

LEKKI FREEPORT TERMINAL



TERMINAL SERVICES GENERAL TERMS AND CONDITIONS (“STANDARD T&C”)

1. DEFINITIONS AND INTERPRETATION

1.1 In these Standard T&C:

“**Bank Holidays**” means bank and other national in the country of the Port. Such Holidays are deemed to commence at 0700 hours on the relevant day and be of 24 hours duration

“**Berth**” or “**Terminal**” (as the case may be) means such wharf area contained within the Port presently owned, leased, operated or managed by the Terminal Operator and any other wharf area within the Port which the Terminal Operator may in the future own, lease or have access to, together with adjacent areas in which Containers or Cargo are received, handled and stored for the purpose of loading onto or discharging from a Vessel;

“**Berthing Window Plan**” means the berthing window plan relating to any Terminal Services to be provided by the Terminal Operator to the Customer in respect of the Vessels;

“**Business Day**” means a day (other than a Saturday or Sunday/Public Holiday on which banks are open for business in the state in which the Port is situated;

“**Cargo**” means goods of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container, or an Out of Gauge Container and includes any Non-containerized Cargo carried on a Vessel;

“**Cargo Owner**” means the owner of any Cargo or containers and any bailor, bailee, consignor, shipper, consignee or other respective agents (including forwarders and hauliers) in relation thereto, or any person, firm or company tendering goods and or containers, flats or vehicles to the Terminal Operator for the performance of the Terminal Services, but shall not include the Terminal Operator.

“**Claim**” means any claim by any person for loss or damage arising out of or relating to any or all of the Cargo, any Container, any Vessel or Vessel’s equipment, the Terminal

Services or any delay or other failure in supplying the Terminal Services

"Container" means any standard ISO container which is owned, leased or controlled by the Customer, 20' or 40' in length, 8' in width and 8'6" or 9'6" in height, including flatracks, bolsters, Reefers or tanks, conforming with ISO recommended lifting arrangements which can be handled by means of a spreader and which is consistent with the safety requirements of CSC plates (Convention for Safe Containers).

"Customer" means the Owner or any other recipient of the Terminal Services (as applicable);

"Dispute" means a dispute arising out of or relating to this Standard T&C and/o the Terminal Services, including without limitation, a dispute about the breach, termination, validity or subject matter of this Standard T&C, or relating to the performance or non-performance of this Standard T&C;

"EDI" means electronic data interchange between the Terminal Operator and the Customer.

"Force Majeure" means any event or circumstance unforeseeable when entering into the Contract, that could not reasonably have been avoided or overcome, not within the reasonable control of the Party claiming force majeure and occurring without its fault or negligence, including, without limitation, to the extent it meets the foregoing requirements: (a) acts of God, flood, drought, earthquake, or other natural disaster; (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargoes or breaking off of diplomatic relations; (c) nuclear, chemical or biological contamination or sonic boom; (d) collapse of buildings, fire, explosion or accident; and/or (e) confiscation or nationalisation of terminal assets by government authority;

"Hazardous Cargo" means 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;

"Laws" means all applicable international, Commonwealth and state laws, including any relevant standards, awards, codes, rules and regulations (including without limitation, Port Authority regulations, AMSA Marine Orders, IMO Dangerous Goods Code, collective bargaining agreements and any awards and laws applicable to the Terminal Operator's employees and applicable regulations introduced pursuant to the ISPS Code);

"Non-containerized Cargo" means Cargo not contained in a Container, accepted for transport/carriage on a Vessel which cannot be handled by means of normal use of a container spreader even with special attachments;

"Out of Gauge Container" means a Container where Cargo protrudes beyond the standard dimensions of the Container which must be handled with the use of special attachments to a container spreader;

"Owner" means the Shipowner and/or Cargo Owner, as appropriate.

"Party" means either the Terminal Operator or the Customer and **"Parties"** shall have a corresponding meaning.

"Port" means Lekki Deep Seaport;

"Rates" means the prices charged by Terminal Operator and agreed upon with the Customer in respect of the Terminal Services rendered by Terminal Operator pursuant

to these Standard T&C as more specifically set out in the Tariff Schedule;

"Regulatory Authority" means any governmental body, authority or department enforcing legislation, byelaws, regulations and standards, including by way of example only Nigeria Ports Authority (NPA);

"Rent Charges" means charges raised by the Terminal Operator in respect of Containers or Cargo remaining on the Terminal yard or estate beyond a permitted period;

"Shipowner" means the registered or beneficial owner of any Vessel to which these Standard T&C relate and any part owner, bareboat, time, voyage or slot charterer, Customer, manager, master, agent or other person in charge of the Vessel, disponent owner consignee or mortgagee in possession

"Special Agreement" means any agreement or special terms concluded between the Terminal Operator and the Customer which are separate from or ancillary to these Standard T&C.

"Terminal Operator" means the terminal facilities at Lekki Freeport Terminal;

"Terminal Services" means the stevedoring or terminal services more fully described in the Terminal Services Schedule and in the Tariff Schedule;

"Tariff Schedule" means the tariff schedule provided to the Customer upon request;

"Vessel" means any Container ship fitted for the carriage of Containers, Out of Gauge Containers and/or Non-containerized Cargo whether above or below deck, including all lashing equipment required for the proper securing of Containers on board or any vessel owned, chartered, operated, or leased by the Customer (or, for the avoidance of doubt, the Vessel Operator) availing of Terminal Services;

"Vessel Operator" means the Shipowner or the operator in control of any Vessel at the Terminal;

"VGM" means the verified gross mass of a packed Container.

"VGM Declaration" means a signed shipping document (e.g. shipping note) provided to the Terminal Operator, or electronic certification certifying the VGM in accordance with the VGM Regulations.

"VGM Regulations" means regulations pursuant to the Safety of Life at Sea Convention ("**SOLAS**") Chapter VI Regulation 2 concerning the declaration of VGM by shippers of containerized cargoes, and requirements under The Merchant Shipping (Carriage of Cargoes) Regulations 1999 S.I. 1999 No. 336 in relation to the declaration of gross mass of cargo units in advance of loading, as either may be amended, supplemented or superseded from time to time.

"Website" means www.lft-ng.com

2. APPLICATION OF THE STANDARD TERMS AND CONDITIONS

2.1 These Standard T&C shall apply to: (a) all Terminal Services; (b) the use by any Customer of the Terminal and/or the facilities at the Terminal; and (c) all Vessels which berth at the Terminal.

2.2 In the absence of express acceptance by the Customer of these Standard T&C, by receiving or using the Terminal Services from the Terminal Operator, or by using or entering the Berth, the Terminal, including by berthing any Vessel at the Terminal, the Customer is deemed to have read, understood and agreed to these Standard T&C, without amendment.

2.3 There shall be no variation to these Standard T&C unless expressly agreed by both the Terminal Operator and the Customer in writing. Any notice to be given under these Standard T&C must be given in writing to the registered office of the Terminal Operator or the Customer or the branch or agency office of the Customer through which it has dealt with the Terminal Operator in respect of the Terminal Services.

2.4 The Customer represents and warrants that it will bring these Conditions (including the limits, defences, exceptions, liberties and exclusions herein) to the attention of any person who the Customer may instruct to enter upon the Terminal or otherwise deal with Operator including any subcontractor, agent, employee or other party instructed by the Customer.

3. REQUEST FOR A BERTH

3.1 The Terminal Operator shall provide the use in common with Vessels in other ownerships of a Berth at the Terminal and shall provide or perform the Terminal Services thereat upon the terms and conditions hereinafter mentioned.

3.2 The Customer shall request authorization from the port authority for the berthing of Vessels. The Terminal Operator shall assign the Berth in accordance with the Berthing Windows Plan agreed with the Customer

3.3 The Terminal Operator provides the use, in common with Vessels in other ownerships, of a Berth at the Terminal for the Vessels on such dates/tides as shall be advised to and agreed from time to time by the Terminal Operator. Confirmation of the expected arrival date of each Vessel and notification of each Vessel's expected time of arrival at the Berth ("**ETA**") shall be given in writing to the Terminal Operator not later than ten days prior to the expected date of arrival of the Vessel at the Berth, and all subsequent changes to the said dates and ETA. shall be promptly notified to the Terminal Operator by the Shipowner. Notice of the Vessel's final ETA. at the Berth shall be given to the Terminal Operator not later than twenty four hours before the arrival of the Vessel at the Berth, except that when the Vessel is due to arrive at the Berth on a specific day of the week the Shipowner shall use its best endeavors to provide such notice before 1200 noon on the preceding [specific day of the week] and, when the Vessel is due to arrive at the Berth within the period 0700 hours specific day of the week to 0700 hours specific day of the week, or on a Bank Holiday, the final ETA at the Berth shall be given not later than 1200 noon on the last normal working day prior to such period or Bank Holiday as appropriate

3.4 Priority use of the Berth may be available to Shipowners who have long term contractual Agreements or a Special Agreement concluded with the Terminal Operator or who, with the agreement of the Terminal Operator, are operating regular scheduled sailings to/from the Terminal.

4. TERMINAL SERVICES

4.1 GENERAL

4.1.1 The Terminal Operator will: (a) provide the Terminal Services subject to and in accordance with these Standard T&C; (b) provide the Terminal Services using reasonable care and skill; (c) comply with all laws and regulations in force and applicable to the relevant Terminal Services; (d) obtain all necessary licenses and permits required to operate as a terminal operator and provide the Terminal Services; (e) when applicable, use EDI on terms and procedures agreed between the Terminal Operator and the Customer; (f) perform any other services agreed or to be agreed between the Terminal Operator and the User based on Special Agreement.

4.1.2 No liability shall attach to the Terminal Operator in consequence of any failure to: (a) undertake or complete the loading/unloading of any Vessel or vehicle, or (b) provide a Berth at the Terminal for any Vessel, at or by a particular time, or within a particular interval or period of time, notwithstanding any representation made by any servant or agent of the Terminal Operator, and the Owners (and the haulier in the case of receiving/ delivering goods to road vehicle) shall release and indemnify the Terminal Operator from and against all such liability and costs.

4.1.3 Without prejudice to any statutory powers it may have, the Terminal Operator may direct a Vessel to leave the Berth by a stated time when the scheduled work programme for the Vessel does not require immediate or continuous operations at the Terminal or otherwise as required in the absolute discretion of the Terminal Operator to accommodate Terminal operations. If the Shipowner does not comply with such directions prior to the time directed by the Terminal Operator (the "**Departure Time**"), then the Terminal Operator may at its discretion charge the Shipowner for each hour or part thereof that the Vessel remains at the Berth after such Departure Time. All costs and expenses relating to the movement of a Vessel pursuant to this sub-clause shall be borne by the Shipowner of the Vessel undertaking such movement.

4.2 LOADING AND DISCHARGING

4.2.1 The Terminal Operator will provide the following services to the Customer, in each case to the extent applicable depending upon whether the Terminal Services are provided to the Customer in respect of a Customer Vessel or the Customer's Containers on a third party's vessel:

4.3 RECEIVAL AND DELIVERY

4.3.1 The Terminal Operator will provide the following services to the Customer, in each case to the extent applicable depending upon whether the Terminal Services are provided to the Customer in respect of a Customer Vessel:

4.3.2 Normal receipt and delivery times are published from time to time on the Website. Other times may be arranged by written agreement between the Parties.

4.3.3 The "cut-off" for all Vessels will be twenty-four (24) hours prior to the advised Vessel ETA or such earlier time if required by the Vessel Operator ("**Cut-Off**").

4.3.4 The Terminal Operator shall be entitled to refuse to receive a Container from or deliver a container to any vehicle at the Terminal, or otherwise to suspend the Terminal Services, if: (a) the Terminal Operator has not been presented with the correct information or documentation in respect of such Container; or (b) such container is not sealed with a high security bolt seal to current ISO standards; or (c) in respect of a Container carrying Hazardous Cargo, such Container is not fully and correctly labelled; or (d) there are applicable statutory bars on its export; (e) the VGM Declaration has not already been made, where the Cargo Owner is required to make its own arrangements to calculate the VGM.

4.3.5 The Terminal Operator reserves the right to check the weight of any Container or Cargo at the expense of the Owner. If there is any discrepancy between the VGM Declaration provided by the Cargo Owner, and the VGM as may be determined by the Terminal Operator, the VGM calculation of the Terminal Operator shall be determinative of the VGM.

4.4 HAZARDOUS CARGO

4.4.1 No Dangerous Cargo will be handled by the Terminal Operator except by written consent of the Terminal

Operator and then only in accordance with the conditions prescribed by the Terminal Operator's directions regulations and byelaws governing the handling of such Hazardous Cargo. All extra costs, charges and expenses incurred by the Terminal Operator in handling such Hazardous Cargo shall be repaid by the Owner.

4.4.2 The Operator shall not be obliged to handle Hazardous Cargo and any Cargo that is prohibited by, or subject to restriction under, any Law.

4.5 REEFER CONTAINERS

4.5.1 The Shipowner, consignee or shipper, as the case shall be responsible at all times for the care and maintenance and connection to and dis-connection from power points of refrigerated and insulated containers to be loaded on or having been discharged from the Vessels ("**Reefer Containers**") and their contents whilst situate at the Terminal.

4.5.2 The Owner shall pay in respect of each Reefer Container connected to a power point provided by the Terminal Operator, such sum as shall be specified from time to time by the Terminal Operator, and in respect of any additional reefer services performed or licensed by the Terminal Operator from time to time in relation to which appropriate enquiry should be raised with the Terminal Operator.

5. WORKING TIME

The Terminal Services may be performed or provided during the normal working hours of the Terminal. Terminal gates will be open twenty-four (24) hours, seven (7) days a week and three hundred and sixty-five (365) days a year.

5.1 Such normal working hours may be subject to change from time to time, and current normal working hours may be obtained on enquiry to the Terminal.

5.2 Additional charges may be levied for Terminal Services performed outside normal working hours and/or at weekends or Bank Holidays, and subject to such other applicable restrictions or conditions.

6. CUSTOMER OBLIGATIONS

6.1 The Customer must: (a) pay all invoices issued by the Terminal Operator promptly; (b) promptly perform each task allocated to it in these Standard T&C; (c) arrange for the delivery of Containers or Cargo to the Berth in accordance with the Cut-Off procedures described in Article 4.3 and supply not later than twenty four (24) hours before the Vessel arrives, information sufficient to enable the Terminal Operator to provide the Terminal Services, including the validation of any export Containers to be loaded; (d) pay excess storage charges which accrue beyond the relevant Free Storage Period as described in the Tariff Schedule in respect of all export Containers (whether full or empty); and (e) comply with, and ensure that its employees, officers, agents and sub-contractors comply with, the SOLAS Requirements.

6.2 Where the Customer is a Vessel Operator, the Customer must: (a) comply with the Berthing Window Plan; (b) provide regular sailing schedules and notification of ETAs of Vessels; (c) submit to the Terminal Operator not later than two (2) days before the Vessel arrives one (1) complete set of Cargo documentation as is necessary for the orderly and efficient discharge and loading of that Vessel. Such documentation shall include, without limitation, manifests, export booking lists, bay plans, notifications and detailed descriptions of Hazardous and Reefer Cargos together with such other documents as may be required under the SOLAS Requirements or as the Terminal Operator may reasonably require in order to perform its obligations; (d)

confirm to the Terminal Operator within three (3) Business Days after receipt by the Customer, the accuracy of actual ship working information provided by the Operator to the Customer for invoicing purposes. Absence of a response from the Customer will be deemed an acceptance of the accuracy of the information provided, and any dispute with respect to the information must be resolved by the relevant parties within three (3) Business Days of first receipt by the Customer, failing which the dispute must be resolved in accordance with Article 22; (e) confirm to the Terminal Operator, not later than the time of receipt of Containers/Cargo by the Terminal Operator in its yard, the Customer's instructions in relation to the loading or otherwise of such Containers/Cargo (including a lashing plan); (f) manage and control the movement of Vessels and/or related Vessel equipment within the Port with all due care and skill such that the Vessels do not cause any damage to the Terminal or persons or property on or in the vicinity of the Terminal; and (g) ensure that all lashing gear (including stacking cones and twist-locks) conforms to international standards, is in good working order, is fitted in a consistent manner and is placed readily available adjacent to the area to be lashed;

7. GENERAL WARRANTIES OF THE OWNER

7.1

The Shipowner and/or Cargo Owner undertake that the cargo: (a) complies with all applicable international safety regulations and are properly packed and/or fit to withstand the ordinary risks of the Terminal Services; (b) is not dangerous, hazardous, poisonous, flammable toxic or liable to become so in the form in which it is delivered and/or in which they are to remain while on the Terminal, or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation. (c) is accurately described and without prejudice to Article 7.1(b) that it will not tender any Dangerous Cargo or temperature controlled goods without first presenting to the Terminal Operator a full description of the Cargo and Containers and disclosing their nature without prejudice to the entitlement of the Terminal Operator in its discretion to refuse to provide the Terminal Services in respect of Dangerous Cargo whether or not declared by the Shipowner and/or Cargo Owner; (d) is not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Terminal; (e) is not over-heated or under-heated or liable to become so while on the Terminal; (f) will not contaminate or cause danger, injury, pollution or damage to any person or any other goods, equipment or vessel or the Terminal or the water or air adjacent thereto; (g) does not require for their safekeeping any special protection (other than as may be agreed in writing with the Terminal Operator) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will remain safe if left standing in the open on the Terminal or in covered accommodation (if agreed with the Terminal Operator); (h) contains no unauthorized controlled drugs, contraband, pornographic or other illegal matter; (i) is properly and sufficiently packed, marked and weighed (for the purpose of the VGM Regulations) in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accurately documented and labelled for all shipping, cargo handling, despatch, customs and like purposes.

8. VESSELS

8.1

Where the Customer is a Vessel Operator, the Customer (a) warrants and undertakes to ensure that the Vessels are operated in compliance with all laws with respect to safety,

stability, seaworthiness, fitness for purpose and security including, without limitation, the SOLAS Requirements and any regulations introduced pursuant to the ISPS Code ("**Regulatory Compliant Vessel**"); (b) acknowledges that the Terminal Operator may (at its absolute discretion) from time to time conduct Vessel compliance surveys if the Terminal Operator deems such surveys necessary for the purposes of compliance by the Terminal Operator with its internal health, safety, environment and security policies.

8.2 The Terminal Operator will be entitled to refuse to provide the Terminal Services to any Vessel that is not a Regulatory Compliant Vessel, and the Shipowner, or the Vessel Operator, will indemnify and hold harmless the Terminal Operator in respect of any consequences of a Vessel that is not a Regulatory Compliant Vessel presenting at the Berth or within the Terminal that is not a Regulatory Compliant Vessel and/or arising out of the provision of the Terminal Services in respect of such Vessel.

8.3 Where the Customer is a Vessel Operator, (a) the Terminal Operator must review the stowage plan and stow instructions provided by the Customer and, after taking into account the configuration of the wharf cranes, the yard configuration, the physical constraints of the Vessel, any pilotage restrictions and wind and tidal constraints, must specify the working berth most conducive to the efficient operation of the Vessel and on which side the Vessel should be berthed. If the Customer Vessel can be worked equally well from either side it may be berthed so as to minimize tug costs for the Customer; Subject to sub-clause (c), the Customer may, but shall not be obliged to, comply with the Terminal Operator's berthing instructions under sub-clause (a); (c) If the Customer fails to comply with the Terminal Operator's berthing instructions, the Terminal Operator reserves the right to vary the Vessel's working program.

8.4 The Shipowner, or the Vessel Operator, shall (if required) permit the Terminal Operator the full use of all lighting, cranes, gantries, winches, derricks, runners and tackle on the vessel and shall supply full power therefor and for lighting at all times without charge. The Shipowner, or the Vessel Operator, shall provide all necessary standing and running gear, hatch and winch tents, gear and dunnage.

9. SECURITY

9.1 The provision of any security services or anti-terrorist measures in respect of the Vessels shall be the responsibility of the Shipowner.

9.2 The Terminal Operator reserves the right to move to another location and/or inspect any Container, Cargo which in its reasonable judgement is likely to damage other cargo or property (including Hazardous Cargo), at the risk and expense of the Customer.

9.3 The Owner shall comply in every respect with the International Ships and Ports Facility Security Code ("**ISPS Code**") together with all relevant UK and EU Regulations as may be amended or updated from time to time, and any instructions or directions issued by any Regulatory Authorities relating to any of the said Regulations, and in particular the Owner shall at all times comply fully with the instructions of the Port relating to the Terminal and/or any other property of the Terminal Operator adjacent thereto.

9.4 The Terminal Operator shall be entitled to charge the Owner an ISPS levy, and further, in the event that ISPS conditions, and/or the level of security threat, at any of the Terminals increases at any time, the Terminal Operator reserves the right to then charge the Owner an additional charge proportional to the increase in port security costs

thereby incurred by the Terminal Operator in relation to the performance of the Terminal Services.

10. RATES

10.1 The Customer must pay the Terminal Operator the Rates set out in the Tariff Schedule, including any applicable Public Tariff Schedules (collectively the Tariff Schedule) provided to the Customer by the Terminal Operator.

10.2 The rates set out in the Tariff Schedule may from time to time be varied by the Terminal Operator by giving a minimum of 30 days' notice of change to the Customer or as published in the Website.

10.3 The Terminal Operator will, upon the request of the Customer, price any individual Terminal Service that does not have a corresponding rates in the Tariff Schedule.

11. REN CHARGES

11.1 LADEN CONTAINERS

11.1.1 All laden Containers received or discharged onto the Terminal shall be permitted to remain on the Terminal free of charge for such periods (if any) as specified from time to time in writing by the Terminal Operator (the "**Free Period**").

11.1.2 All laden Containers remaining on the Terminal after expiry of the Free Period (if any) shall be subject to a Rent Charge as specified from time to time by the Terminal Operator. Such Rent Charge, payable by the Owner, shall apply until the relevant laden Container is either delivered from the Terminal or loaded onto a Vessel.

11.1.3 The Terminal Operator may in its absolute discretion, and notwithstanding Clause 11.1.1, give notice at any time to the Owner requiring the Owner to remove any laden Containers from the Terminal within a specified time. Failing such removal, the Terminal Operator's rights shall include but will not be limited to refusing to accept thenceforth from the Owner any further laden Containers onto the Terminal, the imposition of a failed collection premium on the Rent Charges, and rights of sale and disposal.

11.2 EMPTY CONTAINERS

11.2.1 All empty containers received or discharged onto the Terminal (including a laden container which has been discharged and then stripped) shall incur a Rent Charge as specified from time to time by the Terminal Operator. Such Rent Charge, payable by the Owner, shall apply from the date that the relevant empty container is received or discharged up to and including the date on which the empty Container is delivered from the Terminal or loaded onto a Vessel.

11.2.2 The Terminal Operator may provide for the Owner a free storage allowance at the Terminal for such number of empty Containers at any one time as may be agreed from time to time in writing with the Terminal Operator. Rent Charges in respect of the storage of empty Containers on the Terminal, excluding those within the free storage allowance (if any), shall be charged to the Owner on a monthly basis at such rates relating thereto as are in force from time to time.

11.2.3 The Terminal Operator may in its absolute discretion, and notwithstanding Clause 11.2.2, give notice at any time to the Owner revoking such free storage allowance and/or requiring the Owner to remove any empty Containers from the Terminal within a specified time. Failing such removal, the Terminal Operator's rights shall include but will not be limited to refusing to accept thenceforth from the Owner any further empty containers onto the Terminal, the imposition of a failed collection premium on the Rent Charges, and rights of sale and disposal.

12. INVOICING AND PAYMENTS

- 12.1 Unless otherwise agreed in writing with the Customer all Rates are payable in advance prior to the provision of the Terminal Services.
- 12.2 Rates are exclusive of all applicable taxes. Where any such tax is payable in respect of the provision of the Terminal Services, then the Terminal Operator is entitled to recover that amount from the Customer. In that event the Terminal Operator must provide the Customer with a compliant tax invoice with respect to the amount of tax charged.
- 12.3 All payments due from the Customer under these Standard T&C shall be made in full without any setoff, abatement, restriction or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counter claim;
- 12.4 If the Customer fails to pay an invoice, the Terminal Operator may: (a) charge the Customer interest on any overdue amount, calculated daily at the cash rate charged by central bank the due date, plus 2% compounded daily from the due date until the date of payment; (b) suspend the provision of Terminal Services immediately until the outstanding amount is paid in full; (c) have a general lien and charge on any Containers, Cargo, Vessel or documents relating to the Containers, Cargo, or Vessel that are in the Terminal Operator's or its subcontractors' possession or control, for all payments due and owing by the Customer to the Terminal Operator, including any costs incurred in the of recovery of any such payments (sums owing); and (d) have the right to sell, abandon or otherwise dispose of any Containers, Cargo or documents as described in subparagraph (c) above, by public auction or private treaty, without notice to the Customer, at the Customer's expense for the purpose of recovering any sums owing; and (e) seek such other remedy as it sees fit.

13. LIEN

The Terminal Operator shall have a lien on the Cargo, the Containers and any documents relating thereto for all sums whatsoever due at any time by the Customer to the Terminal Operator (including sums in respect of previous transactions, on general account or otherwise), including but not limited to damages for breach of contract and other unliquidated claims, costs, expenses, interests, costs in exercising and maintaining the lien or selling the Cargo/Containers, liabilities and all previously unsatisfied debts whatsoever.

13.1 Right of Detention and Lien: The Terminal Operator shall have a general and particular lien over any and all Vehicles, Equipment, or Containers, as well as the Cargo within such Containers, entering the Terminal, to secure payment of any outstanding charges, fees, or costs incurred due to damage caused by the User, its employees, agents, or contractors to the Terminal's property, infrastructure, or equipment.

13.2 Exercise of Lien: If any damage is caused to the Terminal's property by a User's Vehicle or personnel, the Terminal Operator may, at its sole discretion, refuse to permit the Vehicle to exit the Terminal and/or retain possession of the Cargo/Container/Vehicle until such time as the User provides:

- (a) Full payment for the cost of repair or replacement, or
- (b) Sufficient security (such as a bank guarantee/Indemnity letter or cash deposit) for the estimated cost of repairs, plus administrative costs and potential storage fees incurred during the detention.

14. RISK AND INSURANCE

- 14.1 The Customer must at all times (a) take out and maintain with insurers of international standing (which shall include any members of the International Group of P&I Clubs but also any other insurers acceptable to the Terminal Operator) all such insurances and insure against such risks in respect of third party liability risks (including but not limited to cargo damage, pollution and wreck removal) and for levels of cover as would normally be taken out by a prudent operator of comparable Vessels in similar trades; and (b) provide evidence of the currency of such insurance coverage upon the Terminal Operator's request.
- 14.2 All Cargo and Containers at or on the Terminal are the sole responsibility of the Owner and shall at all times remain at the entire risk of the Owner. The Owner is advised to make appropriate comprehensive insurance arrangements in respect thereof.

15. LIMITATION OF LIABILITY

- 15.1 **Maximum Liability.** (1) Subject to clause 15.1(2), the maximum liability of the Terminal Operator to the Customer is; (a) in respect of any liability arising out of any single incident or series of incidents arising from a common cause shall not exceed USD25,000 (Liability Ceiling Amount); (b) where the Customer is a Vessel Operator, in respect of any loss or damage to a Vessel, up to a maximum of USD50,000.00 for any single incident or series of incidents; (c) in respect of loss or damage to a Container, or a Container and its ancillary equipment, the depreciated value or the reasonable cost of repairs whichever is less, subject to limits of USD1,500; (d) in respect of loss or damage to: (i) containerized Cargo, up to a maximum of USD1,500 per Container; (ii) break bulk or Non-Containerized Cargo, USD2,500 per piece arising out of for any single incident or series of incidents. (e) in respect of loss or damage to any other equipment owned or operated by the Customer not previously referred to in this clause, up to a maximum of USD50,000 for any single incident or series of incidents. (2) Clause 15.1(1) does not limit a Party's liability: (a) in respect of death of or personal injury to any person; (b) in respect of any act or omission which constitutes fraud, wilful misconduct or gross negligence; (c) for any amount which is recoverable under a policy of insurance or which would have been recoverable had the Party effected and maintained insurance
- 15.2 **Himalaya Clause.** The Customer: (a) must include in all their contracts of carriage for Containers or Cargo (including any bill of lading), a provision whereby the Terminal Operator and each of the Terminal Operator's staff: (i) has the benefit of any provision in such contract which limits the Customer's or the Customer's liability relating to such carriage (including any liability caps or limitation periods), and the Terminal Operator appoints the Customer as its agent only for the purpose of making this inclusion in its contracts; and (ii) is not liable to any third

party in relation to such carriage or Cargo and, without prejudice to the liability of the Terminal Operator to the Customer, the Customer indemnify the Terminal Operator and each of the Terminal Operator's Staff and hold them harmless against any claim by a third party relating to such carriage or cargo; and (b) acknowledges that one of the Terminal Operator's promises to the Terminal Operator's staff is that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer and accordingly agree that: (i) the exclusions and limitations of the Terminal Operator's liability benefit the Terminal Operator's staff and any anyone else who is vicariously liable for acts or omissions of the Terminal Operator's staff; and (b) for the purposes of this clause 15.1(b) only, the Terminal Operator enters into this contractual relationship as agent for the Terminal Operator's staff and for all such persons referred to in clause 15.1(b)(ii) who shall be treated as if they were parties to this Standard T&C.

15.3 **Time Limit and Minimum Threshold on Claims.** No Party ("**First Party**") is liable for, and another Party must not make any Claim against the First Party under or in connection with this Standard T&C unless: (a) in the case of an event which customarily requires a survey of damage, the claimant immediately notifies the recipient in writing; (b) the claimant notifies the recipient in writing of the event or events giving rise to the Claim (other than events covered under sub-clause (a)) within sixty (60) days after their occurrence; and (c) the claimant commences proceedings by filing and serving a notice of arbitration under Article 22.4 within one (1) year after the occurrence of such event or events; and (d) the amount of the Claim exceeds USD100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of USD50,000

15.4 **Exclusion of Consequential Losses.** Under no circumstances shall the Terminal Operator be liable for any loss of profit, 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 Customer to any third party (in each case whether direct or indirect) or any indirect or consequential loss.

15.5 **Exclusions in Respect of Provisions of Terminal Services.** Notwithstanding anything to the contrary therein, the Terminal Operator is not liable to the Customer for any claim, and the Customer must not make any Claim against the Terminal Operator in respect of any failure by the Terminal Operator to provide the Terminal Services, unless (and then only to the extent that) the failure by the Terminal Operator was a result of a breach of these Standard T&C by, or negligent act or omission of, the Terminal Operator; and the failure by the Operator was not attributable to: (a) the Customer's staff or contractors, volunteers or agents of the Customer; (b) another customer or any employees, contractors, volunteers or agents of another customer; (c) a Force Majeure Event; or (d) any action taken by the Operator, acting reasonably, in response to an emergency or a genuine safety risk.

15.6 **Waiver.** To the extent permitted by law, the Customer hereby agrees, for and on behalf of itself, and the Vessel owner, to waive any statutory right to limit liability for personal injury or property damage by establishing a limitation fund under any applicable international convention or national law governing the liability of owners and/or operators of seagoing vessels, including the

Limitation Conventions. The Customer hereby warrants that it has the authority to bind the Vessel owner to such waiver of limitation. For the purpose of this Article, "Limitation Conventions" means the Convention on Limitation of Liability for Maritime Claims 1924, the Convention on Limitation of Liability for Maritime Claims 1957, the Convention on Limitation of Liability for Maritime Claims 1976, and the 1996 Protocol thereto.

16. APPOINTMENT OF AN AGENT

16.1 The Customer may, subject to prior notification in writing to the Terminal Operator, appoint an agent in respect of the Terminal Services and other services and facilities provided by the Terminal Operator, in which event, the Customer shall be deemed to have authorized the agent to act on the Customer's behalf in respect of all matters hereunder including to pay to or receive from the Terminal Operator all sums due under the Standard T&C unless the Customer notifies the Terminal Operator to the contrary at the time of such appointment or any time thereafter and: (a) the Terminal Operator shall be entitled at any time, to act upon any instruction, request, notice or other communication from the agent without prior reference to the Customer and to receive from and to pay to the agent any sums due these Standard T&C; (b) any payment made by the Terminal Operator to the agent pursuant shall be held by the agent in trust for the Customer and the receipt of the agent of such payment shall be a full and sufficient discharge of the Terminal Operator in respect of such payment; (c) any payment made by the Terminal Operator to the agent shall only be made to the agent for the time being when such payments fall due without any apportionment or deduction whatsoever with any other person; and (d) the entitlement of the Terminal Operator under sub-clause (a) above shall continue until the Terminal Operator receives notice from the Customer to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the agent thereafter.

17. FORCE MAJEURE

17.1 A Party shall not be liable for any failure of or delay in the performance of its obligations under these Standard T&C to the extent that such performance is prevented or delayed by a Force Majeure Event.

17.2 As soon as practicable but no less than 24 hours from the occurrence of the Force Majeure Event, the affected Party shall notify the other Party of the occurrence through a written notice, e-mail, or, if the affected Party has limited means of communication, by any available means of sending a notice; provided, however, that the affected Party shall continue to use commercially reasonable efforts to remove or mitigate the cause and/or impact of the Force Majeure Event.

17.3 Payment of any invoice due and owing under these Standard T&C shall in no event be delayed by the affected Party.

17.4 If the Terminal Operator is prevented by Force Majeure Event from providing the Terminal Services, either in whole or to a substantial extent, and the period of Force Majeure exceeds two (2) months, then at any time on or after the expiration of such period, either Party may terminate the provisions of the Terminal Services immediately upon fourteen (14) days' written notice to the other.

18. BUSINESS ETHICS & COMPLIANCE

18.1 The Parties undertake to comply with all applicable laws, regulations and rules, including, but not limited to, those relating to anti-corruption, anti-bribery, Human rights,

labour rights, competition matters, applicable customs regulations and health, safety, and Environmental regulations. The Parties shall assure that all of their owners, directors, officers, employees, agents, subcontractors and representatives (hereinafter referred to as "Representatives") shall likewise comply with such applicable laws, regulations and rules.

18.2 Economic sanctions – Embargos. The Parties represent and warrant that they and their Representatives will comply with any and all applicable restrictions and/or prohibitions of commercial transactions under statute, regulation, rule, or other such rulings published by a governmental entity, including but not limited to the United States, European Union, United Nations and United Kingdom. The Parties further represent and warrant that they and all of their Representatives are not identified nor listed nor detained or controlled by an entity listed by the United States, European Union, United Nations or United Kingdom as a "Blocked Person", "Denied Person", "Specially Designated National" nor are subject to prohibition of commercial transactions under statute, regulation, rule or other rulings published by the United States, European Union, United Nations or United Kingdom. Each Party shall notify the other immediately in the event it or any of its Representatives is added to a sanctions list. The Parties shall not enter directly or indirectly into any agreement or transaction with a "Blocked Person", "Denied Person" or "Specially Designated National" in any way related, directly or indirectly, to the Terminal Services.

18.3 Data Privacy: Each Party shall process the business contact information of the other Party's personnel and authorized users (e.g. name, business telephone, address, email, and user ID) for the sole purpose of monitoring the commercial relationship mandatory for the execution of the Terminal Services. The collection, the processing and the transfer of personal data shall be lawful in accordance with any and all applicable data protection laws and regulations (including but not limited to the E.U. General Data Protection Regulation).

19. ASSIGNMENT. SUB-CONTRACTING

19.1 The Terminal Operator shall have the right to assign or otherwise transfer its right, title, interest and obligations under these Standard T&C to The Customer shall not be entitled to assign, or otherwise transfer or subcontract all or any of its rights, title, interest or obligations under these Standard T&C without the prior written consent of the Terminal Operator

19.2 The Terminal Operator may sub-contract the Terminal Services but sub-contracting shall in no way relieve the Terminal Operator of any of its obligations under these Standard T&C and the Terminal Operator shall remain responsible for its sub-contractors and their performance.

20. RELATIONSHIP TO SPECIAL AGREEMENTS

20.1 These Standard T&C are supplemental to any Special Agreement made between the Terminal Operator and any other Party relating to the Terminal Services except insofar as is expressly excluded thereby or inconsistent therewith in which event the terms and conditions of such Special Agreement shall prevail.

21. TERMINAL CONTACT

21.1 All enquiries in relation to the Terminal Services should be directed to the appropriate personnel at the Terminal, relevant contact details for which may be found on the Website.

22. GOVERNING LAW. DISPUTE RESOLUTION

22.1 These Standard T&C and any dispute arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria without regard to any conflict of law rules.

22.2 A Party claiming that a Dispute has arisen must give to the other Party a dispute notice specifying the Dispute and requiring its resolution under this Article.

22.3 Each Party must, during the ten (10) Business Days after a notice is given under this Article (or if the Parties agree a longer period, that longer period), procure that its nominee uses his or her best efforts to resolve the Dispute.

22.4 If a Dispute is not resolved amicably within sixty (60) days following the written invitation to mediate or within such other period as the Parties may agree in writing, the claimant shall refer the matter for arbitration in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The seat of arbitration shall be London, England even where any hearing takes place in another jurisdiction. The reference shall be to three (3) arbitrators unless the Parties agree otherwise. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms.

23. GENERAL PROVISIONS

23.1 Entire Agreement. These Standard T&C comprise the entire agreement between the Terminal Operator and the Customer in respect of the provision of Terminal Services and supersedes all previous agreements and understandings between the Terminal Operator and the Customer in respect of the provision of Terminal Services. If the Customer's documentation contains terms or conditions in addition to or which differ from these Standard T&C, each additional or varying term or condition shall have no effect.

23.2 Amendments. Any modification, variation, amendment or addition to these Standard T&C must be in writing and published.

23.3 Severability. If any provision of these Standard T&C shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of these Standard T&C shall not be affected and the remainder of these Conditions shall continue in full force and effect.

23.4 Independent Contractor. These Standard T&C do not create a relationship of employer and employee, principal and agent or partnership between the Terminal Operator and the Customer.

23.5 If there is any conflict between the English version of these Standard T&C and any translation thereof into any other language, the English language version shall prevail.

24. ALTERATIONS AND VARIATIONS

24.1 These Standard T&C and the rates and charges agreed or specified in accordance herewith, may be altered or varied at any time and from time to time in such respects and in such manner as the Terminal Operator may consider desirable.