

APM Terminals Tangier

**APMT Standard Terms of Business**

**Definitions:**

- APM Terminals: APM Terminals Tangier
- Group: means A.P. Moller-Maersk A/S and any of its direct and indirect subsidiaries;
- Duration: these Standard terms of business is valid from the January 01<sup>st</sup> 2021 until 31<sup>st</sup> December 2021;
- Customer: any person or entity requesting, receiving or benefiting from the delivery of services by APM Terminals;
- 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-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;
- Material Breach: means any breach which is considered material to the overall business relationship, operational capabilities and financial implications to APM Terminals. Upon the occurrence of a Material Breach:
- a. The relevant Terminal User shall indemnify and hold APM Terminals harmless from all costs, fines, penalties and associated expenses arising out of or resulting from such Material Breach;
  - b. APM Terminals is entitled to terminate its legal relationship with the relevant Terminal User under these Terms and recover from the Terminal User the amount of any loss or damage resulting from the termination;
  - c. The Terminal User will surrender any claim for payment under these Terms including payment for services previously performed; and
  - d. APM Terminal will not be liable for any claims, losses, or damages arising from or related to the failure by the Terminal User to comply with any such laws or related to the termination of its legal relationship with the relevant Terminal User under these Terms and the Terminal User hold APM Terminal harmless against any such claims, losses, or damages.
  - e. APM Terminals can immediately terminate if a Material Breach of these Terms or any agreement between the Parties has not been remedied within seven (7) days after notice of the breach has been served by APM Terminals

Non-standard Container:	any Container which APM Terminals cannot handle as a normal lift with a container spreader but can handle with alternative means;
Other Terminal User:	means any supplier, vendor, (sub)contractor, third-party agent and other third parties (excluding Customers) which enter the Terminal premises, provide services to the Terminal or use the Terminal's services;
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 to it 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 [Port of Tangier] operated by APM Terminals;
Terminal User	Any Customer or Other Terminal User;
Vehicle:	any road or rail vehicle entering the Terminal which is operated by or on behalf of a Customer or Other Terminal User or used by a Customer or Other Terminal User;
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 APM Terminals.

**A. Scope**

1. These standard terms of business (the "**Terms**") shall apply to any provision of services by APM Terminals to a Customer and to any Other Terminal User using the Terminal. "Use of the Terminal" includes entering the Terminal, providing services at the Terminal or to APM Terminals and any other interaction between a Terminal User and APM Terminals at the Terminal or with respect to the Terminal. By requesting the delivery of services, or otherwise using the Terminal the Customer or Other Terminal User, respectively, warrants to be authorized to enter into an agreement with APM Terminals not only for itself but also as agent for any principal involved, including owners of the Vessel (if chartered) or Vehicle, Goods and Containers. APM Terminals and any individual Terminal User 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 Terminal User on these Terms shall only be concluded once APM Terminals confirms any request by a Terminal User (the "**Confirmation**"). Notwithstanding the foregoing, the use of the Terminal or the Container Terminal Services by a Terminal User, entry into the Terminal or berthing of any Vessel at the Terminal, shall be treated as acceptance of these

Terms. APM Terminals may at any time with a notice period of [30 days] days terminate the Container Terminal Services or otherwise discontinue the use of the Terminal by a Terminal User.

3. Notwithstanding any language to the contrary in any documents, any correspondence or any other form of acknowledgement with a Terminal User, the Terminal User 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 APM Terminals and a Customer, the scope of services (type of services, service description, rates) shall be as set out in the applicable tariff of APM Terminals or the official rates approved by the Port Authority (“**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 hereafter 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 by the Terminal User in accordance with the following payment terms:
  - a. All sums payable to APM Terminals are due on demand by APM Terminals but no later than thirty (30) days from invoice date.
  - b. All payments shall refer to the invoice number and amount. If no reference to the respective invoice number and amount is indicated by the Terminal User, APM Terminals reserves the right to allocate such payments to the oldest outstanding payment by the Terminal User. APM Terminals will inform the Terminal User accordingly. Any payments to be made from APM Terminals to Terminal Users shall only become due when the Terminal User is in compliance with all its contractual obligations towards APM Terminals.
  - c. All payments due from a Terminal User shall be made without any set off, counter claim, deduction or stay of execution.
  - d. If a Terminal User fails to make any payment when they fall due under these Terms and any other agreement between the Parties, APM Terminals, without prejudice to its other rights (i) shall not be obligated to commence performance of its obligations under these Terms or any other agreement between the Parties (or it may suspend the performance of any such obligations if already commenced, at its own discretion); (ii) shall have the right to charge interest on such overdue amounts at a rate equal to [insert rate percentage] LIBOR for the currency of the invoice on the overdue amount, until the date of actual payment; (iii) shall have the right to charge a penalty of [insert penalty amount] of the overdue amount.
  - e. The Parties agree that objections or disputes to an invoice shall be raised within a maximum period of (two weeks) days of the issuance date of the relevant invoice in writing (“**Objection Notification**”). The Objection Notification shall clearly outline the reasons of objection, i.e. why the payment is disputed. The Parties shall come together and endeavor to resolve the dispute in the Objection Notification amicably through good faith negotiations within a period of thirty (30) days from the date on which the Objection Notification is received by APM Terminals. If such dispute cannot be resolved within the period stipulated herein, such dispute shall be resolved in accordance with the Law and Jurisdiction clause as stipulated in these Terms. Any invoice that has not been objected within the period of time as mentioned above shall be deemed to have been accepted by the Terminal User.
3. If as a result of a change in applicable laws, rules or regulations (including SOLAS), APM Terminal's costs in order to comply with its obligations under such are increased, APM Terminals may recover such additional costs from the Terminal User.

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

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

1. Information Exchange
  - (ii) If not otherwise agreed between APM Terminals and the Terminal User or specifically outlined in the Tariff, the Terminal User shall provide the information requested by APM Terminals as set forth in these Terms.

- (iii) If not agreed otherwise, the Terminal User shall, or shall procure that another VGM Declarant shall, provide APM Terminals with the Verified Gross Mass as soon as possible and in any event, no later than:
    - a. [Cargo Cut Off Time] OR [when gated in] for all packed Containers for export; and
    - b. [sufficiently in advance of outbound Vessel loading] OR [in advance of inbound Vessel discharge] OR [Cargo Cut Off Time] for all packed transshipment Containers,to be used by APM Terminals to prepare and implement the Vessel stowage plan in accordance with SOLAS.
  - (iv) The Terminal User 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 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.
  - (v) APM Terminals is not obliged to provide any Container Terminal Services unless timely, accurate, complete and lawful information and documentation has been provided.
  - (vi) The Terminal User shall inform APM Terminals about any change to the initial submitted information as early as possible but not later than [48] 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 Terminal User of any additional payments or rate adjustments requested by APM Terminals.
  - (vii) 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 a [X]% surcharge to be determined ("**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 Terminal User and its agents, employees or any third parties acting on behalf of or at the request of the Terminal User 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 or Vehicle to which the SOLAS applies without a Verified Gross Mass provided by a VGM Declarant in accordance with Clause C.1.
  - (iii) [APM Terminals shall weigh all packed [export] Containers received at the Terminal [without a Verified Gross Mass] using appropriately calibrated and certified equipment as required by SOLAS. Each such weighed Container, a "**Weighed Container**".]
  - (iv) [If a packed Container has been received by the Terminal but the Verified Gross Mass for such Container is not provided to APM Terminals by a VGM Declarant in accordance with Clause C.1(ii), then APM Terminals may use the weight obtained pursuant to Clause C.2(iii) as the Verified Gross Mass for that Weighed Container for the purpose of SOLAS. APM Terminals shall communicate the Verified Gross Mass of each such Weighed Container to the Terminal User.]<sup>1</sup>
  - (v) [If there is any discrepancy [of more than [x]%) between a Verified Gross Mass provided by a VGM Declarant 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 to replace the existing Verified Gross Mass for that Weighed

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<sup>1</sup> Level 4. The requirement to seek Customer confirmation to load is no longer required if a VGM is established by APM Terminals and the necessary authority obtained through Clause C.2(viii).

- Container for the purpose of SOLAS. APM Terminals shall communicate the Verified Gross Mass of each such Weighed Container to the Terminal User.]<sup>2</sup> to be determined
- (vi) APM Terminals shall not load a Container onto a Vessel if the Verified Gross Mass provided by a VGM Declarant or established by APM Terminals in accordance with Clause C.2(iii) exceeds the maximum gross weight indicated on the Safety Approval Plate under the CSC of the relevant Container ("**Overweight Container**").
  - (vii) [At the request and expense of the Terminal User and subject to Clause C.15, APM Terminals shall strip Overweight Containers and stuff and seal two or more Containers with the contents removed from the Overweight Containers and the provisions of Clauses C2(iii) and C2(iv) shall apply accordingly.]<sup>3</sup>
  - (viii) The Terminal User confirms as agent of the Shipper that APM Terminals has authority from the Shipper to act on its behalf and perform all of the actions contemplated in the foregoing sub-clauses of this Clause C.2.
  - (ix) [APM Terminals will inform the Terminal User of a missing Verified Gross Mass requesting the Container to be removed from the Terminal. The Terminal User shall pay the rates outlined in the Tariff as if such yard space was fully occupied by the Terminal User for the time between receipt and removal.]
  - (x) 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 Terminal User shall indemnify APM Terminals for any loss, damage, expense, cost or injury, including loss of business, arising as a consequence of a Vessel or Vehicle causing an obstruction to the approach channel or berth due to grounding blocking or otherwise.
  - (xi) The Terminal User is solely responsible for compliance with all applicable laws, rules and regulations in force relating to the Vessel or Vehicle and all matters whatsoever relating to the Vessel or Vehicle.
  - (xii) APM Terminals shall permit the Terminal User 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. APM Terminals and the Terminal User agree that access as referred to in this clause is permitted by APM Terminals on condition that the same is carried out in accordance with the rules and regulations of APM Terminals and any other relevant authority including, but not limited to, customs authorities and the Port Authority. 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 Terminal User 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).
  - (xiii) In order to ensure safe working practices, APM Terminals may inspect the Vessel or Vehicle and other equipment work areas and gear to determine that all applicable laws, rules and regulations have been satisfied. The Terminal User shall ensure that the Vessel or Vehicle furnishes adequate lighting and safe ingress and egress (for APM Terminal's personnel); maintains appropriately qualified and experienced personnel, officers and crew.
  - (xiv) The Terminal User agrees to allow APM Terminals to inspect Vessels or Vehicles and other equipment, 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.
  - (xv) APM Terminals 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 or Vehicle driver, reasonably believes that safety violations or deficiencies exist relating to the Vessel or Vehicle. 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 or Vehicle driver.
  - (xvi) 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.

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<sup>2</sup> Level 3. The requirement to seek Customer confirmation to load is no longer required if a VGM is established by APM Terminals and the necessary authority obtained through Clause C.2(viii).

<sup>3</sup> Optional.

- (xvii) The Terminal User's masters, crew, drivers and agents shall exercise due care when mooring, departing or occupying a berth or navigating in the vicinity of or in the Terminal.
  - (xviii) Container Terminal Services will only be provided during local ["**Standard Gate Move Hours**"]. For any Container Terminal Services provided in overtime, weekends and/or holidays the Terminal User shall pay the Tariff subject to a surcharge of [INSERT PERCENTAGE] % to be determined ("**Overtime Surcharge**").
  - (xix) 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] to be determined ("**Cargo Cut Off Time**").
  - (xx) APM Terminals shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the power supply howsoever arising and APM Terminals shall not be obliged to maintain an auxiliary power supply at the Terminal.
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 Terminal User 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 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 Terminal User warrants and represents that they:
    - a. are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the 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 Terminal User 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 Terminal User of damage to a Container, its contents or packaging, the Terminal User 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 Terminal User 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 Terminal User's control, and to be handled under these Terms, shall at all times be in conformance with the CSC.
  - (vi) With respect to the Terminal User's Containers laden with, or labelled as containing Hazardous Goods, which are being transported pursuant to a Terminal User's or Vessel's bill of lading, the Terminal User 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 Terminal User shall inform APM



Terminals of Hazardous Goods at least 48 hours before arrival at the Terminal including the following data [INSERT DATA] to be determined.

- (vii) The Terminal User 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 Terminal User shall pay the rates outlined in the Tariff as if such yard space was fully occupied by the Terminal User. 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 Terminal User 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 Terminal User shall provide appropriate instructions to APM Terminals to ensure compliance with the rules and regulations of customs for opening and unpacking of any Container. 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 Terminal User or its agent or any such authority as may have jurisdiction. 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 Terminal User 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 Terminal User 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. Delays Any unlash time extending beyond the scheduled Vessel operation start time caused by the Terminal User 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. The Parties 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 Terminal User 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 Terminal User. Any idle time incurred by APM Terminals due to non-compliance by the Terminal User 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. Each Terminal User represents and undertakes that:
  - (i) in its performance under these Terms, it and all of its affiliates, directors, officers or sub-contractors will comply in all material respects with all applicable laws, rules, regulations or similar instruments including relating to anti-corruption, competition law and foreign trade controls (export controls and sanctions laws of the UN, the EU and US or other relevant regulator);
  - (ii) it will not give, promise or attempt to give or approve the giving of anything of value to any person, for illegal purposes or for improperly obtaining or retaining business;
  - (iii) it shall not deal, or cause APM Terminals to deal, with any person or entity in respect of transactions prohibited by foreign trade controls, except with APM Terminals' prior written consent; or which could damage APM Terminals' commercial or other reputation interests, even if not in violation of any foreign trade controls.
  - (iv) it has established processes and maintains policies and procedures to prevent violation of this Clause D.

2. If a Terminal User breaches any of its obligations or representations in this Clause D, APM Terminals may terminate its relationship with that Terminal User (and where relevant, cease its services) with immediate effect without incurring any liability.
3. Any breach of any of obligations or representations in this Clause D. shall constitute a Material Breach.

[IN CASE OF CUSTOMERS AND IN CASE OF SUPPLIERS THAT DO NOT ACT ON THE TERMINALS' BEHALF, THE FOLLOWING 2 PARAGRAPHS (D.IV and D.V) CAN BE WAIVED/REMOVED] taking in consideration that APM Terminals MedPort Tangier SA work in a close collaboration with many & different subcontractors the two next paragraphs must be kept as it is.

4. Each Terminal User shall maintain adequate records in order to verify its compliance with these provisions, and it shall permit APM Terminals or a certified public accountant designated by APM Terminals to audit such records including all applicable bank accounts and applicable bank transactions at APM Terminals' reasonable discretion if APM Terminals has a bona fide belief that the Terminal User or any of its associated persons is in breach of this Clause D or in case of any investigation by or allegation from any applicable public authority regarding potential violations of relevant laws involving these matters. The Parties shall cooperate in any such audit and otherwise in providing documentation relating to any such dispute or investigation.
5. Each Terminal User expressly agrees to indemnify APM Terminals and its affiliates against any and all claims, judgments, demands, liabilities, fines, penalties, charges, costs and expenses of whichever nature (including legal costs) arising out of or caused by any unlawful or negligent act or omission of such Terminal User (including any breach of contract) under or related to this Clause D. (each an "**Indemnification Trigger**"). Each Terminal User also waives all rights of recourse against APM Terminals and its affiliates for any Indemnification Trigger.

**E. Liability**

1. Loss or damage to Goods

- (i) APM Terminals shall only be liable for loss of or damage to, any Goods or Vehicles 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 or Vehicles actually lost or damaged, namely the reasonable repair cost or replacement cost (with Goods or Vehicles of the same age and in the same condition) of the Goods or Vehicles lost or damaged;
  - b. the limits of liability upon which the Terminal User 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 Terminal User ("**Carriage Contract**"); and
  - c. 2SDRs per kilo of gross weight of the Goods lost or damaged.
- (ii) The Terminal User 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 Terminal User. APM Terminals authorizes, empowers and directs the Terminal User to act, and the Terminal User 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 Terminal User were the merchant referred to in the Carriage Contract.

2. Loss or damage to Containers

- (i) APM Terminals shall only be liable for loss of, or damage to, any Container or other Terminal User 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 Euros (Eur 2,900) per Container in the case of any regular 20' dry Container;
  - B. four thousand six hundred Euros (Eur 4,600) per Container in the case of any regular dry Container of more than 20' in length;
  - C. twenty-five thousand Euros (Eur 25,000) per Container in the case of any 20' reefer Container;
  - D. twenty-eight thousand Euros (Eur 28,000) per Container in the case of any reefer Container of more than 20' in length;
  - E. five thousand Euros (Eur 5,000) per Container in the case of any 20' Container which is not a regular dry or reefer Container;
  - F. nine thousand Euros (Eur 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 Euros (Eur 12,000) per chassis in the case of any chassis;
  - H. fourteen thousand Euros (Eur 14,000) per genset in the case of any genset; and
  - I. ten thousand Euros (Eur 10,000) 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 or Vehicles  
APM Terminals shall only be liable for loss of, or damage to, any Vessel or Vehicle 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 or Vehicle damaged;
  - (ii) the replacement cost (with a Vessel or Vehicle of the same age and in the same condition) of the Vessel or Vehicle lost or damaged; and
  - (iii) twenty million Euros (Eur20,000,000) per Vessel and one hundred thousand Euros (Eur100,000) per Vehicle.
4. Proof of liability  
APM Terminals shall not be liable under Clauses E.1, E.2 or E.3 unless the Terminal User 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 Terminal User 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 Euros (Eur20,000,000) ("**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 Terminal User, 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 Terminal User 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), Vehicle and/or Vessel.
7. 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), Vehicle or Vessel howsoever arising (whether caused by negligence or otherwise).
8. Exclusion of liability for certain losses

- (i) APM Terminals shall have no liability for loss of or damage to any Goods, Container(s), Vehicle 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 Terminal User, 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 Terminal User, or any third party, to comply with the SOLAS Regulations; or
    - c. the receipt by APM Terminals of an Overweight Container;
    - d. APM Terminals not having received a Verified Gross Mass before the 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, Container(s), Vehicle or Vessel; or
    - h. instructions of the Terminal User; 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, APM Terminals shall have no liability (whether direct or indirect) for any loss of profit, loss of revenue, loss of business or expected business, loss of market share, loss of goodwill or reputation, loss of use or corruption of software, data or information or for any special, indirect, consequential or penal loss howsoever arising. The foregoing limitation shall apply regardless of the form of action, whether the damages or other relief sought are based on breach of warranty, breach of contract, tort (including negligence), strict product liability or any other legal or equitable theory, even if the other party has been advised of the possibilities of such damages.
9. General liability limit
- Notwithstanding any other provision of these Terms, 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.
10. Exceptions
- Nothing in these Terms shall exclude or restrict the liability of the Terminal User for death or personal injury caused by its negligence or other act or omission, for which liability may not be excluded or limited under applicable law. The general liability limit in Clause E.9 shall not apply to the liability of APM Terminals under Clauses E.1, E.2 or E.3.
11. Notification of claims
- Any claim by the Terminal User against APM Terminals arising in respect of any Container Terminal Service provided to or by a Terminal User, 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 Terminal User 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
- APM Terminals shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Container Terminal Service provided to or by the Terminal User, 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.
13. Minimum claim threshold
- A Terminal User 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 three thousand Euros (Eur 3,000).
14. Joint and several liabilities
- These Terms are between APM Terminals and the Terminal User. Every person defined as the Terminal User is jointly and severally liable to APM Terminals for all of the Terminal User'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 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.

**16. Indemnity for excess liability**

The Terminal User 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, the Vehicle or the Vessel or any other person who is, or may become, interested in the Goods, the Containers, Vehicle 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) or the information required under Clause C.1 and to the extent such claim exceeds the liability of APM Terminals under these Terms;
- (ii) any breach by Terminal User of the obligations or warranties given in Clause C.1, C.2 or C.3 (or any combination of the foregoing);
- (iii) weighing, [loading,]<sup>4</sup> non-loading, storage, demurrage, additional transport, shunting, handling, stripping, stuffing, release or return to the Terminal User or the Shipper or other charges for any packed Container which [is an Overweight Container], does not have a Verified Gross Mass provided by the Terminal User or another VGM Declarant [or has a Verified Gross Mass provided by the Terminal User or another VGM Declarant found to be incorrect or inaccurate by APM Terminals];
- (iv) delays or missed sailings arising out of or in connection with the activities performed by APM Terminals in Clauses C.2(iii), C.2(iv) and C.2(v) above;
- (v) APM Terminals acting in accordance with Terminal User's instructions; and
- (vi) any death or personal injury of any person or damage to any property whatsoever arising from the presence of the Terminal User at the Terminal, the use by the Terminal User of the Terminal, the presence of the Vessel or Vehicle at the Terminal or the presence of the Goods on the Vessel or Vehicle (whilst the Vessel or Vehicle 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 Terminal User or its customers and supplier.

**17. Insurance**

- (i) APM Terminals is under no obligation to maintain property insurance for Goods, Containers, Vehicles or Vessels. The rates for the Services do not include insurance of any kind.
- (ii) APM Terminals shall, at its own expense, procure and maintain policies of insurance covering:
  - a. any liabilities assumed by it under these Terms; and
  - b. any requirements by law, including general public and third-party liability.
- (iii) the Terminal User 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 law, rules and regulation of their classification society. The Terminal User 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;
  - c. any requirements by law and
- (iv) To the extent not included in the Hull and Machinery insurance or P&I Cover, Fixed and Floating Object insurance, with limits no less than twenty million Euros (Eur 20 million).
- (v) Anti-pollution and pollution clean-up insurance with limits no less than ten million Euros (Eur 10 million), and wreck removal insurance with limits no less than ten million Euros (Eur 10 million).
- (vi) the Terminal User shall maintain or shall cause Vehicles and their equipment, appurtenances, gear and machinery to be maintained in a thoroughly fit and worthy condition at all times. Vehicles shall be kept continuously in class in accordance with the rules of the relevant law, rules and regulations. The Terminal User shall, and shall procure

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<sup>4</sup> Only if planning to load any Containers without a VGM but contrary to Clause C.2(ii)

that third-party owners of Vehicles shall, maintain the following insurances and shall furnish to APM Terminal's representative certificates or copies of policies evidencing such insurance:

- a. commercial general liability insurance with a minimum combined single limit coverage for bodily injury and property damage of Eur 5,000,000 per occurrence;
  - b. commercial automobile liability insurance covering all owned, non-owned or hired vehicles with a minimum combined single limit coverage for bodily injury and property damage of Eur 1,000,000 per occurrence;
  - c. workers' compensation and employers' liability insurance in accordance with the requirements applicable laws and regulations;
- (vii) any requirements by law
- (viii) The Terminal User 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 non-compliance with coverage requirements, shall not be construed as a waiver of Terminal User's obligation to maintain the required insurance.

**F. Force Majeure**

1. APM Terminals shall be relieved from liability for any cargo loss, damage and 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 the Terminal User from its payment obligations arising under these Terms.
2. "**Force Majeure**" means an event or circumstance beyond the reasonable control of APM Terminals including, but not limited to, any act of God, act of public enemies, war, warlike acts, terrorism, cyber-attack, restraint of governments, riots, strikes, lockouts or other labor 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, hurricane, tsunami or any other event or circumstance beyond the reasonable control of APM Terminals. 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. APM Terminals 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 APM Terminals 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, APM Terminals shall notify the Terminal User (the "Non-Affected Party"), as soon as reasonably practicable which 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 APM Terminals, which cannot be fully performed as a result;
  - (iv) the mitigating actions and remedies, which APM Terminals proposes to take.
5. APM Terminals shall keep the Non-Affected Party informed of developments, including the performance by it of the mitigating actions and remedies, and the results thereof.
6. If the Terminal User's obligations are not performed, substantially not performed or delayed due to an event of Force Majeure for a continuous period exceeding seven (7) days, APM Terminals may terminate these Terms and any agreement between the Parties with immediate effect

**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 Terminal User 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 Terminal User 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 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 Terminal User 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 Terminal User. 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 these Terms are governed by and shall be construed in accordance with [the Laws of England and Wales / Moroccan laws ] it better to keep the laws of England & wales as international reference that will supersede the local laws 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 Eur 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 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 I.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 Terminal User 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. Any entity within the Group shall have the right to assign or otherwise transfer its right, title, interest and obligations under these Terms to any affiliate. The Terminal User 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 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 and any other entity in the Group in respect of such Containers or Goods from the Terminal User. If any charges are not paid within [one (1)] calendar month after notice requiring payment has been given to the Terminal User, 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 the Group in such sale. Any sale of Containers or Goods pursuant to these Terms, may be conducted by private treaty, by public auction or otherwise in such manner as the Group shall in its sole discretion determine and the Group 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 Terminal User undertakes that no claim or allegation in respect of the Container Terminal Services or use of the Terminal whether arising in contract, bailment, tort or otherwise shall be made against any member of the Group, subcontractor or any of their employees, servants, agents. If any claim or allegation should nevertheless be made against any member of the Group, subcontractor or any of their employees, servants, agents, the Terminal User agrees to indemnify and hold harmless the Group against all consequences thereof. Without prejudice to the foregoing, all



defenses, exemptions, immunities, limitations, liberties and rights of the Group hereunder, including the right to enforce any law and jurisdiction clause, shall be available and extend to all members of the Group, subcontractors and their employees, servants, agents who shall be entitled to enforce them against the Terminal User.

10. Any notice hereunder shall be deemed to have been duly given if sent by registered post or fax to the Terminal User 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.
12. The APM Terminal may from time to time request information from the Terminal User in relation to the services. The Terminal User shall prepare such documents, papers and reports in respect of the services as may reasonably be required by APM Terminal and provide them to APM Terminal within seven (7) days of receipt of such request, or as required by any competent authority or body.
13. APM Terminal may, from time to time during the term and for a reasonable period after termination of the agreement, by giving a minimum of five (5) working day's prior notice (or such other notice period as may be required by applicable law) to the Terminal User, request access to the Terminal User's and/or its agents' premises (including Vessels and Vehicles) for APM Terminal (and/or its regulators) appointed representative(s) to make an audit of all records in relation to the services and otherwise related to the performance by the Terminal User of its obligations under the agreement for the purpose of ensuring that the services are being provided in accordance with the terms of the agreement and/or assessing and verifying invoices received from the Terminal User. The Terminal User shall provide every assistance to APM Terminal when performing such audits. APM Terminal shall be entitled to take copies of any such documents. Notwithstanding any other provision in the agreement, the Terminal User is not obliged to disclose:
  - (i) any information classified as confidential information; or
  - (ii) information subject to applicable data privacy rules and regulation
14. Notwithstanding anything to the contrary in these Terms, APM Terminals may terminate its legal relationship with the Terminal User under these Terms at any time in any of the following ways:
  - (i) immediately if the Terminal User enters into any form of insolvency, bankruptcy, receivership, administration, or ceases or threatens to cease to carry on its business, or passes a resolution for winding up, or is unable to pay its debts; or
  - (ii) at any time following a failure on the part of the Terminal User to fulfil and deliver any of the services set out in these Terms or any agreement between the Parties on three (3) occasions each month for two (2) consecutive months and APM Terminals has notified the Terminal User of the breaches and despite such a notice, the Terminal User fails to fulfil and deliver another service in the third consecutive month.