. (10 %) 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
- WACT 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 wilful misconduct of WACT and liability shall be limited to the lesser of the reasonable repair cost the damage caused to the Vessel provided that WACT liability does not exceed an aggregate of USD 250,000 per incident for all losses attributable or connected to a single incident Proof of liability.
4. Proof of liability
- WACT 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 wilful misconduct of WACT. If the loss or damage was contributed to by the act or omission of the Customer or any other person, WACT 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
- ii) The maximum aggregate liability of WACT 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) Two Hundred and Fifty thousand United States Dollars US\$ 250,000 ("**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 WACT and the Customer, in no circumstances shall WACT 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 WACT fails to adhere to timeframes agreed with the Customer or if (without prejudice to Clause E.6(i) WACT is found liable for loss or damage caused by delay, the liability of WACT 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.

7. Entire liability

Save as set out in this Clause E, WACT 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).

8. Exclusion of liability for certain losses

- (i) WACT 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 WACT 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. the receipt by WACT of an Overweight and lop-sided Container;
  - d. WACT not having received a Verified Gross Mass before the relevant deadline contained in Clause C.1;
  - e. insufficient, inadequate or defective packing or marks; or
  - f. incorrect setting of any thermostatic, ventilation or other special controls of the Container; or
  - g. inherent vice of the Goods; or
  - h. instructions of the Customer; or
  - i. 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, WACT 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.

9. General liability limit

Notwithstanding any other provision of these Terms, but subject to Clause E.10, the liability of WACT 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.

10. Exceptions

Nothing in these Terms shall exclude or restrict the liability of WACT 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.9 shall not apply to the liability of WACT under Clauses E.1, E.2 or E.3.

11. Notification of claims

Any claim by the Customer against WACT arising in respect of any Container Terminal Service provided to Customer, or which WACT has undertaken to provide shall be made in writing, stating in reasonable detail the nature of the claim, and notified to WACT within a reasonable time, but in any event within fifteen (15 ) 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.

12. Time limit for claims

Notwithstanding the provisions of Clause E.10, WACT 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 WACT has undertaken to provide, unless legal proceedings are commenced and written notice thereof given to WACT within six (6) months from the date of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to a claim.

13. Minimum claim threshold

14. Notwithstanding the remaining provisions of these Terms of Business the maximum aggregate liability of the Terminal to the Customer in any calendar year regardless of the cause of such claim and number of incidents shall in no circumstances exceed One Million United States Dollars (US\$ 1,000,000) provided that all amounts payable under any relevant insurances held by the Customer against any Customer claims shall be paid in full to the Terminal within fourteen (14) days of receipt of the same by the Customer from the relevant insurer of the Customer. The 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 five hundred United States dollars (USD 500). Joint and several liability

These Terms are between WACT and the Customer. Every person defined as the Customer is jointly and severally liable to WACT 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.

15. Application to claims in tort

The defenses, exclusions and limits of liability provided for in these Terms shall apply in any claim against WACT 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, wilful misconduct or fundamental breach of contract.

16. Indemnity for excess liability

The Customer shall indemnify WACT 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 WACT, 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 WACT or otherwise) or the information required under Clause C.1 and to the extent such claim exceeds the liability of WACT under these Terms;

- (ii) any breach by Customer of the obligations or warranties given in Clause C.1, C.2 or C.3 (or any combination of the foregoing);
- (iii) weighing, non-loading, storage, demurrage, additional transport, shunting, handling, stripping, stuffing, release or return to the Customer or the Shipper or other charges for any packed Container which [is an Overweight and Lop-Sided Container], does not have a Verified Gross Mass provided by the Customer or another VGM Declarant [or has a Verified Gross Mass provided by the Customer or another VGM Declarant found to be incorrect or inaccurate by WACT];
- (iv) delays or missed sailings arising out of or in connection with the activities performed by WACT in Clauses C.2(iii), C.2(iv) and C.2(v) above;
- (v) WACT acting in accordance with Customer's instructions; and
- (vi) 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.

#### 17. Insurance

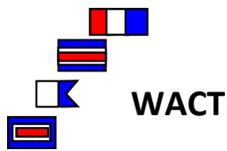
- (i) WACT is under no obligation to maintain property insurance for Goods, Containers or Vessels.
- (ii) WACT shall, at its own expense, procure and maintain policies of insurance covering:
- (iii) any liabilities assumed by it under these Terms; and
- (iv) any requirements by law, including public and third party liability.
- (v) 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:
  - a. 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;
  - b. P&I cover on standard terms and customary limits with a member of the International Group of P&I Clubs; and
- (vi) The Customer shall provide WACT 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 WACT to demand certificates or other evidence of full compliance with these insurance requirements, or failure to identify any deficiency or non-compliance 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 WACT 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 “Non-Affected 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) 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 WACT 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. WACT 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. WACT 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. 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 WACT;
  - (iii) apply special protection, where permissible, by encryption or by other agreed means unless the Parties agree otherwise.
9. WACT 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**

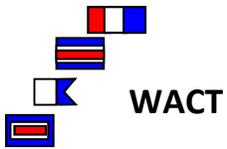
1. These Terms their interpretation and any contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with the Laws of England and Wales without regard to any conflict of law rules.
2. Any dispute arising out of or connection with these Terms 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.

#### **I. 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 WACT 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 1.2, 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 WACT 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. WACT 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 WACT.
6. WACT may sub-contract the Container Terminal Services but sub-contracting shall in no way relieve WACT of any of its obligations under these Terms and WACT 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 WACT 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 WACT in such sale. Any sale of Containers or Goods by WACT pursuant to these Terms, may be conducted by private treaty, by public auction or otherwise in such manner as WACT shall in its sole discretion determine and WACT 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 or 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 WACT Group, subcontractor or any of their employees, servants, agents. If any claim or allegation should nevertheless be made against any member of the WACT Group, subcontractor or any of their employees, servants, agents, the Customer agrees to indemnify and hold harmless WACT against all consequences thereof. Without prejudice to the foregoing, all defenses, exemptions,



immunities, limitations, liberties and rights of WACT hereunder, including the right to enforce any law and jurisdiction clause, shall be available and extend to all members of the WACT Group, subcontractors and their employees, servants, agents who shall be entitled to enforce them against the Customer. WACT Group being understood as all legal entities, that own, are directly or indirectly owned by or are under the common ownership of WACT. 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.