

GULFTAINER

STANDARD TERMS AND CONDITIONS FOR THE HANDLING OF CONTAINERS AND CONTAINER VESSELS AT SHARJAH'S CONTAINER TERMINALS

THE USER'S ATTENTION IS DRAWN TO CLAUSES 28 AND 29 WHICH CONTAINS EXCLUSIONS AND LIMITS ON THE TERMINAL OPERATOR'S LIABILITY AND WHICH REQUIRE THE USER TO INDEMNIFY THE TERMINAL OPERATOR IN CERTAIN CIRCUMSTANCES

1.	DEFINITIONS AND INTERPRETATION	3
2.	APPLICATION OF STANDARD TERMS AND CONDITIONS	5
3.	CARRIER	6
4.	NOTICE OF ARRIVAL	7
5.	INSTRUCTIONS AND DOCUMENTATION.....	7
6.	DANGEROUS CARGO	9
7.	HOURS OF OPERATION	10
8.	SAFETY, SECURITY AND ENVIRONMENT.....	10
9.	COMPLIANCE WITH LAWS AND REGULATIONS	11
10.	MARINE SERVICES	11
11.	USE OF TERMINALS	11
12.	NO ESTATE OR INTEREST	11
13.	NO WARRANTY AS TO SUITABILITY.....	11
14.	FITNESS AND SUITABILITY OF THE VESSEL	12
15.	REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS	12
16.	BERTHING AND SAFETY EQUIPMENT	13
17.	VESSEL ROTATION.....	13
18.	STOWAGE	13
19.	LOADING OR UNLOADING	13
20.	MOVEMENT OF VESSEL'S GEAR	14
21.	HANDLING OF DAMAGED CONTAINERS.....	14
22.	REMOVAL OF OBJECTIONABLE CARGO	14
23.	THE CONTROL OF REFRIGERATED CARGO	14
24.	DIRECT DELIVERY	15
25.	CONTAINER STRIPPING AND STUFFING.....	15
26.	DISPOSAL OF ABANDONED/UNCLAIMED CARGO BY AUCTION	15
27.	TRANSFER OF RISK	16
28.	USER LIABILITY.....	16
29.	TERMINAL OPERATOR LIABILITY	17
30.	GENERAL LIABILITY PROVISIONS	19
31.	CLAIMS AND TIME LIMIT FOR CLAIMS	19
32.	LOSS OR DAMAGE.....	19
33.	MISDECLARATION OF CARGO WEIGHTS	20
34.	VERIFICATION OF CONTAINER WEIGHT	20

35.	TARIFF, EXPENSES AND LIENS	21
36.	FORCE MAJEURE	24
37.	GOVERNING LAW	24
38.	AMENDMENTS AND MODIFICATION.....	24
39.	LOCAL AUTHORITY.....	25

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:

Authority means applicable agencies and authorities having jurisdiction over the Port, customs, immigration and related activities for the Emirate of Sharjah, UAE, 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, loose cargo, an empty Container and whatever is conveyed or to be conveyed in a Vessel, or loaded in a Container.

Carrier means any party or parties either owning, nominating or contracting with the Vessel including its agents, owners, operators or charterers or any combination of the foregoing as appropriate.

Consignee means a person or entity (which can also be the buyer of the Cargo) who has the financial obligation towards the receipt of the Cargo.

Consignor means a person or entity who delivers his/its 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.

Conventions means the conventions relevant to ports or shipping issued by the International Maritime Organization, the International Labour Organization or the regional conventions related to shipping or the protection of the environment.

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.

Disputed Sum has the meaning assigned in Clause 35.13.

EDI means Electronic Data Interchange.

Employee has the meaning assigned in Clause 30.3.

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.

Insurance Policy means the Terminal Operator Liability Insurance of the Terminal Operator.

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.

Nominated Representatives has the meaning assigned in Clause 35.13.

Nominated Representatives Meeting has the meaning assigned in Clause 35.13.

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 34.1.

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.

Services means all the services and activities performed by the Terminal Operator or any member of its Organisation.

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 of the Terminals.

Tariff means the Terminal Operator's schedule of charges as published on the Terminal Operator's website 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 Gulfainer Company Limited or any of its subsidiaries or affiliates, and shall, where the context admits, include any member of its Organisation.

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

User or **Users** shall include: i) any person or entity using the port facilities or to/from whom any service, work or labour is furnished, performed, done or made available by the Port Authority/Terminal Operator or any other person using the Port facilities; ii) any person or entity owning or having custody of the Cargo moving in, over or through the Port facilities; or iii) each Carrier, Vessel, Consignee, Consignor and all other individuals or business entities, including all Vessels, barges, trucks, railroad cars or other means of conveyance or Equipment used by said individuals or business entities, which utilise the Services or facilities of a Terminal or both and shall, where the context admits, include any member of their respective Organisations.

Vessel or **Vessels** shall include any vessel, or barge, that utilizes the Services and facilities of a Terminal 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 persons who has legal right over the Cargo or both, 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 persons who has legal right over the Cargo, the Equipment or the Vessel.
- 2.6 This STC shall contain the entire agreement between the Terminal Operator and the User and the terms shall prevail over any other agreement unless expressly agreed by the parties in writing.
- 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 of the User or the branch or agency office of the User, in each case as notified to the Terminal Operator in writing, 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.
- 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**
- 3.1 Notwithstanding anything mentioned expressly to the contrary, any obligations imposed on the Carrier contained in these STC shall be construed as imposing joint and several liabilities upon the owners, operators and charterers and agents (as appropriate) of the Vessel.

- 3.2 In addition to the provisions of Clause 15, the Carrier represents and warrants to the Terminal Operator that the Cargo:
- (a) has been properly and sufficiently prepared, packed, stowed, labelled or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Cargo;
 - (b) does not require any special protection for its safekeeping (other than as may be agreed in writing between the Carrier and the Terminal Operator) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other Cargo or from inflammability but will remain safe if left standing in the open or in covered accommodation at a Terminal or Terminal Facilities;
 - (c) will not contaminate or cause danger, injury or pollution or damage to any person, a Terminal, the Terminal Facilities or any other Cargo, Equipment or Vessel or the environment adjacent thereto or generally;
 - (d) is not infested, verminous, rotten or subject to fungal attack and not liable to become so while being handled;
 - (e) (other than as may be agreed in writing between the Carrier and the Terminal Operator) is not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
 - (f) is not overheated or under-heated or liable to become so whilst at a Terminal or the Terminal Facilities; and
 - (g) contains no drugs, prohibited or stolen goods, contraband, or other matter contrary to any Legal Requirements or substances or stowaways.

3.3 The Carrier shall be responsible for, and reimburse the Terminal Operator for, all duties, taxes, imposts, levies, deposits and outlays of whatever nature levied by the Port Authority or any other Authority and any expenses incurred in complying with the requirement of the Port Authority or any other Authority in relation to either the Vessel, the Equipment or the Cargo. It is not the intention of the Carrier or the Terminal Operator that the Carrier be granted exclusive use of any part of a Terminal or Terminal Facilities and in carrying out the Services the Terminal Operator will use any area of a Terminal, a Terminal and the Terminal Facilities which is convenient to it at the relevant time.

4. **NOTICE OF ARRIVAL**

Each 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.

5. **INSTRUCTIONS AND DOCUMENTATION**

5.1 The Carrier shall provide to the Terminal Operator at least forty eight (48) hours prior to the Vessel's arrival the documents listed in Clause 5.2 below 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.

5.2 Documents and information:

- (a) Cargo stowage plan/legible bay plan/profile
- (b) Discharge list, including VGM
- (c) List of Dangerous Cargo, out-of-gauge Cargo and Reefer Cargo control lists when applicable
- (d) Dangerous Cargo declaration
- (e) Cargo loading list
- (f) Instructions for Loading and Unloading
- (g) Vessel particulars
- (h) Baplie if EDI available
- (i) Any special berthing requirements
- (j) Cargo manifest
- (k) Passenger manifest
- (l) Any other information, which would help the Terminal Operator in the process of Vessel operation

5.3 Vessel particulars as stated in Clause 5.2(g) above should contain the following details:

- (a) Vessel name
- (b) Service
- (c) Flag
- (d) Official Code and International Maritime Organization number
- (e) Call sign
- (f) LOA, beam and draft
- (g) TEU capacity and reefer plug availability
- (h) Number of hatch lids
- (i) ISPS Status

5.4 Discharge list as stated in Clause 5.2(b) above should contain the following details:

- (a) Vessel name and voyage number
- (b) Container number
- (c) Size and type
- (d) Gross weight (or VGM)
- (e) Port of Loading
- (f) Port of discharge and or final destination

- (g) Status as follows:
 - (i) FCL – Container Local Delivery
 - (ii) LCL – Consolidated cargo for unpacking at CFS
 - (iii) T/S – transshipment
 - (iv) MT – Empty containers
- (h) IMCO Class number and UN code number and copy of manifest
 - (i) For LCL Cargo, LCL manifest must be submitted to CFS Department
 - (j) Highlight if cargo is out of gauge

5.5 Cargo loading List as stated in Clause 5.2(e) above should contain the following details:

- (a) Name of the vessel to be loaded
- (b) Container number
- (c) Size and type
- (d) Full or empty
- (e) Gross weight (or VGM)
- (f) Destination
- (g) IMCO class number and UN code number and copy of manifest
- (h) Highlight if Cargo is out of gauge

5.6 The Carrier and the Terminal Operator both agree to maintain and retain relevant documents and records, as long as Services are provided and for a duration of seven (7) years thereafter, sufficient to enable verification of compliance with the obligations under these STC 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.

6. DANGEROUS CARGO

6.1 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.

6.2 Dangerous Cargo must be accompanied with full disclosure of the hazardous characteristics, risks and special handling requirements of such Cargo, subject to the relevant rates and charges as per the Tariff. It is the responsibility of the Carrier 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.
- 6.3 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.
- 6.4 The Terminal Operator reserves the right to refuse to handle any Cargo or provide storage which, in its judgment, is likely to damage human health, other Cargo or property.
- 6.5 If the Carrier fails to give prior written notice of the nature of any Dangerous Cargo in accordance with Clause 6.2 and the Terminal Operator is unaware of its nature and the necessary precautions to be taken, 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 Carrier, and without the need for a court order to that effect. Without prejudice to the rights of the Terminal Operator under this Clause 6.5, the Carrier 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 Carrier 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.

7. HOURS OF OPERATION

The Terminals operate twenty-four (24) hours a day, every day throughout the year, subject to any Force Majeure Events.

8. SAFETY, SECURITY AND ENVIRONMENT

- 8.1 All Vessels are to furnish, at all times whilst alongside Berth, safe ingress and egress.
- 8.2 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.
- 8.3 Measures must be taken to prevent deballasted water from coming into contact with personnel, Equipment or the dock.
- 8.4 The User and the Vessel crew members shall adhere to the safety and security regulations of the Terminal Operator and the Port Authority.
- 8.5 Certain areas of each Terminal and all of such Terminal's 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 according to the regulation of the Port Authority. Failure to consent to inspection will result in denial or revocation of authorisation to enter.
- 8.6 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. Stowaways must stay on board the Vessel under the Vessel master's responsibility. If the stowaway escapes from the custody of the Vessel's representative, then the Terminal Operator will inform the Authority and the local police and the Vessel (or the Carrier, as the case may be) shall be responsible for all costs and expenses

associated with his/her recovery. The Terminal Operator reserves the right to not allow any proposed repatriation of stowaways by the Carrier or the Vessel, if it considers it may endanger any member of its Organisation or any person that might be involved in the process.

- 8.7 Photography without previous written permission from the Port Authority is strictly prohibited.
- 8.8 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.

9. **COMPLIANCE WITH LAWS AND REGULATIONS**

All Vessels shall fully comply with all applicable UAE Coast Guard regulations and all Legal Requirements, Port Procedures and Port Rules. 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 Vessels shall be required to comply with such more onerous terms.

10. **MARINE SERVICES**

- 10.1 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.
- 10.2 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).

11. **USE OF TERMINALS**

- 11.1 Carriers are allowed to use a Berth only for Loading and Unloading of Containers or Cargo unless otherwise agreed with the Terminal Operator.
- 11.2 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.

12. **NO ESTATE OR INTEREST**

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

13. **NO WARRANTY AS TO SUITABILITY**

- 13.1 The User 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 User 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.
- 13.2 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.

14. FITNESS AND SUITABILITY OF THE VESSEL

- 14.1 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. 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 either 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.
- 14.2 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 not the obligation, to clean and remove the items from the Vessel's deck, which service will be solely on the account of the Carrier.

15. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 15.1 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;
 - (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;
 - (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.

16. **BERTHING AND SAFETY EQUIPMENT**

- 16.1 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.
- 16.2 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.
- 16.3 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 including its owners, operators, charterers and agents 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.

17. **VESSEL ROTATION**

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

18. **STOWAGE**

The Carrier shall be solely responsible for the safe stowage of the Cargo.

19. **LOADING OR UNLOADING**

- 19.1 The Terminal Operator shall use reasonable endeavours to make available on a Terminal adequate container handling equipment, comprising cranes and suitable container handling 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 container from the Vessel and the handling of Containers, including their transport from the quay to the storage area or vice versa.
- 19.2 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.

20. MOVEMENT OF VESSEL'S GEAR

20.1 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.

20.2 None of the Vessel's cranes, hatch covers or other gear may be moved without prior written consent of the Terminal Operator.

21. HANDLING OF DAMAGED CONTAINERS

The Terminal Operator may refuse acceptance of damaged or distorted Containers or of any Container which in its opinion is in an unsatisfactory or unsafe condition, or of any non-standard Container. In the event the Terminal Operator agrees to handle such Containers, a further charge may be levied in the Carrier's account, in addition to the applicable Tariff, whether or not such damage or deterioration has been caused wholly or in part by the Terminal Operator or any member of its Organisation, and any damages caused due to handling of such containers shall be for the account of the Carrier.

22. REMOVAL OF OBJECTIONABLE CARGO

22.1 The Terminal Operator and the Port Authority shall have the right to move any Cargo or Container or both to another location or inspect any Cargo or Container or both, for any reason, at the risk and full expense of the Carrier.

22.2 Damaged or defective Cargo, including perishable cargo which is likely to deteriorate, must be cleared from a Terminal within thirty (30) calendar days of the date of Unloading. The Terminal Operator will not assume any responsibility for further loss or damage. Any goods not cleared in accordance with the above may be removed at any time by the Terminal Operator, without notice, at the Carrier's risk and expense.

23. THE CONTROL OF REFRIGERATED CARGO

23.1 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.

23.2 Reefer Cargo must be accompanied with full disclosure of the characteristics and special handling requirements of such Reefer Cargo, subject to the relevant rates and charges as per the Tariff. It is the responsibility of the Carrier tendering such Reefer Cargo to a Terminal:

(a) to fully disclose in writing and in advance all of the applicable Reefer Cargo characteristics and special handling requirements; and

- (b) to provide the Terminal Operator with the details of the special handling requirements to handle and store such Reefer Cargo.
- 23.3 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.
- 23.4 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 23, 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.
24. **DIRECT DELIVERY**
- The Carrier shall obtain prior approval to take delivery of the Containers directly from the Vessel by the Consignee or its agent onto road transport or other mode arranged by it. If for any reason whatsoever, Cargo for direct delivery are 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.
25. **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.
26. **DISPOSAL OF ABANDONED/UNCLAIMED CARGO BY AUCTION**
- 26.1 Goods 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; and
 - (g) ninety (90) days for empty Containers,
- for which the respective charges have not been paid, may be auctioned or sold or both without any notice, by the Terminal Operator, without the need for a court order to that effect. The Carrier/User shall indemnify the Terminal Operator from all losses, damages and claims which may arise subsequent to such auction or sale.
- 26.2 If the Cargo, as determined by the sole discretion of the Terminal Operator, is unsuitable for auction or sale, the Terminal Operator may proceed with the destruction of the Cargo, and all the charges accrued until the date of destruction along with the destruction charges and all other related charges shall be on the Carrier's account. The Carrier/User shall indemnify the Terminal Operator from all losses, damages and claims which may arise subsequent to such destruction. Without prejudice to the rights of the Terminal Operator under this Clause 26.2, the Carrier 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.

- 26.3 Containers containing Cargo destined for public auction or disposal shall only be released after all the charges including the stripping and stuffing charges and storage charges have been received by the Terminal Operator. These charges will be on the respective Carrier's account.

27. **TRANSFER OF RISK**

- 27.1 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 unstowing of the Container or Cargo from the Vessel (from unlocking twistlocks on board) 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 unstowing of the Container or Cargo from the Vessel (as from unlocking twist locks on board) until restowing of such Container or Cargo on the Vessel (as from locking twist locks on board).

28. **USER LIABILITY**

- 28.1 The Terminal Operator shall notify the User 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.
- 28.2 The User shall be responsible for any physical damage arising out of or resulting from the 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.
- 28.3 The User shall be liable for, and shall indemnify, defend and hold harmless the Terminal Operator, its affiliates and members of its Organisation against any liability for 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 judgment of whatsoever nature against the Terminal Operator by a third party, including reasonable costs and expenses incidental thereto, in respect of:
- (a) loss, damages, pollution damages, delay, deficiency, costs (including legal costs), expenses of whatsoever nature, however arising or caused, whether directly or indirectly incurred by Terminal Operator, whether actual or consequential occasioned to and sustained by:

- (i) a User, Cargo, Container, Equipment, or Vessel or any combination of the foregoing as appropriate;
 - (ii) the User or its property, whether owned, hired, leased or otherwise provided;
 - (iii) the property of any third party;
- (b) loss of life or personal injury or both, including fatal injury and disease, to any person or persons or any legal liability of whatsoever nature, however arising or caused, notwithstanding any defect of any premises, property, machinery, gear or appliance (none of which is in any way warranted by the Terminal Operator as to fitness for use) and notwithstanding any omission, negligence, default or error by the Terminal Operator or any member of its Organisation, or any other person, body or authority in connection with the Terminal Operator's marine crafts, cranes, equipment or any member of its Organisation, arising from or during the period of a Vessel's or User's use of the Port or for receipt of marine or port services or both, which the Terminal Operator may provide to the User or Vessel;
- (c) pollutants or waste matter emanating from a Vessel or the User's property (other than a Vessel) of whatsoever nature causing pollution and contamination arising out of or in connection with these STC, in each event, whether caused by tort (including negligence), breach of statutory duty, contract or otherwise;
- (d) any act, neglect or default of the master, mariner, pilot, or the servants of the Carrier in the navigation or in the management of the Vessel including the Loading and Unloading of ship's stores, fresh water and bunkers;
- (e) the stuffing of the Containers in excess of the rated gross capacity unless occasioned by the default of the Terminal Operator;
- (f) any incorrect declarations in respect of the weight or VGM of a Container or Cargo;
- (g) the incorrect stuffing of Containers so as to affect the safe handling of any Container unless occasioned by the default of the Terminal Operator not being the result of circumstances outside the Terminal Operator's direct control;
- (h) any act, neglect or default of the User, any member of its Organisation or any person whomsoever in or on a Berth in connection with the use of that Berth by the Carrier's Vessel with the Carrier's permission express or implied or of any inherent quality or defect of any Cargo in or on a Berth or on any Vessel; and
- (i) the User will also pay to the Terminal Operator full compensation for all damage done to or suffered by the property or equipment operated by the Terminal Operator and arising as aforesaid including consequential loss.
- 28.4 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.

29. **TERMINAL OPERATOR LIABILITY**

- 29.1 In no circumstances will the Terminal Operator be liable for any consequential or indirect loss of whatever nature and howsoever arising including any loss of profit (whether direct or indirect), loss of market share, loss of goodwill, loss of future or anticipated sales, loss of production or factory down time, damages, costs or expenses incurred or payable by the User to any third party or any other indirect or consequential losses.
- 29.2 Without prejudice to Clause 29.1 above, the Terminal Operator shall not be liable for loss, damage and delay arising out of 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.

- 29.3 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.
 - (b) 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, contaminated, deteriorated or damaged (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 the Cargo; and
 - (B) US\$50,000.
 - (ii) any Vessel, including its gear and all other 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) of the Vessel; and
 - (B) US\$1,000,000.
 - (iii) any Container, 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, other than covered by Clause 29.3(b)(i)(B), and such liability shall be limited to the lesser of:
 - (A) the reasonable repair, cost or replacement (with an item of the same age and in the same condition); and
 - (B) US\$50,000.
- 29.4 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 under Clause 29.3 to the extent that such act or omission contributed to the loss or damage.
- 29.5 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.
- 29.6 The User shall make no claim against the Terminal Operator for an amount less than US\$2,500.

30. GENERAL LIABILITY PROVISIONS

- 30.1 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.
- 30.2 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.
- 30.3 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.
- 30.4 Save as set out in Clause 29 the Terminal Operator shall not be liable for loss of or damage to any Vessel, Equipment or Cargo howsoever arising.

31. CLAIMS AND TIME LIMIT FOR CLAIMS

- 31.1 Subject to Clause 29.2 above, 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 is noted 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.
- 31.2 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 29.3 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.

32. LOSS OR DAMAGE

- 32.1 In the event of the Terminal Operator suffering loss or damage from the Consignee, Consignor or any other third party, inclusive in respect of any Container or unit handed over to it for shipment aboard any Vessel, the Carrier shall provide all reasonable assistance to the Terminal Operator in recovering from such third party or other party 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 damage suffered by the Terminal Operator arising as aforesaid.
- 32.2 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 the terms of the Carrier's shipping note or bill of lading (including for these purposes the lending of the Carrier's name 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 proceedings claims and costs whatsoever as aforesaid.

33. MISDECLARATION OF CARGO WEIGHTS

- 33.1 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 equipment. Should the Terminal Operator's equipment be used in handling an Overweight Container or 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 fine, as specified in the applicable Tariff, will be payable by the Carrier.
- 33.2 In addition to the remedies contained in Clause 33.1, 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 33.2(a) and Clause 33.2(b) above.

34. VERIFICATION OF CONTAINER WEIGHT

- 34.1 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.
- 34.2 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.
- 34.3 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.
- 34.4 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 34.2; 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.

- 34.5 Any weight of a packed Container established by the Terminal Operator, other than pursuant to Clause 34.4 above, shall not be considered as the VGM for the purpose of SOLAS and Legal Requirements related thereto.
- 34.6 The Carrier shall not interfere in settling charges eventually applicable in the event the Terminal Operator delivers VGM information to the Consignor. In such events, the Terminal Operator shall issue the VGM only upon receiving the payment in full from the Consignor or from the Carrier.
- 34.7 The Carrier shall pay all such charges arising out of or in connection with the activities performed by the Terminal Operator in this Clause 34 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 34.4 above, additional transport, shunting, handling, re-handling, de-stuffing, stuffing, storage or other charges resulting from Overweight Containers, delays or missed sailings.
- 34.8 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 34 are increased, the Terminal Operator may recover such additional costs from the User.
- 34.9 If agreed with the Carrier and subject to Clause 34.1, 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 34.4. The Carrier shall be responsible for removing any Overweight Containers from a Terminal without delay at the cost of the Carrier.
- 34.10 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.
- 34.11 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 34.4 above.
- 34.12 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.

35. **TARIFF, EXPENSES AND LIENS**

- 35.1 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.
- 35.2 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.

- 35.3 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.
- 35.4 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.
- 35.5 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.
- 35.6 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.
- 35.7 The Terminal Operator shall have:
- (a) a general lien on all Cargo, Equipment or Vessel in the Terminal Operator's possession to secure the payment by the User of all charges whatsoever due from the User to the Terminal Operator; and
 - (b) a particular lien on all Cargo, Equipment or Vessel in the Terminal Operator's possession;
- 35.8 Upon the Terminal Operator exercising its lien under Clause 35.7 hereof, storage charges shall apply to any Cargo, Equipment or Vessel held subject to the lien. Moreover, other charges such as, but not limited to, Equipment demurrage and rental charges may accrue. Such storage 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.
- 35.9 Once a lien under Clause 35.7 has been exercised, the Terminal Operator may sell, dispose of or otherwise deal with the Cargo/Container as mentioned under Clause 26 of these STC, and after the lapse of the timeframes provided for thereunder.
- 35.10 Upon accounting to the User for any balance remaining after payment of any due sums and the costs of and associated with the storage, sale, disposal and dealing with the Cargo, the Terminal Operator shall be discharged from any liability whatsoever in respect of the Cargo, the Container or the Vessel.

- 35.11 The Terminal Operator reserves the right to alter, change or amend any or all charges, terms, conditions or interpretations contained in these STC with or without prior notice. Moreover, the Tariff is subject to revisions and surcharges as imposed by the Authority or governmental or quasi-governmental authorities or bodies, without appropriate advance notice and which automatically become part of the Tariff and payable by the User, from the date of their formal implementation (current or retrospective).
- 35.12 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 at the rate of two (2%) per month on any invoice or part thereof remaining unpaid beyond the due date.
- 35.13 If, in respect of any sum invoiced or any credit note issued by the Terminal Operator, the User claims on reasonable bona fide grounds that it is not liable to pay such sum (**Disputed Sum**), it must notify the Terminal Operator in writing of such dispute within fourteen (14) days of the date of such invoice or credit note. Any dispute arising out of or in connection with a Disputed Sum will be referred to the nominated representatives of the Terminal Operator and the User (**Nominated Representatives**) for discussion and resolution. The Nominated Representatives shall meet within fourteen (14) days of the reference to attempt to resolve the dispute regarding the Disputed Sum (**Nominated Representatives Meeting**). If the dispute regarding the Disputed Sum is not resolved between the Nominated Representatives within fourteen (14) days of the Nominated Representatives Meeting, the dispute will be dealt with in accordance with Clause 37. The Terminal Operator reserves the right to charge interest in accordance with Clause 35.12 where a Disputed Sum has been withheld but should have been paid.
- 35.14 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 35.5 or 35.12 as appropriate.
- 35.15 In the event of the User's failure to pay on the date specified above and without prejudice to the rights available under Clause 35.5 above, the Terminal Operator shall have a general as well as a particular lien on the Vessel, Equipment or Cargo and all documents in its possession custody or control to secure payment whatsoever due to the Terminal Operator from the User. Upon exercising a lien, additional charges may apply to a Vessel, Equipment or Cargo held subject to the lien. Terminal Operator shall be entitled to sell or dispose of a Vessel, Equipment or Cargo at the User's expense and apply the proceeds towards payment of any charges due upon twenty eight (28) days written notice to the User. In the event that any Cargo detained is perishable and may deteriorate during the twenty eight (28) day notice period, the Terminal Operator may sell such Cargo without giving the said notice. Upon accounting to the User for any balance remaining after payment of any sums due and costs, the Terminal Operator shall be discharged from all and any liability whatsoever in respect of such Vessel, Equipment or Cargo.
- 35.16 Any right of lien afforded under these STC may be exercised by the Terminal Operator unilaterally and without the need for a court order.

35.17 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 Carrier/User.

36. **FORCE MAJEURE**

36.1 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.

36.2 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 five (5) 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.

36.3 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.

36.4 If a Force Majeure Event prevails for a continuous period in excess of thirty (30) 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.

37. **GOVERNING LAW**

37.1 All claims under these STC shall be determined according to the laws of United Arab Emirates.

37.2 Any claim against the Terminal Operator, or any dispute with its Organisation, arising out of or in connection with these STC shall be subject to the exclusive jurisdiction of the Sharjah Courts. This 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 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.

37.3 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.

38. **AMENDMENTS AND MODIFICATION**

Amendments to these STC may be issued by the Terminal Operator at any time. This STC in effect at any time shall be published on the Terminal Operator's website. This STC in effect at the time a Vessel docks at a Terminal shall be the STC applicable during the period of time such Vessel is docked at a Terminal for that particular period of time. If an updated STC is in effect at the time of a subsequent dockage by a Vessel such updated STC shall apply. This STC is subject to change, by the Terminal Operator, from time to time.

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.