



GULFTAINER

STANDARD TERMS AND CONDITIONS FOR THE HANDLING OF CONTAINERS AND CONTAINER VESSELS AT SHARJAH AND KHOR FAKKAN CONTAINER TERMINALS

THE USER'S ATTENTION IS DRAWN TO CLAUSES 24 AND 25 WHICH CONTAINS EXCLUSIONS AND LIMITS ON THE TERMINAL OPERATOR'S LIABILITY AND WHICH REQUIRE THE USER TO INDEMNIFY THE TERMINAL OPERATOR IN CERTAIN CIRCUMSTANCES

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1. DEFINITIONS AND INTERPRETATION

- 1.1 Defined terms are identified throughout these STC and the Tariff by the capitalisation of the initial letter of a word or phrase. Where capitalisation of the initial letter is not used, an expression has its natural meaning.

The following defined terms have the meaning given below:

Additional Carrier Obligations means the additional operational and procedural obligations applicable to the Carrier, as set out in the document titled *Additional Carrier Obligations*, attached at Annex 1 of these STCs, and published on the Terminal Operator's website at [Gulfair – Global End-to-End Supply Chain Solutions Provider](#), which forms an integral part of these STCs and may be amended by the Terminal Operator from time to time.

Authority means applicable agencies and authorities having jurisdiction over the Ports and any federal authorities within the UAE.

Berth means a Terminal berth.

Cargo means all types of cargo including solid, liquid, Reefer Cargo, Dangerous Cargo, live animals, vehicles, breakbulk or loose Cargo, RoRo Cargo, Containers, and whatever else is conveyed or to be conveyed on or from a Vessel, or loaded in a Container.

Carrier means any party or parties either owning, chartering, operating, and/or contracting with the Vessel including Vessel agents.

Charges means any and all charges, fees, costs and disbursements charged by the Terminal Operator to the User in relation to the Services, including as set out in the Tariff.

Consignee means a person or entity (which can also be the buyer of the Cargo) who has the right and obligation to receive the Cargo.

Consignor means a person or entity who delivers Cargo to a Carrier and is named as the shipper in the transportation documents.

Container means the standard I.S.O. certified container suitable for stacking and transportation of Cargo including dry, liquid gas or Reefer Cargo, constructed of metal, fiberglass, plastic or wood and must be capable of being handled as a unit and lifted by a crane with a container spreader.

Dangerous Cargo means any Cargo that contains materials or items with hazardous properties which, if not properly controlled, present a potential hazard to human health and safety, infrastructure and/ or their means of transport and shall include Cargo of any kind classified by the International Maritime Organization as hazardous cargo and shall include **dangerous goods** as defined in the International Maritime Dangerous Goods Code.

EDI means Electronic Data Interchange.

Employee has the meaning assigned in Clause 26.3.

Equipment means any plant, machinery, Container, package, case, pallet, vehicle, trailer, truck or wagon of any description which is not owned or leased by the Terminal Operator and which is not Cargo.

Force Majeure Event means any circumstance not within a party's reasonable control, whether foreseeable or unforeseeable, known or unknown at the time of contracting, including: an act of God or the public enemy, acts or refusals to act of any government or governmental agency in either its sovereign or contractual capacity, governmental restrictions or control on imports, exports or foreign exchange, freight embargoes, non-availability or mechanical breakdown or



destruction of equipment vital to the performance of a party's obligations under these STC or in connection therewith, fire, floods, tidal waves, earthquake, storm, slides, epidemics, pandemics including COVID-19, quarantine restrictions, war declared or undeclared, revolution, riots, insurrections, hostilities, civil disturbances, power shortage, or stoppages, strikes, walk-outs, work stoppages, lockouts, railroad obstructions or obstruction of ocean navigation, stoppages of labour, deliberate work slowdowns, other labour difficulties, the taking of a Terminal facility by expropriation, other ouster of the Terminal Operator from a Terminal facility or other denial of rights of the Terminal Operator in a Terminal facility or the premises upon which the facility is built or any other cause beyond the reasonable control of a party.

International Maritime Dangerous Goods Code means the International Maritime Dangerous Goods Code published by the International Maritime Organization, as may be amended from time to time.

Legal Requirements means, insofar as they may apply to a User, all international, local or federal laws and conventions and all regulations, regulatory requirements, act, orders, codes of practice or delegated or subordinate legislation and any building or health and safety codes of practice so enacted or issued or which are customarily used in the UAE made thereunder and the regulations, requirements and by-laws of the Port or any other Authority.

Loading and Unloading means the service of loading or discharge of Cargo, as the case may be, between any place at a Terminal and railroad cars, trucks, Vessels, barges or any other means of conveyance to or from a Terminal.

Organisation means the agents, directors, employees, officers and subcontractors or any other person acting on behalf of a User, the Terminal Operator or any other party.

Overweight Container has the meaning assigned in Clause 31.1.

Port means sea ports at Sharjah, Khor Fakkan and Hamriyah.

Port Authority means the Sharjah Port Authority.

Port Procedures means any policies and procedures specified by the Terminal Operator and the Port Authority relating to the entry and exit of Vessels and persons to a Terminal and the handling of Cargo at the Port, as may be amended from time to time.

Port Rules means any Legal Requirements of the Port Authority or any other Authority relating to the entry and exit of Vessels and persons to the Port and the handling of Cargo at a Terminal.

Reefer Cargo means refrigerated Cargo.

RoRo Cargo means any Cargo that is self-propelled or otherwise capable of being rolled on or rolled off a Vessel or Terminal Facility, including but not limited to cars, trucks, trailers, buses, construction machinery, agricultural equipment, and other wheeled or tracked units. RoRo Cargo may also include static units loaded on wheeled platforms or MAFI trailers designed for roll-on/roll-off operations.

Services means all the services and activities performed by the Terminal Operator or any member of its Organisation for Users at a Terminal, unless defined more specifically by express agreement with the Terminal Operator.

SOLAS means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines, as amended from time to time.

STC means these Standard Terms and Conditions for The Handling of Containers and Container Vessels at Sharjah and Khor Fakkan Container Terminals, as may be amended from time to time.



Tariff means the Terminal Operator's schedule of Charges as published on the Terminal Operator's website at [Sharjah Container Terminal: UAE's First Trade Gateway](#), and subject to change from time to time.

Terminal means any of the Terminal Operator's multi-user container Berths, land and premises owned or used or both by the Terminal Operator at the Ports.

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

Terminal Operator means Gulftainer Company Limited or any of its subsidiaries or affiliates, and shall, where the context admits, include any member of its Organisation.

UAE means United Arab Emirates.

US\$ means the lawful currency of the United States of America.

User or **Users** shall include: i) any person or entity using the Terminal Facilities or to whom any Service, work or labour is furnished, performed, done or made available by the Terminal Operator; ii) any person or entity owning or having custody of Equipment or Cargo moving in, over or through the Terminal Facilities; or iii) each Carrier, Vessel, Consignee, Consignor; including any member of their respective Organisations.

Vessel or **Vessels** shall include any vessel, or barge, that utilizes the Services and Terminal Facilities for the Loading, Unloading, storage, handling or transfer of Cargo.

VGM means Verified Gross Mass.

1.2 Capitalised terms used but not defined in these STC shall be interpreted in accordance with industry norms.

1.3 In this Agreement:

- (a) any words following the word **including** shall be interpreted without limitation to the generality of the preceding words;
- (b) a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time whether before, on or after the date of this Agreement and any subordinate legislation made or other thing done under the statutory provision whether before, on or after the date of these STC;
- (c) the singular includes the plural and vice versa (unless the context otherwise requires); and
- (d) a Clause, unless the context otherwise requires, is a reference to a clause of these STC.

1.4 The headings in these STC do not affect its interpretation.

2. APPLICATION OF STANDARD TERMS AND CONDITIONS

2.1 Use of the Terminal Facilities and Services managed and operated by the Terminal Operator shall constitute consent to these STC and evidence an agreement with all Users who shall abide by all the terms and conditions stated herein.

2.2 Notwithstanding anything to the contrary herein, the rights of any User to utilize the Terminal shall be subject to the prior approval of the Terminal Operator.



- 2.3 Unless explicitly agreed otherwise, in the event of any inconsistencies or ambiguity between the terms of these STC and any agreement with a User, the terms of these STC shall prevail.
- 2.4 This STC shall apply to all Services provided by the Terminal Operator. It shall also apply to any other relationship between the Terminal Operator and any party entering onto a Terminal or otherwise dealing with the Terminal Operator or a Terminal.
- 2.5 The User hereby warrants that it is either the owner of the Cargo, the Equipment or the Vessel or that it is authorised by the owner or other person who has legal right over the Cargo, the Equipment or the Vessel, to accept these STC not only for itself but also as agent for and on behalf of the owner or other person who has legal right over the Cargo, the Equipment or the Vessel.
- 2.6 Unless expressly agreed otherwise by the parties in writing, this STC shall contain the entire agreement between the Terminal Operator and the User and the terms shall prevail over any other agreement.
- 2.7 This STC shall apply to the exclusion of any printed terms and conditions of any purchase order or other correspondence or documents issued by a User in connection with the Services unless expressly accepted in writing by the Terminal Operator.
- 2.8 Any notice to be given under these STC must be given in writing as follows:
- (a) in the case of a notice to the Terminal Operator, to the registered office of the Terminal Operator; or
 - (b) in the case of a notice to the User, to the registered office or email of the User or the branch or agency office of the User, in each case as notified to the Terminal Operator in writing, and/or through which User has dealt with the Terminal Operator in respect of the provision of the Services.
- 2.9 The Terminal Operator shall, at its discretion, arrange for the Services or any part thereof, to be carried out by one or more members of its Organisation.
- 2.10 The terms of these STC shall, insofar as possible, be construed in accordance with Legal Requirements and Port Procedures. If any of these terms are found by any competent court or tribunal to be contrary to any Legal Requirements and Port Procedures, those terms shall be varied only to the extent necessary to comply with such Legal Requirements and Port Procedures.
- 2.11 Each sub-clause of these STC shall be construed severally. If any provision of these STC shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of these STC shall not be affected and the remainder of these STC shall continue in full force and effect.
- 2.12 This STC shall also govern the relationship between the Terminal Operator and any third party entering on to a Terminal whether or not that third party is a User. The Terminal Operator shall be entitled to rely on the limits of and exclusions to liability within these STC as against any User or other person entering on to a Terminal. The User warrants that it will bring the terms of these STC (including the limits and exclusions herein) to the attention of any person who the User may instruct to enter upon a Terminal or otherwise deal with Terminal Operator including any member of its Organisation or other party instructed by the User.
- 2.13 Any User or other party entering on to a Terminal shall ensure that it is familiar with and that it follows any Legal Requirements and Port Procedures, including regulations, instructions or directions issued by the Terminal Operator or any member of its Organisation which relate to the use of a Terminal, entry thereon or the use of any Equipment or Vessel thereon or there at. The User shall ensure that any third party which it might instruct to enter on to a Terminal



(including any member of its Organisation) is familiar with any such Legal Requirements and Port Procedures, including regulations, instructions or directions.

3. CARRIER OBLIGATIONS

- 3.1 The Carrier (including Vessel owners, charterers, operators, and agents) shall be jointly and severally responsible for complying with all obligations described in these STCs, including in the Additional Carrier Obligations.
- 3.2 The Carrier shall procure compliance with these obligations by its crew, Vessel, agents, and other third parties it appoints.
- 3.3 Failure to comply with these STC may result in refusal of services, delay Charges, standby Charges, retention rights (including a right to refuse Vessel clearance), or denial of berth access, at the sole discretion of the Terminal Operator.
- 3.4 The Carrier acknowledges that the Terminal Operator may update the Carrier Obligations without prior notice and that the current version as published on the Terminal Operator's website shall apply.
- 3.5 The Terminal Operator shall not be liable for any delay, cost, or damage resulting from the Carrier's non-compliance with these STC.

4. DANGEROUS CARGO

- 4.1 Dangerous Cargo will not be provided with any Service of any kind except under advance arrangement with the Terminal Operator and the Port Authority. The Terminal Operator reserves the right to refuse to handle any Cargo or provide any Service which, in its judgment, is likely to harm human health, or damage other Cargo or property. The handling of Dangerous Cargo will be governed by the Port Rules, Port Procedures, the International Maritime Dangerous Goods Code, and any other Legal Requirements on the management of hazardous materials in the Emirate of Sharjah and the UAE.
- 4.2 Dangerous Cargo must be accompanied with full disclosure of the hazardous characteristics, risks and special handling requirements of such Cargo, subject to the relevant Charges as per the Tariff. It is the responsibility of the User tendering such Cargo to a Terminal:
 - (a) to fully disclose in writing and in advance all of the Cargo's characteristics, risks and special requirements applicable to its safe Loading, Unloading, handling and storage in bulk;
 - (b) to obtain all necessary special permits or permissions required by the Port Authority or other local or federal authorities or both in connection with the Loading, Unloading, handling, storage, or any combination of the foregoing as appropriate at a Terminal; and
 - (c) to provide the Terminal Operator with the details of the safety requirements to handle and store such Cargo.
- 4.3 The Carrier shall comply and advise Consignees and Consignors of their obligation to comply with the terms of these STC related to the Dangerous Cargo.
- 4.4 If the User fails to give prior written notice of the nature of any Dangerous Cargo in accordance with Clause 4.2, or if, at any time, and in the Terminal Operator's sole opinion, it is deemed to be a hazard to life or property, the Dangerous Cargo may, in the Terminal Operator's sole discretion and as circumstances may require, be destroyed or rendered harmless without notice or compensation to the User, and without the need for a court order to that effect. Without prejudice to the rights of the Terminal Operator under this Clause 4.4, the User will be responsible for arranging the destruction of the Dangerous Cargo or rendering the Dangerous



Cargo harmless in accordance with all Legal Requirements, if and as required by the Terminal Operator. The User shall be liable for all loss, damage, delay or expenses arising out of or in connection with the destruction or rendering the Dangerous Cargo harmless.

5. SAFETY, SECURITY AND ENVIRONMENT

- 5.1 All Vessels are to furnish, at all times whilst alongside Berth, safe ingress and egress.
- 5.2 When a Vessel is berthing or is berthed at any of the Terminal Facilities, the Carrier shall be solely responsible for the safety of the Vessel and their crew. The Vessel whilst alongside Berth shall at all times maintain appropriate officers and crew aboard in order to maintain an alert watch and respond to emergencies. The Vessel and its main engine must be maintained in a state of readiness to respond to emergency situations and to avoid delays in vacating a Berth.
- 5.3 Measures must be taken to prevent deballasted water from coming into contact with personnel, Equipment or the dock.
- 5.4 The User and the Vessel crew members shall adhere to the safety and security regulations of the Terminal Operator and the Port Authority.
- 5.5 Certain areas of each Terminal, and all Berths, are considered restricted areas. Any unauthorised entry into restricted areas is considered a breach of security and the proper authorities will be notified. Anyone or anything entering into the Terminal is subject to inspection. Failure to consent to inspection will result in denial or revocation of authorisation to enter.
- 5.6 The Carrier or Vessel must cause and ensure that they have appropriate arrangements in place for 'watch keeping' within and around the Vessel and a definitive count and check on persons entering or leaving the Vessel. The Carrier warrants that it will enforce strict access controls to be performed at the gangway on all Vessels whilst berthed at the Terminal, in order to prevent unauthorised access to or from those Vessels. Stowaways must stay on board the Vessel under the Vessel master's responsibility. If the stowaway escapes from the Vessel, then the Terminal Operator will inform the Authority and the local police. The Terminal Operator will not be liable for any loss or damage suffered or incurred by the Carrier (including, without limitation, any fines or penalties or the payment of expenses by the Carrier on account of care, lodging, medical attention, security and repatriation) arising from the presence on board Vessels of stowaways, or other unauthorised personnel.
- 5.7 Photography without previous written permission from the Port Authority is strictly prohibited.
- 5.8 The Terminal Operator may, from time to time, conduct vessel compliance surveys and inspections as a part of the Terminal Operator's occupational health and safety responsibility. The Carrier acknowledges that the Terminal Operator is required to provide members of its Organisation with a safe working environment and will comply with all reasonable requests to achieve this and that may result therefrom.
- 5.9 In case of any incident involving a Vessel or Cargo, and causing damage to property, and/or injury or death, the User will:
- (a) provide all available documentation or information requested by the Terminal Operator, including but not limited to copies of Vessel's voyage data recorder, log books, stowage plans, bills of lading and cargo manifests;
 - (b) allow access to the Vessel and Cargo; and
 - (c) allow access to the Vessel master and crew for interview,
- as and when requested by the Terminal Operator, or by any person appointed by the Terminal Operator to investigate the relevant incident.

6. COMPLIANCE WITH LAWS AND REGULATIONS

- 6.1 All Users shall and shall ensure that members of their Organisation fully comply with all applicable Legal Requirements, Port Procedures and Port Rules including those relating to anti-bribery and corruption (such as the UK Bribery Act 2010 and U.S. Foreign Corrupt Practices Act), anti-money laundering (AML) and counter-terrorism financing, international trade sanctions and export control laws (including those issued by the United Nations, United States, European Union, United Kingdom, and the United Arab Emirates).
- 6.2 For the avoidance of doubt, where any such Legal Requirements, Port Procedures and Port Rules impose obligations that are more onerous than those provided in these STC, the Users shall be required to comply with such more onerous terms.
- 6.3 All Users shall and shall ensure that all members of its Organisation shall, at all times:
- (a) Not engage in any activity that would cause the Terminal Operator or its affiliates to violate any of the above laws or regulations;
 - (b) Maintain internal policies and procedures reasonably designed to prevent violations of this Clause;
 - (c) Promptly notify the Terminal Operator in writing of any actual or suspected breach of this Clause or of these STC more generally.
- 6.4 A breach of this Clause 6 shall be considered a material breach and shall entitle the Terminal Operator to immediately suspend or terminate the provision of Services without liability.

7. MARINE SERVICES

- 7.1 The Terminal Operator shall not be responsible for providing pilotage, towage, or any other marine services. The Carrier shall contact the Port Authority to provide such services and the cost of which shall be fully borne by the Carrier.
- 7.2 Any Vessel which is required to shift Berth or to warp will be responsible for any and all expenses pertaining to shifting/warping as levied by the Authority (or by the Terminal Operator on behalf of the Authority).

8. USE OF TERMINALS

- 8.1 Carriers are allowed to use a Berth only for Loading and Unloading of Containers or Cargo unless otherwise agreed with the Terminal Operator.
- 8.2 The Terminal Operator may allow a Vessel to lay alongside a Terminal for a limited period or following the Loading or Unloading of the Vessel or any combination of the foregoing as appropriate, but a Berth is not intended to be used for the purpose of laying up other than to meet the Terminal Operator's operational requirements. The Terminal Operator will endeavour to provide a lay-by Berth at the request of a Carrier subject to the approval of the Port Authority and payment of additional Charges as applicable.

9. NO ESTATE OR INTEREST

The Carrier acknowledges that its rights to access or use a Berth rest in contract only and these STC does not create or confer upon the Carrier any tenancy, estate or other interest in a Berth or a Terminal.

10. NO WARRANTY AS TO SUITABILITY

- 10.1 The Carrier shall be solely responsible for determining if the depth of water (at any state of tide) is sufficient for the Vessel, the Terminal Operator having no responsibility therefor. The Carrier



agrees that the Terminal Operator has made no representations and gives no warranty concerning the adequacy or suitability of a Berth or a Terminal and shall not be liable for any damages or compensation caused due to any inadequacy and or delay in providing access to a Berth or a Terminal.

- 10.2 Full and active co-operation of the User is required in all aspects of Container operations to enable the Terminal Operator to operate a Terminal as expeditiously and effectively as possible, for the general benefit of all Users.

11. FITNESS AND SUITABILITY OF THE VESSEL

- 11.1 The Carrier, at all times, shall remain responsible for the suitable condition of the Vessel in compliance with all Legal Requirements, Port Procedures and Port Rules relative to the fitness of the Vessel and security including, without limitation, rules and regulations introduced pursuant to the ISPS Code. The berthing of any Vessel or delivery of any barge to a Terminal shall constitute a warranty by the Carrier to the Terminal Operator that there are no latent defects in the Vessel or barge and that the same is capable of being Loaded or Unloaded with the Cargo by the Terminal Operator using the equipment normally employed by the Terminal Operator. The Terminal Operator reserves the right to refuse any Vessel considered by the Terminal Operator to be in breach of these STC, unseaworthy, or due to damage, distribution of load, draft or lack of freeboard, list or such other reason for which the Terminal Operator deems in its absolute discretion the Vessel not suitable for handling at a Terminal. In no event shall the Terminal Operator be responsible for the seaworthiness, maintenance, repair or service of Vessels coming into a Berth at a Terminal or barges delivered to a Terminal, such responsibility being solely that of the Carrier.

- 11.2 The Carrier, at all times, shall maintain the Vessel clean and free of debris. Should the Carrier fail to promptly clean and remove any items which render the deck of any such Vessel hazardous to the safety of any person, the Terminal Operator reserves the right, but has no obligation, to clean and remove the items from the Vessel's deck, which service will be solely on the account of the Carrier.

- 11.3 The Terminal Operator will not be responsible for the security or safety of any Vessel while at the Terminal.

12. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 12.1 The User represents, warrants and undertakes that it shall or shall procure that third parties shall:

- (a) ensure that any of their Vessels entering the Port is seaworthy and holds valid ship certificates and crew certificates certifying the Vessel's condition and competency of the crew, in accordance with international standards and Legal Requirements, Port Procedures and Port Rules. The User shall provide the Terminal Operator with a copy of the relevant certificate or certificates evidencing the above arrangements, if and when requested to do so;
- (b) ensure that all of their Vessels are adequately covered by insurance policies for Hull & Machinery and Protection & Indemnity, covering oil pollution and third party insurance in accordance with international standards, and that all such insurance is valid throughout the period that such Vessels use a Port or are provided with marine service or Services or any of the foregoing as appropriate. The User shall provide the Terminal Operator with a copy of the certificate or certificates of insurance evidencing the above policies, if and when requested to do so;
- (c) comply with and perform its obligations contained in these STC;

- (d) obtain and maintain at its own expense, all necessary licences and authorisations and comply with all Legal Requirements in respect of any Vessel, Equipment, Cargo or the use of a Terminal and Terminal Facilities;
- (e) comply with all reasonable directions, instructions, notifications, signage and marking, security, health and safety and environmental procedures and policies notified or published by the Terminal Operator from time to time (each of which will be deemed to be incorporated into these STC) for the safe and efficient operation of the Port or Terminal or both, or as otherwise agreed with the Terminal Operator for the use of a Port or Terminal or both;
- (f) immediately inform the Terminal Operator of any occurrence or incident which might affect the safe and efficient operation of a Terminal or a Port or both, or endanger the health and safety of persons at a Terminal or a Port or both, or which may cause pollution or damage to the environment and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience caused by such occurrence or incident as may be directed by the Terminal Operator;
- (g) complete and provide to the Terminal Operator accurate and complete documents, descriptions, particulars or information required in relation to any Vessel, Equipment, and Cargo pursuant to any Legal Requirements prior to the use of a Port or receipt of marine services or Services or both;
- (h) accept that these STC constitutes valid and legally binding obligations of the User enforceable against the User in accordance with its terms;
- (i) be authorised to contract with the Terminal Operator on the terms of these STC in respect of any Vessel, Equipment and Cargo (as appropriate) and that it is accepting these STC not only for itself, but also as agent for and on behalf of the owners, operators, charterers or agents (as appropriate) of the Vessel and owners of the Cargo and any other person who is or may become interested in the Cargo (as appropriate);
- (j) that it and members of its Organisation will comply with all Legal Requirements relating to anti-bribery and corruption and shall not engage in any activity that would constitute an offence under said Legal Requirements; and
- (k) comply with all other Legal Requirements relating to the Vessels, the Equipment, the Cargo or the use of a Terminal and Terminal Facilities.

13. BERTHING AND SAFETY EQUIPMENT

- 13.1 During berthing, unberthing and throughout the duration of the Port stay, the Vessel shall at all times provide adequate lighting, Equipment and appropriate officers and crew aboard to permit Loading or Unloading of Cargo as the case may be at any time of the day or night, including public holidays in the UAE, and maintain an adequate safety and security watch.
- 13.2 The master and crew of every Vessel will provide assistance in handling lines and operating related deck machinery. Competent deck officers must be available to ensure timely response to directions of any representatives of a Terminal relative to handling of mooring lines. Terminal representatives will position lines on the shore side.
- 13.3 In the event that the Vessel fails to comply with these requirements and another Vessel, although arriving or scheduled later, is available for Loading or Unloading operations the Terminal Operator may, in its sole discretion, and without liability to anyone, bypass the subject Vessel. If the Vessel is ordered to a Berth, and a delay in excess of 1 hour in the berthing of the Vessel results from circumstances or conditions within the control of, or due to the fault of, the Vessel, the Carrier shall be responsible, jointly and severally, for standby time Charges. Such charge shall be as specified in the applicable Tariff and shall be due for each hour or fraction thereof.

14. VESSEL ROTATION

The Terminal Operator may adjust the Vessel berthing programme in its sole discretion and judgment in the best interest of Terminal operations.

15. STOWAGE

The Carrier shall be solely responsible for the safe lashing and stowage of the Cargo in accordance with applicable Legal Requirements and Port Procedures.

16. CARGO HANDLING

16.1 The Carrier shall provide the Terminal Operator with full written disclosure of the nature, dimensions, weight, and any special handling or storage requirements (as applicable) of all Cargo at least two (2) working days prior to the Vessel's arrival. Acceptance of Cargo is subject to the Terminal Operator's written confirmation and operational capacity.

16.2 The Terminal Operator shall use reasonable endeavours to make available at a Terminal adequate Cargo handling equipment, comprising cranes and suitable vehicles, but no warranty is given as to the availability or capacity of such equipment at any given time for the Loading and Unloading of the Vessel and the handling of Cargo, including for their transport from the quay to the storage area or vice versa.

16.3 In no event shall Loading or Unloading of a Vessel, as the case may be, occur until such time as such Vessel has been cleared by the Authority. If a Vessel fails to comply with any of the Legal Requirements, Port Procedures and Port Rules, the Terminal Operator may order the Vessel to vacate a Berth. If the Vessel does not vacate such Berth when so ordered or within one hour of completion of Loading or Unloading, the Vessel will be subject to, in addition to the standby time Charges as mentioned in the Tariff applicable from time to time, all costs (including the Terminal Operator's lawyer's fees) and expenses in connection with the moving of the Vessel. Any such costs and expenses shall be on the account of and at the full risk of the Carrier.

17. MOVEMENT OF VESSEL'S GEAR

17.1 Where the Vessel's gear is used, the Carrier will allow the full use of all cranes, winches, derricks, runners, tackle, etc., and will supply full power at all times without charge. No responsibility will be attached to the Terminal Operator for any accident directly or indirectly arising out of, caused, or contributed to by any defect in gear supplied by the Carrier; and the Carrier shall indemnify the Terminal Operator against any claim arising out of such accident. The Carrier shall maintain all Vessel's gear in good working order and before work commences shall produce to the Terminal Operator's representative a current certificate of test of such gear that it meets the requirements of all statutes, orders, and regulations then in force.

17.2 None of the Vessel's cranes, hatch covers or other gear may be moved without prior written consent of the Terminal Operator. The opening and closing of hatch covers shall be performed by the Vessel's crew.

18. REFUSAL OF CARGO

The Terminal Operator reserves the right to refuse acceptance or handling of any Cargo deemed unsafe, inadequately documented, or incompatible with Terminal Facilities, at its sole discretion. In the event the Terminal Operator agrees to handle such Cargo, a further charge may be levied on the Carrier, in addition to the applicable Tariff, and any damage caused due to handling of such Cargo shall be for the account of the Carrier.

19. REFRIGERATED CARGO

- 19.1 The Terminal Operator shall only handle Reefer Cargo on the condition that it has been given prior written notice of the temperature control requirements and has expressly agreed to handle such Reefer Cargo. The Carrier undertakes that any refrigerated Container, Vessel or other Equipment has been properly pre-cooled and its thermostatic controls have been properly set by the Carrier (or any person acting on its behalf) before receipt of the Reefer Cargo by the Terminal Operator.
- 19.2 Reefer Cargo must be accompanied with full disclosure of the characteristics and special handling requirements of such Reefer Cargo, subject to the relevant Charges as per the Tariff. It is the responsibility of the Carrier tendering such Reefer Cargo to a Terminal to fully disclose in writing and in advance all of the applicable Reefer Cargo characteristics and special handling and storage requirements.
- 19.3 The Carrier shall comply and advise Consignees and Consignors of their obligation to comply with the terms of these STC related to the Reefer Cargo.
- 19.4 The Terminal Operator shall use reasonable endeavours to provide for the monitoring of Reefer Cargo whilst at a Terminal. The checking of temperature recording equipment when receiving and dispatching refrigerated or insulated Containers shall be in accordance with the Carrier's instructions and any faults or discrepancies shall be reported to the Carrier. The Terminal Operator shall not be responsible for any loss or damage to any Container or its contents or any Reefer Cargo occasioned or resulting by or from, the Carrier's failure to comply with this Clause 19, any power failure, defects in or failure, breakdown or stoppage of temperature controlling or recording equipment, insulation or apparatus of any Container, Vessel, or other Equipment, or any other cause outside the control of the Terminal Operator.

20. DIRECT DELIVERY

Cargo directly from the Vessel onto road transport or other mode of transport is subject to the Terminal Operator's prior written approval. If for any reason whatsoever, Cargo for direct delivery is unloaded to the quay or removed to the transit sheds or warehouses or stacked in the open yard, or any combination of the foregoing as appropriate, full Tariff will be applied.

21. CONTAINER STRIPPING AND STUFFING

In the event the Terminal Operator is requested to handle Container stripping and stuffing, such Services shall be conducted within a Terminal as per the applicable Tariff.

22. DISPOSAL AND REMOVAL OF CARGO

- 22.1 The Terminal Operator shall have the right to move any Cargo, Containers or Equipment to any location, and to inspect any such Cargo, Containers, or Equipment, for any reason, at the risk and full expense of the User.
- 22.2 Damaged or defective Cargo, Containers or Equipment, including perishable Cargo which is likely to deteriorate, must be cleared from the Terminal as soon as possible, or at the Terminal Operator's request.
- 22.3 Without prejudice to the other terms of this Agreement, Cargo, Containers, or Equipment remaining in a Port unclaimed for a period of more than:
- (a) five (5) days for perishable Cargo;
 - (b) ninety (90) days for general Cargo;
 - (c) ninety (90) days for vehicles and other road-moving Equipment;

- (d) thirty (30) days for Dangerous Cargo;
- (e) sixty (60) days for Reefer Cargo;
- (f) ninety (90) days for all other containerised Cargo;
- (g) ninety (90) days for empty Containers; and
- (h) sixty (60) days for other Equipment,

for which the respective Charges have not been paid, and/or which, in the Terminal Operator or Authority's judgment, is likely to be a hazard or to cause disruption to Port operations, may be moved, disposed of, auctioned or sold without any notice, by the Terminal Operator, at its discretion, without the need for a court order to that effect.

- 22.4 The User shall indemnify the Terminal Operator against any and all losses, damages, claims, Charges, costs (including legal costs) and expenses which may arise out of or in connection with any Cargo, Containers, or Equipment, referred to in clause 22.3, or subsequent to their movement, disposal, auction or sale.
- 22.5 Containers containing Cargo destined for sale, public auction or disposal shall only be released after all the Charges up to the date of sale, auction or disposal, including the stripping and stuffing Charges and storage Charges, have been received by the Terminal Operator. These Charges will be on the relevant User's account.

23. **TRANSFER OF RISK**

- 23.1 For the purpose of these STC, the custody of the Cargo and Containers will be transferred to the Terminal Operator as follows:
 - (a) For export Containers or Cargo, upon passing in a Terminal gate according to the relevant equipment interchange receipt to be issued by the Terminal Operator, until stowing of the Container or Cargo on the Vessel (locking twistlocks on board).
 - (b) For import Containers or Cargo:
 - (i) upon discharging of the Container or Cargo from the Vessel into the Terminal, until either:
 - (A) passing out of a Terminal gate into the custody of the person duly authorised to receive the Container or the Cargo according to the relevant equipment interchange receipt to be issued by the Terminal Operator; or
 - (B) received by the person duly authorised to take delivery of the Container or the Cargo according to the relevant equipment interchange receipt to be issued by the Terminal Operator,
 - whichever happens first.
 - (c) For transshipment and restows of Cargo or Containers, as from discharging of the Container or Cargo from the Vessel until restowing of such Container or Cargo on the Vessel.

24. **USER LIABILITY**

- 24.1 The User shall notify the Terminal Operator without undue delay upon becoming aware of any matter which gives rise to or may give rise to a claim for loss or damage against such User in respect of marine services or Services or both stating in reasonable detail or with such



information as is available, the nature of the matter and claim, and so far as practicable, the amount claimed.

- 24.2 The User shall be responsible for any physical damage arising out of or resulting from its use of the Port. The Terminal Operator reserves the right to replace or repair any such damage caused by a User as it deems fit and correct, at the expense of such User.
- 24.3 The User shall be liable for, and shall indemnify, defend and hold harmless the Terminal Operator against any and all costs (including the costs of investigating and defending any claims, and legal costs), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgment of whatsoever nature, directly or indirectly incurred by the Terminal Operator (including as may be incurred to third parties), arising out of or in connection with:
- (a) any act or omission of the User, or of a member of its Organisation, or of any person whomsoever in the Terminal Facilities with the User's permission (express or implied) in connection with the use of such facilities by the User, whether or not in breach of these STC;
 - (b) any and all User Cargo, Container, Equipment, or Vessel, or any other material whether owned, hired, leased or otherwise provided by the User, or any combination of the foregoing as applicable, except to the extent directly caused by the Terminal Operator's negligence.
- 24.4 The User hereby agrees to provide security, in a form acceptable to the Terminal Operator, for the Terminal Operator's worst realistic case losses, liabilities and/or costs for which the User is liable under this clause 24, as determined by the Terminal Operator, together with written agreement from the User as to the Terminal Operator's submission for appropriate jurisdiction.
- 24.5 The User agrees that its liability under these STC shall be joint and several with any other User it represents (either as an agent, employee or representative) and shall not be conditional upon Terminal Operator proceeding first against any other person, whether or not such person is party or liable under these STC.

25. **TERMINAL OPERATOR LIABILITY**

- 25.1 In no circumstances will the Terminal Operator be liable for: (i) any consequential or indirect loss of whatever nature and howsoever; or (ii) any loss of profit, loss of business, loss of contract, loss of market share, loss of goodwill, loss of future or anticipated sales, or loss of production or factory down time.
- 25.2 Without prejudice to Clause 25.1 above, the Terminal Operator shall not be liable for loss, damage and delay arising out of or in connection with the provision of the Services under these STC, except where such damage, loss and delay is caused by the Terminal Operator's gross negligence or wilful misconduct.
- 25.3 To the extent that any exclusion of liability under these STC does not apply for any reason whatsoever:
- (a) the liability of the Terminal Operator (if any) shall not exceed the financial limits set out below for the specified categories of loss or damage provided that the maximum liability of the Terminal Operator arising out of any single incident or series of related incidents or series of incidents arising from a common cause shall not in any case exceed US\$10,000,000 in aggregate.
 - (b) In respect of any single incident or series of related incidents or series of incidents arising from a common cause, the Terminal Operator will only be liable for loss, contamination, deterioration of, or damage to the following specified categories:



- (i) Cargo, and such liability shall be limited to the lesser of:
 - (A) the value of the Cargo lost (which shall be net invoice price (excluding value added tax (**VAT**)) to the Consignee or the manufacturing cost (excluding VAT) incurred by the Consignor for such Cargo (as the case may be)) or in the case of contaminated, deteriorated or damaged Cargo, the reduction in value of such Cargo;
 - (B) in the case of containerised Cargo: US\$50,000 per Container; and
 - (C) in the case of RoRo Cargo, breakbulk Cargo or other non-containerised Cargo: US\$10,000 per unit.
 - (ii) Vessels, including Vessel gear, and such liability shall be limited to the lesser of:
 - (A) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Vessel; and
 - (B) US\$1,000,000 per Vessel.
 - (iii) Containers, and such liability shall be limited to the lesser of:
 - (A) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Container; and
 - (B) US\$2,500 per 20' Container, US\$2,500 for any other size/type of Container and US\$5,000 per reefer Container.
 - (iv) Equipment, and such liability shall be limited to the lesser of:
 - (A) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition); and
 - (B) US\$50,000 per piece of Equipment.
- 25.4 The depreciated value of Containers shall be calculated on the basis of a depreciation of five point five per cent (5.5%) per annum from the date of manufacturing as per the Container's safety certificate until the day before the incident.
- 25.5 If the loss or damage was contributed to by the act or omission of the Carrier, Consignor, Consignee, User or any other person, the Terminal Operator shall be exonerated from liability to the extent that such act or omission contributed to the loss or damage.
- 25.6 The Terminal Operator shall only accept liabilities related to the Services and shall not accept any liability for the obligations of the Port Authority or any Authority or any third party whatsoever.
- 25.7 The User shall make no claim against the Terminal Operator for an amount less than US\$2,500.
26. **GENERAL LIABILITY PROVISIONS**
- 26.1 Notwithstanding any other provision herein, the User and the Terminal Operator shall at all times take all reasonable steps to minimise and mitigate any loss, damage or costs and expenses for which the relevant party is entitled to bring a claim against the other pursuant to these STC.
- 26.2 The User and the Terminal Operator do not exclude or limit the application of any provision of any Legal Requirements (such as an implied condition or warranty) to the extent that such



exclusion or limitation would contravene Legal Requirements or cause any part of these STC to be void.

26.3 There is no agreement between any User and any member of the Terminal Operator's Organisation (each an **Employee**) and any services provided by such Employees are provided on behalf of the Terminal Operator and not in his or her personal capacity and no Employee assumes any personal responsibility, obligation or duty to any User. The User undertakes that it will not bring any claim (including under these STC or in law of tort) against an Employee.

26.4 Save as set out in Clause 25 the Terminal Operator shall not be liable for loss of or damage to any Vessel, Equipment or Cargo howsoever arising.

27. **HIMALAYA CLAUSE**

27.1 The User:

(a) must include in all its contracts of carriage for Containers or Cargo loaded or discharged at the Terminal, provisions whereby every sub-contractor of the User (including the Terminal Operator and each of the Terminal Operator's sub-contractors):

(i) shall have the benefit of any provision in such contract which limits the User's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and the Terminal Operator hereby appoints the User as its agent only for such limited purpose; and

(ii) shall not be liable to any party other than the User in relation to Cargo and, without prejudice to the liability of the Terminal Operator to the User, the User hereby indemnifies the Terminal Operator and each of the Terminal Operator's sub-contractors and shall hold them harmless against any claim by a third party relating to Cargo.

(b) acknowledges that the Terminal Operator has agreed with its sub-contractors that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the User pursuant to these STC and accordingly agrees that:

(i) the exclusions and limitations of the Terminal Operator's liability in clauses 25 above shall benefit the Terminal Operator's sub-contractors, all employees and agents of the Terminal Operator or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and

(ii) for the purposes of this sub-clause (b) only, the Terminal Operator acts as agent for all such persons who shall be treated as if they were subject to these STCs.

28. **CLAIMS AND TIME LIMIT FOR CLAIMS**

28.1 Subject to Clause 27.2, the Terminal Operator shall not be liable in respect of any loss of or damage to the Vessel, Cargo, Equipment or any other matter unless notification of a claim in respect of such loss or damage is made in writing (in addition to annotation of a notice of such claim in any of the Terminal Operator's documents at a Terminal) within fifteen (15) calendar days from the date of its occurrence and the amount of the said loss or damage should also be submitted in writing to the Terminal Operator within twelve (12) months after the date of occurrence of such loss or damage.

28.2 For the avoidance of doubt, it is hereby declared that the Terminal Operator's liability in respect of any loss or damage shall be subject to the deductible de minimis and limitation of liability prescribed in Clause 27 above. The User shall indemnify the Terminal Operator against all proceedings and claims whatsoever in respect of any amounts claimed by any persons outside the prescribed limits as aforesaid.

29. LOSS OR DAMAGE

- 29.1 In the event of the Terminal Operator suffering loss or damage caused by any Cargo or Container, the Carrier shall provide all reasonable assistance to the Terminal Operator in recovering from such third party as may be responsible for such loss or damage. In the event the Carrier is in breach of its obligation hereunder in refusing to provide any such assistance it will indemnify the Terminal Operator against all proceedings, claims and costs whatsoever in respect thereof and will pay to the Terminal Operator full compensation for all loss or damage suffered by the Terminal Operator arising as aforesaid.
- 29.2 In the event of a claim for any loss of or damage to Cargo being made against the Terminal Operator, the Carrier shall lend all reasonable assistance to the Terminal Operator in resisting or defending such claims where the Terminal Operator's liability is expressly or impliedly excluded or limited by these STC and/or the terms of the Carrier's shipping note or bill of lading (including for these purposes the lending of the Carrier's name, and the provision of adequate authority, for enabling application to be made to the competent court so that the Carrier be joined as defendant in any action against the Terminal Operator or that proceedings be stayed against the Terminal Operator in such action). Where the Carrier is in breach of its obligation hereunder in refusing to lend any such assistance it will indemnify the Terminal Operator against all loss, liability, proceedings, claims and costs whatsoever as aforesaid.

30. MISDECLARATION OF CARGO WEIGHTS

- 30.1 The Terminal Operator shall not permit its equipment to be used in any way to lift, move or transport a Container or Cargo with a weight in excess of the safe working load of the relevant equipment. Should the Terminal Operator's equipment be used in handling Overweight Container or overweight Cargo, the Carrier causing such unauthorised use shall be held liable for all losses, claims, demands and suits for damages including death and personal injury, loss or damage caused to any property, legal and court expenses, directly or indirectly resulting from such unauthorised use. Containers or Cargo tendered to the Terminal Operator, where the weight is misdeclared will be rejected and a charge, as specified in the applicable Tariff, will be payable by the Carrier.
- 30.2 In addition to the remedies contained in Clause 30.1, if the Carrier tenders or allows the tendering of a Container or Cargo with a weight in excess of the safe working load of the Terminal Operator's equipment or where the weight is misdeclared, the Terminal Operator reserves the right to:
- (a) suspend the provision of any Service; or
 - (b) refuse to handle certain or any future consignments of Cargo or Containers;
 - (c) exercise its rights both Clause 30.2(a) and Clause 30.2(b) above.

31. VERIFICATION OF CONTAINER WEIGHT

- 31.1 The Carrier shall ensure that their Consignor complies with all applicable local, national, and international laws, rules and regulations pertaining to verification of Container weight before loading on the Vessel. If a packed Container has no VGM as required by Legal Requirements, Port Procedures and Port Rules, or if the VGM exceeds the maximum allowed by Legal Requirements, Port Procedures and Port Rules (an **Overweight Container**), it shall not be loaded onto the Vessel until a VGM is obtained or until the VGM is within the limits allowed by the relevant Legal Requirements, Port Procedures and Port Rules.
- 31.2 To that end, the proper documentation shall be provided to the Terminal Operator no later than at cut-off time agreed between the Carrier and the Terminal Operator.



- 31.3 If the Terminal Operator has reason to believe that the VGM of any packed Container provided by the Carrier is significantly in error, the Terminal Operator shall inform the Carrier in due course, who in turn shall inform its Consignor.
- 31.4 If either:
- (a) a packed Container has been received by the Terminal Operator but the VGM for such Container is not provided to the Terminal Operator by the Carrier before the cut-off time pursuant to Clause 31.2; or
 - (b) it is agreed in writing (including by e-mail) between the Carrier and the Terminal Operator that a packed Container shall be weighed by the Terminal Operator at the agreed rate,
- then the Terminal Operator shall obtain the VGM for such Container using appropriately calibrated and certified equipment as required by Legal Requirements and, for the purpose of paragraph (b), that VGM shall replace the VGM for that Container previously provided by the Carrier or Consignor. The Terminal Operator will promptly communicate the VGM to the Carrier.
- 31.5 Any weight of a packed Container established by the Terminal Operator, other than pursuant to Clause 31.4 above, shall not be considered as the VGM for the purpose of SOLAS and Legal Requirements related thereto.
- 31.6 The Terminal Operator shall issue the VGM only upon receiving the payment in full therefore from the Consignor or from the Carrier.
- 31.7 The Carrier shall pay all such Charges arising out of or in connection with the activities performed by the Terminal Operator in this Clause 31 including checking the existence of a VGM in the Cargo documentation provided by the Carrier, establishing a VGM for a Container in accordance with Clause 31.4 above, additional transport, shunting, handling, re-handling, de-stuffing, stuffing, storage or other Charges resulting from Overweight Containers, delays or missed sailings.
- 31.8 If as a result of a change in Legal Requirements (including SOLAS), the Terminal Operator's costs in order to comply with its obligations under this Clause 31 are increased, the Terminal Operator may recover such additional costs from the Carrier.
- 31.9 If agreed with the Carrier and subject to Clause 31.1, the Terminal Operator will de-stuff Overweight Containers and stuff and seal two or more Containers with the contents of such Overweight Containers and weigh each repacked sealed Container in accordance with Clause 31.4. Absent such agreement, the Carrier shall be responsible for removing any Overweight Containers from a Terminal without delay at the cost of the Carrier.
- 31.10 For all export Containers including transshipment Containers, the Carrier or its agent shall provide the Terminal Operator, latest at time of agreed cut-off, the VGM principally by way of EDI messages, or any other way of transmission of VGM information as agreed between the Terminal Operator and the Carrier. The Terminal Operator shall not be liable towards any User for any loss, damage, or expenses resulting from discrepancies between the weights reported on the VGM and the actual weight of a laden Container unless the VGM has been issued by the Terminal Operator.
- 31.11 The Terminal Operator shall not have any liability arising out of or in connection with delays or missed sailings as a result of:
- (a) any failure of a Consignor, Carrier or third party to comply with the requirements of SOLAS or the terms of these STC;
 - (b) the receipt by the Terminal Operator of an Overweight Container;



- (c) a Terminal not having received a VGM before the VGM cut-off; or
- (d) establishing a VGM for a Container in accordance with Clause 31.4 above.

31.12 The Terminal Operator shall treat as genuine and rely in good faith upon, without further investigation, a gross mass of a Container purporting to be a VGM received from the Carrier or a Consignor in any communication ordinarily used for the provision of information or as otherwise agreed.

32. **TARIFF AND EXPENSES**

32.1 The Terminal Operator may at its sole discretion, estimate and collect in advance all Charges which may accrue against Cargo or Vessels from the respective User. Use of a Terminal, or permission to sail, may be denied until such advance Charges have been paid.

32.2 The User must pay the Terminal Operator's Charges. The rates and terms shall be as per the Tariff prevailing at the time of the Service provided by the Terminal Operator. Any agreement for Services/Tariff as applicable executed with any individual User shall be privy to and shall remain legally binding upon such User even in the event of any merger, acquisition or formation of any kind of joint venture, consortium or alliance between two or more Users.

32.3 The Carrier shall advise Users of their obligation to pay certain Charges as fully described in the Tariff directly to the Terminal Operator. In the event the Consignee is in breach of its obligation to pay the Charges stated in the Tariff, the Carrier will indemnify the Terminal Operator and will pay to the Terminal Operator any and all costs, expenses, Charges and compensation owed to and damages suffered by the Terminal Operator in this respect.

32.4 Notwithstanding any agreement by the Terminal Operator to collect Charges from any person other than the User, the User shall remain liable to the Terminal Operator for payment of all Charges when due.

32.5 The granting of any credit by the Terminal Operator (including any credit terms shown on any invoice or the credit terms applied by any separate agreement) shall be at the absolute discretion of the Terminal Operator. Terminal Operator may, in its absolute discretion, require the User to make payment in full or in part immediately upon presentation of an invoice whether this be before or after the Services have been provided.

32.6 If the User fails to make any payment on the due date or if the User becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the User or the whole or part of the User's assets, or if the User makes any assignment for the benefit of, or composition with its creditors generally or is subject to an equivalent or analogous insolvency event in any jurisdiction:

- (a) all and any sums owed by the User to the Terminal Operator shall become immediately payable, whether or not such sums are subject to a credit agreement (which shall, for the avoidance of doubt, include the payment terms shown on the Terminal Operator's invoices or any credit terms agreed separately between the Terminal Operator and the User or both); and
- (b) the Terminal Operator may, without prejudice to any other right or remedy available to it, delay or withhold Services, refuse to provide Services or cancel any or all orders for Services with the User.

32.7 The Terminal Operator reserves the right to alter, change or amend any or all Tariff or Charges with or without prior notice. Moreover, the Terminal Operator's charges are subject to revisions and surcharges due to factors beyond its control, including but not limited to changes in Authority tariffs, fuel costs, inflation, new taxes or levies, FX rate fluctuations, or regulatory requirements as imposed by the Authority or governmental or quasi-governmental authorities



or bodies, without advance notice and which automatically become part of the charges and payable by the User, from the date of their formal implementation (current or retrospective).

- 32.8 All invoices are issued as due on presentation, unless otherwise agreed to in writing between the Terminal Operator and the User. The Terminal Operator reserves the right to apply interest on any overdue amount, at a rate of 12% per annum on any invoice or part thereof remaining unpaid beyond the due date.
- 32.9 The User shall pay all invoiced amounts in full, including those disputed in good faith. Any disputes must be raised in writing within fifteen (15) days of the invoice date. Such disputes shall not relieve the User from its obligation to make full payment by the due date or entitle the User to delay or withhold payment.
- 32.10 If the Terminal Operator has:
- (a) made an error, mistake or provided an incorrect estimate in an invoice addressed to the User in respect of any Services provided by the Terminal Operator; or
 - (b) failed to submit an invoice to the User in respect of any Services provided by the Terminal Operator; or
 - (c) made an error, mistake or provided an incorrect estimate in regards to the Charges, Tariff or rebates applied to the User,

the Terminal Operator shall notify the User in writing within fourteen (14) days of such discovery. The Terminal Operator reserves the right to reissue corrected invoices and estimates and to claim all amounts from the User. Subject to the User receiving a written notification in accordance with this Clause, the User shall make all payments in accordance with Clause 32.5 or 32.8 as appropriate.

- 32.11 Any right of lien afforded under these STC may be exercised by the Terminal Operator unilaterally and without the need for a court order.
- 32.12 The above mentioned Tariff is in AED and is exclusive of any applicable taxes including VAT, levies, duties or charges of similar nature imposed by the government/tax authority, whether applicable now or in future. All such taxes, levies and duties which may become applicable in the future will be charged separately by the Terminal Operator and payable by the User.

33. **RIGHT OF RETENTION**

- 33.1 The Terminal Operator shall have the right to retain any Container, Cargo, Equipment or Vessel as security for any claims or demands that the Terminal Operator might have against the User, including claims arising out of or in connection with: (a) non-payment of Terminal Operator Charges, costs, expenses or disbursements; or (b) liability, loss or damage sustained by the Terminal Operator in connection with any Services and for which the User is responsible under these STC.
- 33.2 Upon the Terminal Operator exercising its lien under Clause 33.1 hereof, Charges shall continue to apply to any Cargo, Equipment or Vessel held. Such Charges and other expenses shall be for the account of the User and the User shall indemnify and hold the Terminal Operator harmless from and against all and any such Charges and expenses.
- 33.3 Once a lien under Clause 33.1 has been exercised, the Terminal Operator may sell, dispose of or otherwise deal with the relevant Vessel/Equipment/Cargo as mentioned under Clause 22 of these STC (after the lapse of the timeframes provided for thereunder, if any), without further notice or the need for a court order, and at the User's cost. The User will indemnify the Terminal Operator against any loss, liability or costs (including legal costs) that the Terminal Operator may incur arising out of or in connection with such sale, disposal or other dealing with the Vessel/Cargo/Equipment.



33.4 Upon accounting to the User for any balance remaining after payment of any sums claimed by the Terminal Operator, the Terminal Operator shall be discharged from any liability whatsoever in respect of such Cargo, Equipment or Vessel.

34. **FORCE MAJEURE**

34.1 Neither party shall be liable to the other for any loss of any kind or delay in or failure to perform its obligations hereunder (other than non-payment of money) if any such loss or delay or failure is due to a Force Majeure Event.

34.2 If either party becomes aware of an event of a Force Majeure Event it shall promptly notify the other party, the following, in writing within ten (10) days of the occurrence of a Force Majeure Event:

- (a) description of the Force Majeure Event in reasonable detail and stating, to the extent reasonably practicable at such time, its estimate of the duration of the Force Majeure Event; and
- (b) setting out in reasonable detail the obligations under these STC which cannot be performed as a result of the occurrence of the Force Majeure Event.

34.3 The party which is prevented from performing its obligations by a Force Majeure Event shall:

- (a) shall use its reasonable endeavours to continue to perform, or resume performance of, such obligations under these STC for the duration of such Force Majeure Event; and
- (b) keep the other party informed on a timely basis of any progress made in curtailing, containing or removing the Force Majeure Event condition.

34.4 If a Force Majeure Event prevails for a continuous period in excess of ninety (90) days, then the Terminal Operator is entitled to give notice to the relevant party to terminate the provision of Services. The notice to terminate must specify the termination date, which must be not less than seven (7) days after the date on which the notice to terminate is given.

35. **SUSPENSION OR TERMINATION OF SERVICES**

35.1 Without prejudice to any other rights or remedies, the Terminal Operator may suspend or terminate Services governed by these STCs, in whole or in part, by giving written notice to the User, with immediate effect, if the User:

- (a) breaches any obligation under these STCs or any applicable agreement (including, without limitation, an obligation to pay) and fails to remedy the breach within 7 days after receiving notice from the Terminal Operator requiring it to do so,
- (b) disposes of the whole or any part of its assets, operations or business other than in the normal course of business (except a voluntary liquidation for the purpose of amalgamation or reconstruction if the new company assumes all of the User's obligations under these STC on terms satisfactory to the Terminal Operator),
- (c) a mortgagee, receiver, receiver and manager, liquidator, provisional liquidator or any kind of external administrator is appointed to the User or any of its assets or business;
- (d) any arrangement or compromise is entered into between the User and its creditors;
- (e) ceases to be able to pay its debts as and when they fall due;
- (f) ceases to carry on its business in the ordinary course;
- (g) In case of Force Majeure Event, under the conditions provided for at clause 34.



- 35.2 On termination of Services for any reason, User shall immediately settle any outstanding invoices and payments due to the Terminal Operator.
- 35.3 The accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages for any breach of these STC.
- 35.4 The Parties acknowledge and agree that by agreeing to these STC they consent to the exercise of the termination rights set out in this Clause in accordance with the meaning of mutual consent contemplated under the Civil Code (UAE Federal Law No 5 of 1985 regarding Civil Transactions Law) and accordingly such termination shall take effect without the need to obtain a court order.

36. **GOVERNING LAW**

- 36.1 These STC, and all claims thereunder, shall be governed by the laws of United Arab Emirates.
- 36.2 Any claim against the Terminal Operator arising out of or in connection with these STC or any Services shall be subject to the exclusive jurisdiction of the Sharjah Courts. This Clause, however, is for the benefit of the Terminal Operator and is without prejudice to the Terminal Operator's right to bring any claim, action or demand arising out of or in connection with these STC or any Services in any court of competent jurisdiction. Use of a Terminal or receipt of Services by any Users shall constitute that User's consent to jurisdiction and venue in such courts and a waiver of any objections thereto.
- 36.3 Where these STC is silent on the rights and liabilities of the Terminal Operator or the User or both hereunder, these shall be determined according to the laws of United Arab Emirates, as aforesaid.

37. **GENERAL**

- 37.1 A failure or delay by a party to exercise any right or remedy under this Agreement will not be construed or operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy will preclude the further exercise of that right or remedy by that Party.
- 37.2 If any provision or part-provision of these STC is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these STC.
- 37.3 During the term of any provision of Services between Terminal Operator and User and for six (6) months thereafter, User shall not solicit to be hired or hire, as an employee or independent contractor, any individual who is then the personnel of Terminal Operator or was the personnel of Terminal Operator during the provision of the Services.

38. **AMENDMENTS AND MODIFICATION**

- 38.1 The Terminal Operator may add to, change or update these STC from time to time. Any and all amendments to these STC shall be published on the Website and shall be effective on the date of publication thereof. The User is responsible for checking the STC periodically to remain in compliance with their terms. The User's request for and/or acceptance of Services after any amendment to these STC shall constitute acceptance of any such amendment.

39. **LOCAL AUTHORITY**

The Terminals are within the jurisdiction of Port Authority and the Users are subject to the Legal Requirements, Port Procedures and Port Rules.



Schedule 1 – Additional Carrier Obligations

NOTICE OF ARRIVAL AND VESSELS

1. Notice of Arrival

A Carrier expecting to berth a Vessel at a Terminal for the purpose of Loading or Unloading Cargo shall give the Terminal Operator a notice of at least seventy-two (72) hours prior to the arrival of such Vessel, and thereafter forty-eight (48) and twenty-four (24) hours prior to arrival, and furnish such information as the Terminal Operator may request. The acceptance and berthing of each Vessel must be agreed in writing in advance by the Terminal Operator

2. Reserved Right

If during the term of the Agreement, the Carrier introduces any Vessel not fully cellular or outfitted with semi-automatic twist locks or both, the Terminal Operator reserves the right to review the Charges if the Terminal Operator cannot work that Vessel as efficiently as a fully cellular Vessel or a Vessel that is not outfitted with semi-automatic twist locks or both.

3. Documents and Information to be Provided Prior to Vessel's Arrival

The Carrier shall provide to the Terminal Operator at least forty-eight (48) hours prior to the Vessel's arrival the documents listed below (as applicable) and clear instructions in respect of all work to be performed on Vessels, Containers and Cargo. The Terminal Operator reserves the right to request any additional documents which they or any Authority deem fit at their sole discretion. Failure of the Carrier to provide the documents listed below and any additional documents requested by the Terminal Operator or the Authority may result in withholding the Vessel's clearance to berth at, or to sail from, a Terminal until such time as they are made available.

- o Cargo stowage plan/legible bay plan/profile;
- o Discharge list
- o List of Dangerous Cargo, out-of-gauge Cargo and Reefer Cargo when applicable
- o Dangerous Cargo declaration
- o Cargo loading list
- o Instructions for Loading and Unloading, as well any special berthing, or Cargo stowage, handling or storage requirements
- o Vessel particulars
- o Baplie if EDI available - Discharge list (including VGM for each container), and where EDI is available, a BAPLIE message
- o Cargo manifest
- o Passenger manifest
- o Any other information, which would help the Terminal Operator in the process of Vessel operation

3.1. Vessel Particulars

Vessel particulars referred to above should contain the following details (as applicable):



- o Vessel name
- o Service
- o Flag
- o Official Code and International Maritime Organization number
- o Call sign
- o LOA, beam and draft
- o TEU capacity and reefer plug availability
- o Number of hatch lids
- o ISPS status
- o Detail of registered owners and bareboat charterers (if applicable)
- o Detail of local ship agents
- o P&I and H&M insurance certificates
- o Estimated time of arrival (ETA) and departure (ETD)

3.2. Discharge and Loading List Details

Discharge and loading lists referred to above should contain the following details (as applicable):

- o Vessel name and voyage number
- o Container numbers
- o Bill of lading numbers
- o Size and description of Cargo
- o Gross weight (or VGM)
- o Discharge or loading sequence or priority
- o Damage remarks
- o Port of Loading
- o Port of discharge and/or final destination
- o Status as follows:
 - o FCL – Container Local Delivery
 - o LCL – Consolidated cargo for unpacking at CFS
 - o T/S – transshipment
 - o MT – Empty containers
 - o RoRo Cargo



- o Breakbulk
- o IMO Class number and UN code number
- o For LCL Cargo, LCL manifest must be submitted to CFS Department
- o Highlight if Cargo is out of gauge

For RoRo Cargo:

- o Vehicle identification number (VIN)
- o Licence plate
- o Make/model/type
- o Fuel level and battery status
- o Parking location on Vessel deck

For breakbulk cargo:

- o Piece count
- o Lashing/securing details
- o Crane or lifting gear requirements

4. **Retention of Documents**

The Carrier and the Terminal Operator both agree to maintain and retain relevant documents and records, as long as Terminal Services are provided and for a duration of seven (7) years thereafter, sufficient to enable verification of compliance with the obligations under this Agreement and, where reasonably required by the other, shall provide copies of such records (or reasonable access, as appropriate, during normal business hours) for the purposes of such verification.

5. **Dangerous Cargo**

Dangerous Cargo obligations are governed exclusively by Clause 4 of the Gulftainer Standard Terms and Conditions (STCs), which shall apply in full. The Carrier acknowledges and agrees to comply with the requirements set out therein.

These Additional Carrier Obligations are incorporated into and form an integral part of the Gulftainer Standard Terms and Conditions for The Handling of Containers and Container Vessels at Sharjah and Khor Fakkan Container Terminals. They are binding on all Carriers using the Terminal.

In case of any inconsistency, the STCs shall prevail.