

TERMS OF BUSINESS (TOB)



Salalah Port Services Company SAOG

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A. Application

Save as otherwise specifically provided, the following Terms of Business (hereinafter referred to as "TOB") apply to all work and services performed by Salalah Port Services Company SAOG (hereinafter referred to as "**Terminal**") at Salalah Port (hereinafter referred to as "Port"). Any user of Terminal services (hereinafter referred to as "**Customer**") is deemed to have accepted these Terms of Business upon entry of their cargo or vessel into the Port. These Terms of Business are in addition to the Port Rules and Regulations as updated from time to time.

B. DEFINITIONS AND INTERPRETATION:

- 1) In these TOB the following words and expressions shall, unless the context shall otherwise require, have the following meanings:

Audit means inspection and audit conducted by SPS to ascertain the standards and quality of the Customer in performing and complying the terms of this TOB and the Rate Offer;

Approved HSSE Plan mean and as defined published on www.portofsalalah.com/port_information from time to time;

Allocated Land means any land within the Port Are as defined under the Concession Agreements comprising the Container Terminal Concession Agreement and the Conventional Facilities Concession Agreement, granted to the Terminal, that Terminal has allocated for the Customer's storage use from time to time (either for the purposes of this TOB) and in accordance with terms and conditions under this TOB that may apply;

SPS Fatal 5 means and include the list of actions as specified and published on www.portofsalalah.com/port_information from time to time;

Cargo means and includes Container Cargo and General Cargo (also break bulk cargo) with relevant proof of documents for such cargo; and include any of the goods of any kind, size or weight/measurement whatsoever owned / managed by the Customer and to be transported in or to be transported out or otherwise will be passing through the Port of Salalah due to the provision of SPS Services;

CFS/ICD means the Container Freight Station or Inland Container Depot where, amongst other things, Cargo is packed, unpacked and cleared;

Confidential Information means:

- (a) the contents of specific agreement / Rate Offer signed between the Terminal and the Customer;
- (b) information of the Customer, or its contractors or SPS or or its contractors, disclosed to the other Party, including any formula, pattern, compilation, program, apparatus, device, drawing, schematic, method, technique, know-how, process or data, cost, price, revenue details and other non-public information such as business plans or other technology that has economic value, actual or potential, and is not generally known to, and is not readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

- (c) any information that was identified by the disclosing Party to the receiving Party as confidential at the time of disclosure;

Consignee means a person other than the Customer entitled to receive Cargo as per the bill of lading and invoice;

Consignor means any person other than the Customer who delivers Cargo as per the bill of lading and invoice;

Container means

- a) any container 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other container developed for use in liner shipping at any time, including, but not limited to, flat-racks, platforms, reefer containers and tanks, with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a standard 20', 40' and 45' spreader;
- b) a non-standard Container; and/or
- c) an Out of Gauge Container.

Container Cargo means (i) any goods or articles of any kind whatsoever including Hazardous Cargo, transported in a Container, Non-standard Container or Out of Gauge Container, excluding Non-containerised Cargo and (ii) empty Containers;

Container Ship means a ship fitted for the carriage of Containers;

Container Terminal means the terminal at Salalah Port comprising container berths, the Container Yard and CFS and all other equipment and buildings at the Port whether constructed or under construction, together with any additional land, berths, buildings, Container Yards and CFS in operation or to be developed for the purpose of providing Container Terminal Services for Container Cargo;

Container Terminal Services means the services to be provided to the Customer by the Terminal in respect of Container Cargo or Container Ships;

Container-transporter means any road vehicle (including articulated vehicles) used for the transportation of Containers, Non-standard Containers and Out of Gauge Containers or any vessel other than a Container Ship;

Container Yard means the land and premises used by the Terminal where Containers are, amongst other things, stored, received and delivered;

Contract of Carriage means any contract or other document including, but not limited to bills of lading and contracts of affreightment, seen and accepted by the Terminal, which evidence a contract between two parties to ship Containers and/or Cargo on-board a ship for consideration;

Controlled and **Control** means the holding of power to direct or cause the direction of management, policies and decisions of a company, corporation, partnership or other entity

including, without limitation, through control either direct or indirect means of not less than 50% of the voting rights in such company, corporation, partnership or other entity.

Customs Authorities means the Directorate General of Customs operated by the Royal Oman Police, Government of Oman;

Damages” shall mean all applicable costs, losses, claims, damages, expenses, action, suits (including attorney’s fees and legal costs payable) or liabilities, but shall not include, unless specified, any indirect or consequential damages, or any loss of any anticipatory or actual profit.

Dutiable Cargo means dutiable goods as defined by the Customs Authorities and the relevant and import and export authorities;

EDI System means an electronic data interchange system whereby any Message is transmitted from one party to another party by electronic means;

Event of Default means any of the events specified as Events of Default in this TOB

Expiry Date means the date as defined as Expiry Date in this TOB;

Force Majeure means any act of God, act of public enemies, war, warlike acts, terrorism, restraint of governments, princes or peoples of any nation, riots, strikes, lockouts, insurrections, civil commotion, civil disobedience, floods, earthquake, fire, restrictions due to quarantines, epidemics, storms or any other causes beyond the reasonable control of the party claiming an event of Force Majeure by writing;

General Cargo" means all goods or articles of any kind whatsoever other than Container Cargo and includes Non-containerised Cargo, break bulk cargo, livestock or passengers,

"**General Cargo Terminal** means the terminal at Salalah Port comprising general cargo berths, the General Cargo Yard and all other equipment and buildings at the Port whether constructed or under construction, together with additional land, berths, buildings and General Cargo Yard's in operation or to be developed for the purpose of providing General Terminal Services for General Cargo;

General Cargo Ships means a ship carrying General Cargo or berthing at the General Cargo Terminal and includes dhows break bulk vessels, navy vessels, offshore supply vessels, oil tankers, gas tankers, dredging units, hydrofoils, hovercrafts, hydroplanes and any other sea going craft whether or not designed for carrying cargo;

General Cargo Terminal Services means the services to be provided to the Customer by the Terminal in respect of General Cargo or General Cargo Ships;

General Cargo Yard means the land and premises used by the Terminal where General Cargo is among other things stored, received and delivered.

Government means Government of the Sultanate of Oman;

Government Approvals means all law, rules, obligations, permissions, approvals, consents, licences and requirements of the relevant Government Bodies which are applicable in connection with the provision of the SPS Services pursuant to this TOB at the Port of Salalah;

Government Body or **Bodies** means the Government and any ministry or department or authority thereof and anybody, commission, authority, agency or entity exercising executive, legislative, judicial, regulatory, fiscal or administrative powers and functions; and includes any official or employee of a Government body acting in an official capacity;

Hazardous Cargo means Cargo of any kind classified by the International Maritime Organisation as hazardous and shall include "dangerous goods" as defined in the International Maritime Dangerous Goods Code;

HSSE Regulations means all health and safety rules and regulations that apply at the Port of Salalah (under law or otherwise) including those specified in the SPS's Rules and Regulations and any other health, safety, security and environment requirements or instructions that may be made by SPS from time to time and to be complied by the Customer;

Indemnify means to indemnify and keep indemnified and hold harmless;

Intermediary Service means, in relation to the use of the EDI System, services or facilities provided by an intermediary service provider as mutually agreed by the parties to facilitate the interchange of data by electronic means not susceptible to any external interference;

Labour Law means Royal Decree 35/2003 of the Sultanate of Oman and as may be amended and or modified from time to time;

Land means Allocated Land and/or Unallocated Land, as applicable;

Law means all laws, regulations, ministerial decisions, statutes, statutory instruments, law proclamations, regulations, resolutions, notices, rulings by court, decrees includes Royal Decree, orders, rules, codes, treaties, directives and other legislation to the extent of having the force of law or any interpretation of any of the same, as enacted, issued or promulgated in Oman, by the Sultan of Oman or the Government (which includes any Government Body), including amendments, modifications, extensions, replacements and re-enactments of any of the same and any injunction or final non-appealable judgment, decision or order of any Government Body having jurisdiction over the issue in question;

Losses means all liabilities and losses incurred and obligations suffered by SPS including without limitation of damages, compensation, claims, demands, actions, proceedings and all related fees, costs and expenses (include court costs and legal fees) incurred by SPS;

Message means data structured in accordance with the User Manual and adopting the EDIFACT standards which is transmitted between Terminal and the Customer using an EDI System through the medium of the Intermediary Service;

Message Date Log means a complete record date wise maintained by the parties of Messages, Message Transmissions and Message Retrievals transmitted to and received from the Intermediary Service database;

Message Retrieval means the access by any of the parties to the Intermediary Service data base and the retrieval by such party of any Message stored in the data base;

Message Transmission means the deposit of a Message by any of the parties in the Intermediary Service database;

Non-containerised Cargo means any cargo, which cannot be handled by means of normal use of a container spreader, even with attachments;

Non-standard Container means a Container, in any size as per ISO standards, accepted for transport/carriage on a Container Ship which cannot be handled by means of a normal use of a container spreader, even with attachments;

Out of Gauge Container (OOG) means a Container whose contents exceed the dimensions of the standard Container of 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height;

Oman means the Sultanate of Oman;

OMR means Omani Rial, the official currency of the Sultanate of Oman;

Penalty Rate means in OMR payable for each square meter of Unallocated Land being occupied or used by the Customer, as determined by SPS from time to time;

Personnel in relation to a Party (either SPS or the Customer), means its employees, officers, contractors, representatives and agents;

Pilot means any qualified person employed or contracted by the Terminal, not belonging to a Container Ship who has conduct thereof to guide the ship through the canal or channel and waterways within the Port limits;

Port or Terminal or SPS means Salalah Port or Port of Salalah, within the boundary lines as determined under the relevant Concession Agreements granted by the Government of Oman and, for the avoidance of any doubt, includes all of the area between the terminal gates and the stockpile gates and includes the Container Terminal and General Cargo Terminal and all berths and anchorages, employees accommodation buildings and employees recreational facility annexe (Oasis Club) area (hilltop) included within the port limits as defined by the Port Rules and Regulations, managed and operated by Salalah Port Services Co. SAOG and for brevity "**SPS**";

Port Rules and Regulations means:

- a) Port Rules and Regulations;
- b) Container Terminal Operational Guidelines;
- c) General Cargo Terminal Operational Guidelines;
- d) Port Tariff or SPS Tariff; and
- e) Such other rules, regulations and guidelines including Approved HSSE Plan, SPS Fatal 5, safety regulations, issued by the Terminal,
as published on www.portofsalalah.com/port_information from time to time;

Public Tariff or SPS Tariff means the charges published on www.portofsalalah.com/port_information from time to time including but not limited to the following:

1. Marine Charges;
2. General Cargo Terminal Tariff;
3. Container Terminal Tariff;
4. Hire of Equipment Charges;
5. Maintenance & Repair Charges.

Reference to SPS Tariff in this TOB is brought for reference and shall exclude any rates exclusively offered under the Rate Offer;

Rates means the price, costs and expenses set out in Rate Offer agreed between the Customer and the Terminal to be charged by the Terminal and payable by Customer in respect of Terminal Services and or SPS Services rendered by SPS in the manner as set out in the Rate Offer, and the Rates may be reviewed and revised from time to time based on mutual negotiation;

Rate Offer shall mean a written letter document recording the price, costs and expenses for Terminal Services and SPS Services offered by SPS and accepted by the Customer by signing the said offer.

Reefer Container means a Container used for the transportation of refrigerated Cargo;

Ship means a Container Ship or a General Cargo Ship and also includes dhows;

Sub-contract means any sub-contract for the provision of the Terminal Services or any part thereof granted by the Terminal to a Sub-contractor inside the Terminal;

Sub-contractor means any sub-contractor appointed by the Terminal for the performance of the Terminal Services or any part thereof inside the Terminal given under Sub-contract;

SPS's Rules and Regulations means those rules and regulations published on the SPS Website from time to time;

SPS Services means the services to be provided by SPS as set out in Rate Offer signed between the Customer and Terminal;

SPS Website means www.salalahport.com;

Terminal Services means the services to be provided to the Customer by the Terminal under these TOB including the Container Terminal Services and General Cargo Terminal Services;

Terms of Business (TOB) means this document.

User Manuals means the documents or instructions which are produced from time to time by Terminal by way of guidelines to govern the methods and operation of the structure, transmission and receipt of Messages each of which such documents may cover one or more Messages;

USD or US\$ means the currency of United States of America

Wharf includes a berth, quay, pier, jetty, docks, ramp, landing place and any wall and building adjoining the foreshore, sea-bed of the Port of Salalah;

Working Day means any day on which services are performed by the Port including any public holidays declared by the Government of Oman on which the Terminal is open for business for which a special Tariff be applied.

Unallocated Land has the meaning given to the land used to store Customer's stockpile without proper approval of SPS;

Vacation Date means the date on which the Customer vacates the Allocated Land;

- 2) The headings in these TOB are for reference only and shall not be construed as defining the terms of these TOB.
- 3) Unless the context otherwise requires:
 - i) words importing the singular include the plural and vice versa;
 - ii) words importing any gender include all genders; and
 - iii) a reference to a person includes a reference to a body corporate and to an unincorporated body of persons or proprietorship concern or firm.
 - iv) The headings in this TOB are for convenience only and will not be used in the interpretation of this TOB.
 - v) References in this TOB to:
 - a) terms not herein defined will have the meaning ordinarily ascribed to them in the Shorter Oxford English Dictionary;
 - b) a person includes an individual, an undertaking, any corporate body and also any unincorporated association, whether or not carrying on a trade or a business, together with that person's legal representatives and successors;
 - c) recitals, Clauses and schedules are, unless the context otherwise requires, references to recitals and Clauses of and Schedules to this TOB;
 - d) a day means the period between any one midnight and the next;
 - e) a month means a period of one month according to the Gregorian calendar commencing with any day of the month;
 - f) the words include or including will be deemed to be followed by without limitation or but not limited to whether or not they are followed by such phrases or words of similar report;
 - g) a Party will include its permitted assignees, transferees and successors in title;
 - h) any Royal Decree, ministerial decision, enactment, ordinance or regulation including any amendment or replacement thereof will be a reference to those issued as of the date of such issuance; and
 - i) reasonable endeavours and best endeavours will be interpreted in accordance with English law.

- vi) Unless specified otherwise, references to Customer in this TOB includes both the Customer and all of its Personnel.
- vii) Any obligation in this TOB on a Party not to do something includes an obligation not to agree, allow, permit to that thing being done.
- viii) If there is any conflict between the terms and conditions of this TOB and the terms and conditions of its schedules, appendices and annexures (to the extent any), the terms and conditions of the main document will first prevail.

C. MARINE AND STEVEDORING SERVICES

1) Marine Services at the Port

Terminal may, in its discretion, provide the following services to the Customer at the Port:

- i) receiving Ships at Wharves alongside the Terminal, either Container /Ships or General Cargo /Ships as the case may be;
- ii) rendering assistance in navigating, mooring and unmooring Ships in the Port.

2) Other Services provided by the Terminal

- i) unloading from and loading onto, Container Ships of Containers;
- ii) unloading from and loading onto, General Cargo Ships of General Cargo (include any other means);
- iii) acceptance into and removal from the Container Terminal of Containers by means of shore based cranes including lashing and unlashng of Containers on a Container Ship;
- iv) acceptance into and removal from the General Cargo Terminal of General Cargo [by means of shore based cranes;]

together with any other services which may be agreed in advance in writing, at prices agreed mutually between the Parties or failing mutual agreement, at the applicable Public Tariff.

3) Sailing Schedule and Berthing Requirements

- i) The Customer shall notify the Terminal with a sailing schedule and berthing requirements, not later than three (3) weeks before each Ship's expected date of arrival at the Terminal. The berthing requirements shall include details of the projected number of any Containers or type and volume of General Cargo to be discharged from, or loaded onto, that Ship at the Terminal.
- ii) Not less than seventy-two (72) hours before the estimated time of arrival of a Ship at the Terminal, the Customer shall supply to the Terminal such particulars in writing as the Terminal may require or as otherwise required from time to time of the Containers or General Cargo (including the contents & value thereof together with valid insurance policy documents) on-board to be discharged from, or loaded onto, that Ship at the Terminal. The particulars and documents shall include, but shall not be limited to, information relating to Hazardous Cargo, OOG cargo, Reefer cargo and Dutiable Cargo contained in or intended to be contained in a Container.

- iii) Any changes to the berthing requirements provided to the Terminal in accordance with Clause C2 (ii) above must be promptly notified to the Terminal, but in any event not later than forty-eight (48) hours before the Estimated Time of Arrival (ETA) of the Ship at the Port.
- iv) The final time for arrival of a Ship shall be confirmed either in writing or by means specified by Terminal at least twenty-four (24) hours before the Ship's anticipated time of arrival at the Port.
- v) While every effort will be made by the Terminal to accommodate the Customers vessels as per the agreed schedule, the Terminal cannot be held liable or responsible in the event that vessels cannot be accommodated as per the agreed schedule, for whatever reason.

4) Arrival of a Ship at the Port

- i) A non-binding acceptance to receive the vessel at the Port will be given to the Customer for each call as may be appropriate having regard to the current circumstances at that time and prior/existing scheduled commitments of the Terminal. The Customer shall ensure that each of its Masters' shall not berth or attempt to berth his Ship at a Wharf alongside the Terminal until such acceptance has been given by the Terminal to the Customer that the Terminal is ready to receive the Ship. All marine movements in the channel shall be done under Pilot's escort and in compliance with the Port Rules and Regulations prevalent at the time. All marine movements in the channel shall be done under Pilot's escort and in compliance with the prevailing Port Rules and Regulations.
- ii) The Terminal will provide mooring crew to render assistance to the Ship. The mooring crew shall operate under the instructions and the responsibility of the Master / Pilot of the Ship for the sole purpose of making fast or casting off the Ship's hawsers and mooring ropes.
- iii) The Terminal will not be responsible for or liable in any way for latent defects in mooring bollards or posts, nor for any improper mooring of the Ship at the Port, whether or not such mooring was completed with the assistance of a berthing officer and mooring crew provided by the Terminal.
- iv) The Customer shall supply gangways from the Ship to the Port. The safety and illumination of gangways shall be the sole responsibility of the Customer and at the minimum should comply with the regulations laid down by International Labour Organisation (ILO) and the Labour Law.

5) Ships at the Port

- i) The Terminal shall provide the Customer with an efficient terminal control system controlling the movement of Containers or General Cargo at the Port and shall report activities relating to Container or General Cargo movement
- ii) The Customer shall ensure that all equipment on Ships for discharging and loading Containers or General Cargo is technically compatible with the Terminal's working equipment at the Port.

- iii) The Customer shall ensure that the Terminal's employees/contractors working on board the ship are provided with safe access (including guardrails and fencing where applicable) between the gangway and the holds, deck cargoes, lashing platforms etc that are to be worked. If access is required during the hours of darkness, all access routes should be lit with a minimum of 10 Lux and maximum of 50 Lux in all working areas taking into account any specific need that may require additional lighting is accordingly provided.
- iv) The Terminal shall permit the Customer to bring trucks alongside Ships and to load and discharge Ships' stores at such times as may be agreed and shall allow access to the Port personnel to proceed on board a Ship for the purpose of carrying out works and repairs. The Terminal and the Customer agree that access as referred to in this clause is permitted by the Terminal on condition that the same is carried out in accordance with the rules and regulations of the Terminal and the Customs Authorities. The Terminal shall not be responsible or liable in any way for any Loss, damage, cost, expense arising in any way howsoever to any property or person or thing granting access in accordance with this Clause. The Customer shall indemnify and keep indemnified the Terminal for any loss, damage, expense, cost or injury or fatal injury to property or persons including legal Costs and attorney fees in any way howsoever caused to person or property by reason of the Terminal permitting access under this Clause including third party costs.

D. CONTAINER AND CARGO HANDLING SERVICES:

1) Terminal Services

Subject to what is stated in Clause C3 above, the Terminal may, at its discretion, provide the following services to the Customer at the Port at the applicable Public Tariff or for such consideration as is agreed between the Customer and the Terminal from time to time:

- i) Receiving Containers from or for loading aboard Container Ships berthed at Wharves at the Container Terminal;
- ii) Transferring Containers to or from the Container Yard;
- iii) Receiving and delivering Containers from / to transporters;
- iv) Transferring of Containers to or from the C.F.S, ICD, Customs Examination Areas;
- v) Moving empty Containers to and from storage yards;
- vi) Stuffing and de-stuffing of Containers;
- vii) If available, Movement to rail terminal, loading & unloading from railway flats;
- viii) Reefer electricity supply, monitoring, PTI & minor repairs together with any other services which shall be agreed in writing;
- ix) Receiving General Cargo from or for loading aboard General Cargo Ships berthed at Wharves at the General Cargo Terminal or at the Container Terminal;
- x) Transferring General Cargo to or from the General Cargo Yard, stockpiles, by means of conveyor systems or by other means;

- xi) Receiving and delivering General Cargo from / to transporters;
- xii) Transferring of General Cargo to or from the C.F.S, ICD, Customs Examination Areas;
- xiii) If available, movement to rail terminal, loading & unloading from railway flats;
- xiv) Storage of full /empty container for an agreed time as per customer request in accordance with the commercial considerations.
- xv) Reworking of any hazardous or non-hazardous leaking Containers;

2) Acceptance of Containers

- i) Containers delivered from or to the Customer or a Consignor or a Consignee shall be brought for acceptance to or received from, such area within the Container Terminal as may be designated from time to time by the Terminal.
- ii) The Terminal is not obliged to receive or deliver Containers unless full covering documentation satisfying the Terminal has been provided to the Terminal. The Terminal's responsibility to the Customer for Containers shall commence only when the Containers have been delivered to the area designated as referred to in Clause D 2(i) above and notice of acceptance has been duly given by the Terminal.
- iii) Prior to the presentation for acceptance to the Terminal of any Containers, the Customer shall supply to the Terminal such particulars in writing thereof and where appropriate of the contents of a Container including weight and other measurements or as may be requested by the Terminal. The Terminal is entitled to rely upon such particulars of the Container, the contents of a Container, as are furnished by the Customer or Consignor. Any damage or Loss resulting from the inaccuracy of, or omission from, such particulars given by the Customer or the Consignor shall be the Customer's / Consignor's responsibility and the Customer / Consignor shall indemnify and keep indemnified the Terminal against any Loss, damages, claims, costs and expenses including legal costs and attorney fees which the Terminal may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.
- iv) The Terminal will accept no Containers for handling until the Terminal is satisfied that adequate space reservation arrangements have been made for the onward carriage of the same within a period of time acceptable to the Terminal.
- v) Out of Gauge Container Acceptance: Prior to accepting OOG bookings it is the responsibility of the Customer to inform and secure prior cargo acceptance by the Terminal in writing.

3) Acceptance of General Cargo

- i) General Cargo delivered from or to the Customer or a Consignor or a Consignee shall be brought for acceptance to or received from, such area within the General Cargo Yard as may be designated from time to time by the Terminal.

- ii) The Terminal is not obliged to receive or deliver General Cargo unless full covering documentation satisfying the Terminal has been provided to the Terminal. The Terminal's responsibility to the Customer for General Cargo shall commence only when the General Cargo have been delivered to the area designated as referred to in Clause D 3(i) above and notice of acceptance has been duly given by the Terminal.
- iii) Prior to the presentation for acceptance to the Terminal of any General Cargo, the Customer shall supply to the Terminal such particulars in writing thereof and where appropriate of the contents of a Container including weight and other measurements or as may be requested by the Terminal. The Terminal is entitled to rely upon such particulars of the General Cargo, as are furnished by the Customer or Consignor. Any damage or loss resulting from the inaccuracy of, or omission from, such particulars given by the Customer or the Consignor shall be the Customer's / Consignor's responsibility and liability and the Customer / Consignor shall indemnify and keep indemnified the Terminal against any loss, damages, claims, costs and expenses including legal costs and attorney fees which the Terminal may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.
- iv) The Terminal will accept no General Cargo for handling until the Terminal is satisfied that adequate space reservation arrangements have been made for the onward carriage of the same within a period of time acceptable to the Terminal.
- v) Break Bulk Cargo Acceptance
 - a) The booking break bulk cargo the Customer shall send the following details to the Terminal:
 - i. Technical drawing, including centre of gravity indication
 - ii. Weight
 - iii. Dimensions
 - iv. Lifting points
 - v. Special handling gear requirements
 - vi. Proposed intermodal connections
 - vii. Expected date of arrival/delivery to the Port
 - viii. Outbound carrier voyage No. with date and time
 - ix. Nature of break bulk cargo
 - x. Any special tools that are required to handle break bulk
 - xi. Cargo must have proper lifting points with equal distribution of cargo weight;
 - xii. Lifting point must be certified for cargo handling and documentary proof must be provided to the Terminal three days prior to cargo arrival;
 - xiii. Survey Report from port of loading must be provided three days prior to cargo arrival;
 - xiv. Minimum 72 hours' notice is required prior to arrival of cargo at Port of Salalah
 - b) The Terminal shall thereafter analyse the feasibility of the operation and reply with a written confirmation of acceptance or non-acceptance or modification / amendment if any, along with the quotation if not covered by the published tariff of the Terminal.

4) Condition of Containers

- i) The Customer undertakes that, each Container which it delivers or causes to be delivered to the Terminal is upon delivery secure, in a good state of condition for use and suitable

for its purpose. The Terminal shall be entitled to refuse to handle any Container which is not in the condition required by this Clause. Even in case where container as aforesaid in this Clause is accepted by the Terminal to load or handle, the Terminal shall not, in such case, be liable or responsible for any damage to such container or any containers and its contents thereof.

- ii) The Terminal shall inform the Customer of any damage to any Container, its contents or its packaging coming to the attention or knowledge of the Terminal, and shall have the right to refuse to load or handle such Containers. If the Terminal gives notice to the Customer of damage to a Container, its contents or its packaging, the Customer shall be entitled, within seven (7) days of such notice being dispatched, to inform the Terminal in writing that an inspection of the relevant items is required. The Terminal shall thereafter permit the Customer or its duly appointed agents upon reasonable prior notice to inspect the Container, contents or packaging.

5) Reefer Containers

- i) The Terminal shall check and report upon the temperature of Reefer Containers stored at the Container Terminal subject to instructions being given in writing to the Terminal at least two (2) working days in advance of receipt of a specific Reefer Container by the Terminal and such instructions are accepted in writing by the Terminal, Terminal shall check and report upon the temperatures of Containers as mutually agreed.
- ii) The Terminal shall not be responsible or liable in any way for any Reefer Container or its contents or the refrigeration of refrigerated Cargo, if the Customer fails to give written instructions, or provides wrong or inadequate instructions concerning the handling thereof in the Terminal.
- iii) If the Terminal is instructed in writing in accordance with Clause D 4 (i) the Terminal shall, within a reasonable time of receipt, connect the Reefer Container to a main power supply. The Terminal shall not be obliged to maintain an auxiliary power supply and the Terminal shall under no circumstances be liable or responsible for any failure or discontinuance or interference from time to time in the mains power supply howsoever arising.

6) Stripping of Containers

If the Terminal carries out an instruction to open the doors of a Container or to de-stuff a Container for any purpose whatsoever, this shall be at the sole risk and cost of the Customer and the Terminal shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Cargo by reason of such deterioration or opening or of contents. The Customer shall ensure compliance with the rules and regulations of the Customs Authorities for opening and de-stuffing of any Container. The Terminal may, but shall be under no obligation to do so close, reconnect, or connect to a power supply for Reefer Containers, repack or otherwise deal with any such Container and/or its contents at the sole cost and expense of the Customer.

E. CONDITIONS RELATING TO THE PROVISION OF TERMINAL SERVICES and SPS SERVICES

1) Circumstances preventing safe handling

- i. When, in Terminal's sole opinion, there are any circumstances which shall or may prevent or hinder the safe handling, storage, loading, unloading or transport of any Cargo, the Terminal may, in its sole discretion, refuse to handle the same and shall give notice of such refusal to the Customer or Consignor, as the case may be. The recipient of such notice shall remove or procure the immediate removal of Cargo and/or its contents from the Port forthwith at its own risk and expense.

2) Warranties and Indemnities given by the Customer

- i. So as to enable the Terminal to carry out the provision of Terminal Services efficiently, the Customer warrants and undertakes that:
 - a) all particulars relating to Containers and General Cargo (including, but not limited to Reefer Containers) furnished by the Customer in accordance with these Terms of Business are accurate;
 - b) all Cargo is properly packed and labelled and the contents are properly stowed and secured therein;
 - c) all Containers or packaging is fit for its intended purposes and in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed at the Port;
 - d) all Containers and Cargo comply with applicable Laws, orders, regulations, or other requirements of Government, Customs Authorities, municipal or other authorities whatsoever of the Government of Oman; and
 - e) all Reefer Containers have been properly pre-cooled or pre-heated as appropriate and their controls have been properly set as per the requirement and the Customer shall indemnify and keep indemnified the Terminal in respect of the consequence of the breach of any of these warranties.
- ii. The Terminal shall not be responsible for or liable in any way, and the Customer shall indemnify the Terminal against all damages, claims, costs and expenses including legal costs and attorney fees suffered or incurred by the Terminal resulting directly or indirectly from defects in a Container and/or its contents.
- iii. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Ship and the Cargo and all matters whatsoever relating to the Ship and the Cargo applicable in the Sultanate of Oman.
- iv. The Customer shall be responsible and liable for any damage and/or loss to the Terminal's Wharves, premises, equipment, gendering, mooring bollards, other Port users, all other Port property, other Ships, vessels and property belonging to the third parties, caused during or arising from berthing or un-berthing and shall Indemnify the Terminal against all claims, demands, losses, costs and expenses arising from any such damage or loss.
- v. Upon the delivery of any Container or General Cargo to the Terminal, the Customer shall undertake to the Terminal that all values and other particulars in respect thereof supplied to the Terminal for customs or other purposes and all necessary customs removal permits are complete and accurate and, where appropriate, are valid and in full force and effect

as per Oman law. The Customer shall indemnify the Terminal and its servants, or agents against all loss, damages, claims, costs, expenses, fines and penalties that the Terminal or its servants, or agents may incur or suffer directly or indirectly as a result of any breach of this undertaking.

- vi. The Customer shall ensure that Containers delivered to the Port are weather-proof.
- vii. The Customer shall indemnify the Terminal, against all claims and actions arising by reason of:
 - a) any defects in any Container or the contents thereof;
 - b) any mixture or confusion of Cargo; and/or
 - c) shifting or movement of the Cargo.
- viii. Overweight Containers: In case the weight of cargo or container is understated in the declaration submitted by the customer, the handling of such Cargo or Container is at the sole risk and responsibility of the Customer and Customer hereby indemnifies the Port against all injury, loss and damage resulting from the handling of such Cargo or Container.

3) Delivery Orders etc.

- i. The Customer shall appoint an agent in the Port ("**the Port Agent or Agent**") for the purposes of these TOB, and shall make the same known to the Terminal by notice in writing. The Terminal shall not be required to deliver or otherwise deal with any Container or Cargo except with the authority of a delivery order signed by the Port Agent.
- ii. The Customer shall ensure that the Port Agent registers with the Terminal, specimen signature(s) of the person(s) authorised to sign on its behalf in accordance with the Port Rules and Regulations. The Terminal shall be entitled to deliver or otherwise deal with any Container or Cargo in accordance with a delivery order which appears to have been properly signed by the Port Agent, and shall not be liable to the Customer or any other person in consequence.
- iii. The Customer will be deemed to have authorised the Port Agent to act on the Customer's behalf in respect of all matters hereunder including to pay to or receive from SPS all sums due under this TOB unless the Customer notifies SPS to the contrary at the time of such appointment and:
- iv. SPS shall be entitled at any time and from time to time hereafter, to act upon any instruction, request, notice or other communication from the said agent without prior reference to the Customer and to receive from and to pay to the Agent any sums due under this TOB (including any rebate);
- v. Any payment made by SPS to the Port Agent pursuant to this TOB and the receipt by the Agent of such payment as a full and sufficient discharge of SPS in respect of such payment obligation to the Customer; and
- vi. The power granted to SPS herein will continue until SPS receives written 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.

4) Hazardous Cargo, Dutiable Cargo - HSSE

- i. Before tendering any Hazardous Cargo for loading and/or unloading, the Customer warrants and shall submit to the Terminal a Hazardous Cargo manifest to the satisfaction of the Terminal with full details of the said Cargo declared in writing to the Terminal. Handling Hazardous Cargo shall require prior task force approval and advance clearance which may be refused at the discretion of the Terminal.
- ii. The Customer shall ensure that all goods tendered to the Terminal for loading and/or unloading, comply with all applicable laws, regulations and prevailing industry standards for Hazardous Cargo and/or Dutiable Cargo and shall Indemnify the Terminal against any breach of this section E(4) of this TOB.
- iii. Prior to accepting hazardous cargo bookings, it is the responsibility of the Customer to ensure that such hazardous cargo is permitted for handling and storing at the Port of Salalah and its warehouses [in accordance with global best practise.]
- iv. The Terminal has the right to refuse to handle Cargo which, upon inspection, is found not to comply with the applicable rules or regulations or ordinances or prevalent laws and to reject and/or return such Cargo at the sole expense and risk of the Customer.
- v. During the storage, any containers found leaking, the Customer shall be held fully responsible and liable for any and / or all cost consequences arising there upon;

5) Applicable to Customers obtaining SPS Services

- i. At the discretion of the Terminal, the Customer obtaining SPS Services (includes handling of stock piles) must submit to SPS a health, safety, security and environment management plan which complies with all HSSE Regulations and all applicable laws in Oman (including, but not limited to, the Labour Law) for approval by SPS and SPS must notify the Customer whether the Customer's HSSE Plan is approved or whether it needs to be amended and re-submitted to SPS for approval.
- ii. SPS will not be required to perform any of SPS Services or provide any other services to the Customer under this TOB unless the Customer's HSSE Plan has been approved by SPS (**Approved HSSE Plan**).
- iii. The Customer must ensure that at all times the Approved HSSE Plan is implemented at the Port of Salalah and the Customer complies with the Approved HSSE Plan at all times.
- iv. The Customer must ensure that it complies with all HSSE Regulations and all other applicable laws in Oman (including but not limited to, the Labour Law).
- v. In the event of an inconsistency between the Approved HSSE Plan, HSSE Regulations and any Law in Oman, the Customer must ensure that it complies with the applicable Law in Oman followed by HSSE Regulations.
- vi. The Customer shall pay any and all costs and expenses which may be incurred by SPS in complying with any instructions, regulations or policies of the Government requiring the movement, treatment, removal or destruction of Hazardous Cargo or infested, contaminated or condemned goods or the treatment of SPS' premises as a result of any

infestation or contamination arising from such Hazardous Cargo, including any associated environmental costs and expenses incurred by SPS.

- vii. The Customer must comply, at its costs and expenses, with in the time specified by SPS:
 - a. all mandatory applicable environmental protection measures in accordance with the SPS's Rules and Regulations, all Laws and Government Approvals and pay to SPS any cost, claim, liability or expense for any damage or pollution arising from discharge (including any Hazardous Materials) at the Port of Salalah from any of the Customer's Cargo, Ships, vessels, vehicles, equipment or otherwise, whether in the land or the marine environment due to any action, inaction or failure of the Customer as well as any cost, claim, liability or expense for the safe removal of such discharge; and
 - b. all requirements and standards specified in the SPS Fatal 5 and its compliance.
- viii. The Customer must at all times ensure that its Personnel operating within the Port of Salalah:
 - a. are competent and adequately trained and experienced; and
 - b. will at all times operate under direct supervision and instructions or direction of SPS.
- ix. SPS reserves the right to evaluate any of the Customer's Personnel from time to time and to either remove or otherwise refuse any of the Customer's Personnel access to the Port of Salalah:
 - a. due to any non-compliance by the Customer or the Customer's Personnel with this clause; or
 - b. if SPS deems (acting reasonably) that the Customer's Personnel is unsuitable or otherwise unfit to operate within the Port of Salalah.
- x. If the Customer is occupying any Land, then the Customer:
 - c. must ensure that it complies with the Approved HSSE Plan, the HSSE Regulations, all applicable laws in Oman and the terms of this TOB (to the extent applicable) in respect of the Land;
 - d. is responsible for securing the Land by all reasonable means, including but not limited to, by installation of a perimeter fence with access controlled by an entry/exit gate; and
 - e. subject to Vacation Date and Expiry Date defined hereabove, must, at least [15] Business Days prior to surrendering or vacating any Land, provide SPS with a written notice of its intention to do so.

6) Valuable Cargo

- i. The Terminal shall not be bound to accept Cargo of high value or which requires special care (in the sole opinion of the Terminal), including, but without limitation:
 - a) gold;
 - b) silver;
 - c) bullion, coins and currency notes;
 - d) precious stones;
 - e) precious metals;
 - f) securities for cash and stamping;
 - g) documents and Title deeds;
 - h) opium, essential oils and similar valuable drugs including narcotics and psychotropic substances and banned drugs (such as cocaine, heroin and marijuana);
 - i) lace, fur and feathers;
 - j) works of Art and Paintings;
 - k) scientific instruments of all kinds;
 - l) revenue or postal stamps;
 - m) gold, Silver and Platinum Watches;
 - n) precious Metal Jewellery Works; and
 - o) antiques;
 - p) and any other valuables.
- ii. The Customer shall give the Terminal at minimum of 15 days' prior notice of their intended delivery of such Cargo to the Port whether by Container Ship, General Cargo Ship or Container-transporter to enable the Terminal to decide whether or not it will accept such Cargo. Under no circumstances shall the Customer deliver to the Container Terminal such Cargo, without the prior written approval of the Terminal. If such Cargo is delivered to the Terminal without its prior written approval, that Cargo shall at all times be at the sole risk and cost of the Customer and the Terminal shall not be liable for any loss or damage howsoever caused to such Cargo.
- iii. Notwithstanding the prior written approval of the Terminal in accordance with Clause E5(ii) above, the Terminal's total liability for loss of and/or damage to valuable Cargo as described in Clause E5(i) above shall be limited to the amounts as set out in Clause E(9) except to the extent the Terminal expressly agrees in writing to a higher limit on liability in a particular case. The Customer shall be responsible and liable for any additional costs of insurance (including, but not limited to, additional premiums and fees) that the Terminal incurs as a consequence of acceptance of valuable Cargo.

7) Lien

All Containers, Cargo and all documents relating to Containers and Cargo shall be subject to a particular and general lien respectively for charges due to the Terminal in respect of such Containers or Cargo from the Customer. If any charges are not paid within one (1) calendar month after written notice requiring payment has been given to such Customer, the Containers or Cargo subject to such lien, may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by the Terminal in such sale. Any sale of Containers or Cargo by the Terminal pursuant to these Terms of Business, may be conducted by a private treaty, by public auction or otherwise in such manner as the Terminal shall in its sole discretion determine and the Terminal shall not be liable for any loss and/or damage to any person whatsoever as a result thereof. The residual amount if any available after settlement of Terminal dues shall be returned to the Customer. In case the sale value not being sufficient to settle the Terminal dues, the

Customer shall be liable to pay such residual amount to the Terminal. This lien shall be in addition to any other recourse allowed under any law.

8) Costs and expenses to be paid by the Customer

The Customer shall pay:

- i. any costs and expenses which may be incurred by the Terminal in complying with any Government regulations requiring the movement, treatment, removal or destruction of Hazardous Cargo or infested, contaminated or condemned goods or the treatment of the Terminal's premises as a result of any infestation or contamination arising from such Hazardous Cargo; the Terminal has full rights to take swift action as they deem fit without obtaining any prior approval from the interested parties; and
- ii. all costs and expenses incurred by the Terminal arising out of or incidental to the failure by the Customer to observe these Terms of Business including, but not limited to, the rules for Hazardous Cargo or any one of them.

9) Port Rules and Regulations

- i. The Customer shall, comply and adhere to the established Port Rules and Regulations. The Customer shall be required to abide by and satisfy all rules and regulations concerning environment protection, transportation of Hazardous Cargo, if any, and pollution control, as applicable to the Customer, and whether promulgated by the Terminal or a Government authority. Furthermore, the Customer hereby agrees to Indemnify from any and all liabilities, damages and costs related to the transportation of Hazardous Cargo during its transportation or the other matters which the rules and regulations referred to in the immediately preceding sentence apply.
- ii. The Customer shall be solely responsible at its own expense for obtaining/ensure requisite compliance of the laws, authorisations and other registrations, and other authorisations, governmental or otherwise, required to be obtained for the orderly completion of its obligations, responsibilities and duties as required while transacting the Containers containing hazardous cargoes.
- iii. The Customer shall abide Port Rules and Regulations including safety rules and regulations within Port at all times.

10) Exclusion of Liability and Indemnity Provisions

- i. The Terminal shall not be liable or responsible for any loss, claim or damage caused or suffered by the Customer or any third party arising due to the reason of delay in transit of Containers and or Cargo, or any missing Containers in the yard, or failed to load / discharge on allocated Vessel, due to reasons of the Terminal handling or arising due to any negligence or default of the Terminal.
- ii. The maximum liability of the Terminal to the Customer for loss of and/or damage to Containers in the custody of the Terminal (i.e from the time of receiving up to and including the time of completion of loading onto any Container Ship or Container-transporter), where such loss and/or damage was caused by proven gross negligence or wilful default of the Terminal, its agent, servants or Sub Contractors, in relation to each Container, shall be

the lesser of either the depreciated value of the Container or the actual cost of the repair subject to production of requisite documents accepted by the Terminal, provided always that under no circumstances shall the claim exceed the following amounts:

- a) depreciated value of the Container or USD 500, whichever is less in the case of any 20' dry Container;
 - b) depreciated value of the Container or USD 750, whichever is less in the case of any dry Container of more than 20' in length;
 - c) depreciated value of the Container or USD 3,000, whichever is less in the case of any 20' Reefer Container; and
 - d) depreciated value of the Container or USD 4,500, whichever is less in the case of any Reefer Container of more than 20' in length.
- iii. Notwithstanding Clause E9 (ii) above, in the absence of gross negligence or wilful default, the Terminal shall have no liability whatsoever for such loss and/or damage to the said Containers.
- iv. The maximum liability of the Terminal to the Customer for loss of and/or damage to Cargo whilst in the custody of the Terminal, where such loss and/or damage was caused by proven gross negligence or wilful default of the Terminal, its agents, servants or Sub-contractors, in relation to such Cargo, shall be limited to the following:
- a) USD 500 in the case of Cargo transported within any 20' dry Container;
 - b) USD 750 in the case of Cargo transported within any dry Container of more than 20' in length; and
 - c) USD 1,500 in the case of Cargo transported within any Reefer Container; and
 - d) USD 750, for any Cargo transported outside of a Container.
- v. Notwithstanding Clause E9 (iv) above, in the absence of gross negligence or wilful default, the Terminal shall have no liability whatsoever for such loss and/or damage of the accepted Cargo.
- vi. Without prejudice to what is stated in this clause in no circumstances shall the Terminal's liability exceed the above limits of liability in accordance with the terms and conditions contained within the Customer's Contract of Carriage or, if applicable, the Ship's limitation fund except to the extent the Terminal agrees expressly in writing to a higher limit on liability in a particular case.
- vii. The limitation of liability under this Clause E(9) shall relate to the whole of any losses and damages which may arise, although such loss and/or damage may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law and notwithstanding anything in such written law.
- viii. The Terminal shall only be liable to a Customer for any major loss or damage to a Ship (including gear and all other equipment) where such loss and/or damage was caused by the proven gross negligence or wilful default of the Terminal, its agents, servants or Sub-contractors and notwithstanding anything contained in these TOB or elsewhere, the maximum liability of the Terminal to the Customer in relation to each incident (howsoever caused) shall be limited to two hundred thousand United States Dollars (US\$ 200,000). For the minor damages such as handrail, cell guide, hatch cover, walking platform, tank

top etc., the maximum liability shall be USD 500/- only. Anything less than USD 200/-, the Terminal shall not be held liable to pay any amount.

- ix. The Terminal shall not be responsible or liable to the Customer for any loss or damage to Hazardous Cargo or for any loss, delay, damage or personal injury (including death) arising out of bad stowage in Containers unless caused by proven gross negligence or wilful default of the Terminal, its agents, servants or Sub-contractors and PROVIDED THAT the maximum liability of the Terminal to the Customer in relation to such incident howsoever caused shall be the limits of liability in accordance with clause E 9 (iii) and subject however to Clause E 9 (v).
- x. The Customer shall be liable for and shall fully Indemnify the Terminal, its servants, agents and Sub-contractors against any liability for claims or suits, including costs and expenses legal costs and attorney fees and incidental thereto, in respect of loss of or damage to any property and death or injury suffered by any person caused by the negligence or default of the Customer, its servant or agents pursuant to these TOB or otherwise.
- xi. The Terminal shall not, under any circumstances whatsoever, be responsible for or liable to the Customer for:
 - a) any consequential or indirect loss or damage; or
 - b) loss of profit, revenue, savings or contracts; injury to goodwill or reputation; or delay howsoever caused, including any breach by the Terminal of its obligations under this TOB or its breach of duty, negligence or gross negligence.
- xii. In respect of any claim by the Customer under these TOB the Customer shall:
 - a) within fifteen (15) days after becoming aware of the claim based on cause of action, notify the Terminal in writing of the claim (the "**Terminal Claim**") against which the Customer is seeking to be indemnified together with all cause of action with details of Terminal Claim in the actual knowledge or possession of the Customer at the time and becoming known to it at any time thereafter;
 - b) take such other steps as may be necessary or as the Terminal may reasonably require to avoid or mitigate any Terminal's Claim;
 - c) where the Terminal Claim relates to a claim by any third party against the Customer, not admit liability or make any offer, promise, compromise or settlement with the third party without the express prior written consent of the Terminal, which shall be issued subject to evaluation of facts of each case; and
 - d) where the Terminal Claim relates to a claim by any third party against the Customer, at the request of the Terminal and at Terminal's cost, cooperate with the Terminal or its insurers, in the defence, settlement and/or counter claim of such Customer Claim.
- xiii. Notwithstanding the provisions of these TOB the maximum aggregate liability of the Terminal to the Customer or to any third party regardless of the cause of such claim and number of incidents shall in no circumstances exceed One Hundred Thousand United States Dollars US\$ 100,000 in any calendar year, provided that, where the Terminal has paid an amount to the Customer in respect of such liability, all amounts payable under any relevant insurances held by the Customer against any Customer claims shall be paid in

full to the Terminal within fourteen (14) days of receipt of the same by the Customer from the relevant insurer of the Customer. The Terminal shall also not be liable for any claim with the value less USD 500/-.

- xiv. Save as provided in this Clause E9 the Terminal shall not be liable to the Customer whether in contract, tort or otherwise in respect of the use of the Port and the provision of the Terminal Services for any death, personal injury, damage or loss resulting from the use of the Port and the provision of the Terminal Services or from any work done in connection therewith.
- xv. The Terminal does not give any warranty or representation that the Ship will not ground whilst approaching, leaving or lying alongside the Port. Each Ship approaching, leaving and whilst lying alongside the Port does so at the sole risk and responsibility of the Customer.
- xvi. The Terminal shall not be responsible for or liable in any way for any damage or loss suffered or incurred during the berthing and un-berthing of a Ship.
- xvii. The Customer shall be solely responsible and liable for any damage to the Wharf and or/to the Port, Container Terminal, General Cargo Terminal, equipment, fenders, mooring bollards, Container Ships, tugs, tow ropes / pendants, vessels belonging to the Terminal or any third party port users and their equipment or assets, caused during or arising from the act of berthing or unberthing, whether by reason of incompetence or negligence of the Pilot in-charge of the ship belonging to the Customer, or as a result of insecure or improper mooring of the ship whilst alongside the wharf/berths, and shall Indemnify the Terminal, against all claims, demands, losses, costs and expenses including legal costs and attorney fees arising from any such damage, except it is solely caused by gross negligence or default of the Terminal.
- xviii. The Customer and the Master of the ship shall be in sole charge of the Ship whilst using any of the Wharves in the Port, and her safety shall be the sole responsibility of the Customer. The Customer shall be held responsible and liable for any loss and/or damage that may arise from faulty navigation, or by reason of her breaking adrift from her moorings. No instruction or direction given, or act performed by the Terminal or its officers shall place any responsibility or liability upon the Terminal, with respect to the security or safety of such Ship.
- xix. In the event a ship drifts away from the Port while berthing or otherwise, it will be the sole responsibility of the Master of the ship and the Customer.
- xx. In the event of any Ship sunk, the Terminal has full right to carry out the wreck removal / salvage in order to avoid any business interruption or delays to the Terminal and recover the complete costs from the Customer. The decision of the Terminal shall be final and binding in this regard and the Customer shall oblige the same.
- xxi. The Terminal shall not be responsible for the following events:
 - a) Any non-compliance with the ISPS code or any other related and necessary requirements include statutory requirements which may prevent a ship from being permitted to berth at a Wharf at the Port.

- b) Breakdown, fire, explosion, sinking or any accident or incident which occurs on the ship, caused solely due to the Customer, ship owner's or ship operator's fault resulting in the ship being denied permission to berth at a Wharf at the Port. In that event, the ship shall be piloted out of the Terminal to avoid any damage to the Port or third party assets in the Terminal and any loss or costs incurred or suffered by the Terminal or any third party Port users shall be borne by the Customer.
- xxii. The Terminal shall not be responsible or liable for any incorrect or delayed delivery of any Container which is insufficiently, incorrectly or otherwise not properly marked and/or in respect of which full and complete particulars in respect of such delivery have not been provided to the Terminal. This includes relevant approvals and consents as specified by the Laws of Oman.
- xxiii. The Terminal shall not, under any circumstances, be responsible for or liable in any way for any damage to Containers or their contents or General Cargo caused by rust, rain, typhoon, flood, tempest, lightning, fire or any similar event or occurrence.

11) Sub-contracting

SPS may sub-contract its performance, in part or whole including the SPS Services, but any sub-contracting will in no way relieve SPS of any of its obligations and SPS will remain responsible for any sub-contractor and its performance. SPS will ensure that such sub-contractors comply with and observe the terms and conditions of this TOB as if they were an original party, in particular, but in no way limited to, the obligations of confidentiality provided herein.

12) Independent Contractor

SPS will be an independent Party and as such:

- f. will at all times maintain complete control over and full responsibility for its performance including work performed by its employees, agents and contractors;
- g. other than as expressly provided herein, SPS will not incur any liabilities nor make any contractual commitment on behalf of the Customer, without the prior written approval of the Customer;
- h. SPS will have exclusive right to determine at all times whether the SPS Services can be safely performed, and where practically possible, may notify the Customer whether any decision or precautions related thereto has an effect on the SPS services or other services and/or the Customer.

This TOB does not create, nor will the same be construed as creating or constituting, any license, partnership, joint venture or association between the Parties. Nothing in this TOB will be deemed to constitute a Party as a partner, agent or legal representative of the other Party for any purpose whatsoever.

13) Insurance

- i. The Terminal is under no obligation or liability to maintain or claim insurance of Containers, Cargo or contents of Containers of the Customer or any third parties.

- ii. The Customer shall be wholly responsible to:
 - a) Take out and maintain adequate hull and machinery and protection and indemnity insurance ("**P&I Insurance**") in respect of its Ships, the latter from a club being a member of the International Group of P&I Clubs, together with insurances adequate to cover its liabilities under these TOB.
 - b) Provide the Terminal with a copy of certificate of insurance confirming that these requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the Customer's obligations to arrange insurance required by law or under these TOB, unless such waiver is granted expressly in writing by the Terminal.
 - c) The Customer must send the copies of their insurance policies to Port Control 72 hours' prior to the arrival of their Vessel; The Terminal has all rights to reject the said Vessel berthing in the Port including blocking their access in to their canal;
 - d) The Terminal has full right to check the authenticity of the insurance policy documents submitted with the respective insurance company/ies; In the event, the said insurance policy found to be fake or fabricated or duplicated, the Terminal shall impose a penalty of OMR 1,500/-. In this regard, the Terminal shall inform this matter to all statutory and regulatory authorities in Oman in addition to initiating appropriate action against such agents in Oman including blacklisting them.
- iii. The Terminal reserves the right to not allow those vessels to enter Port, which do not have adequate hull and machinery and P&I Insurance in respect of its Ships, the latter from a club being a member of the International Group of P&I Clubs, together with insurances adequate to cover its liabilities under these TOB.
- iv. Apart, the Customer also requires to take out and maintain necessary insurance policies for its Cargo, Property, Personnel, vehicles and equipment operating at the terminal, as may be required by SPS from time to time during the Term or otherwise required by Law. This includes environmental pollution also.
- v. SPS assumes no liability/ responsibility, for any loss or claim or damages or suit / action, to the Customer and or its Agents or to any third party, for such loss or damage caused to their property, Cargo, Personnel, vehicles and equipment while in the Terminal or when using SPS equipment or at its warehouses, arising due acts or omission on the part of SPS or its Contractors prior, during or after any natural calamity including Event of Force Majeure. Further it is the primary obligation of the Customer to obtain requisite insurance policy to safeguard their interest and to indemnify SPS from such claim, loss and or damage. It is accepted by the Customer that SPS equipment or warehouses rented, leased or licensed to Customer or its third party are on "as is where is condition" only.
- vi. This TOB excludes any and all liability arising due to any Act of Force Majeure against the Terminal and in this regard, the Customer waives all its rights of claims under any contract or Torts or Laws or Rate Offer.

14) Third Party Trucks & Equipment entering Container Terminal:

Subject to prior express written approval of SPS, any Third Party Trucks and or Equipment ("**Third Party Equipment**") entering into Container Terminal shall abide by the Standard Operating Procedures issued by SPS ("**SOP**"). The owner and/or the driver of Third Party Equipment shall obtain the SOP at the time of receiving his gate pass at the Port Gate Pass Office and/or from CT Gate Operations. The gate pass shall be issued until the validation of Royal Oman Police (ROP) registration card on Truck/trailer or the Equipment. The Third Party Equipment must have valid insurance cover including third party property damage insurance cover and a copy of the same should be submitted to Port Gate Pass Office. Without submission of insurance cover for the Third Party Equipment and its operator, no gate pass will be issued. The rules and regulations, inside the terminal is different than outside. The third party truck shall be held liable and responsible, in case of there is any accidental damage to Port's property due to non-compliance of Port rules and Regulations. The repair cost of Port property shall be recovered from Third Party Equipment owner before leaving the Terminal and/or after releasing the guarantee / indemnity note issued by its owner. For clarity, the Port equipment known as "Yard Handling Equipment" of "YHE" and shall be working inside the terminal and will not bear any registration plates.

Any operator, with their Third Party Equipment, entering into Container Terminal shall liaise with SPS HSSE department before entering the Container Terminal and shall strictly comply with the said SPS Rules and Regulations. At any point of time, the Terminal shall not be responsible or liable for any damage caused to or by the Third Party Equipment. Despite the intervention of any statutory authority, the Third Party Equipment owners shall bear all consequences and costs to repair / replace the Port equipment to its original condition.

15) Third Party Trucks & Equipment entering General Cargo Terminal and for SPS Services:

Subject to prior express written approval of SPS, any Third Party Trucks and or Equipment ("**Third Party Equipment**") entering into General Cargo Terminal shall abide by the Standard Operating Procedures issued by SPS ("**SOP**"). The owner and/or the driver of Third Party Equipment shall obtain the SOP at the time of receiving his gate pass at the Port Gate Pass Office and/or from GCT Gate Operations. The gate pass shall be issued until the validation of Royal Oman Police (ROP) registration card on Truck/trailer or the Equipment. The Third Party Equipment must have valid insurance cover including third party property damage insurance cover and a copy of the same should be submitted to Port Gate Pass Office. Without submission of insurance cover for the Third Party Equipment and its operator, no gate pass will be issued. The rules and regulations, inside the terminal is different than outside. The third party truck shall be held liable and responsible, in case of there is any accidental damage to Port's property due to non-compliance of Port rules and Regulations. The repair cost of Port property shall be recovered from Third Party Equipment owner before leaving the General Cargo Terminal and/or after releasing the guarantee / indemnity note issued by its owner. For clarity, the Port equipment known as "Yard Handling Equipment" and shall be working inside the terminal and will not bear any registration plates. At any point of time, the Terminal shall not be responsible or liable for any damage caused to or by the Third Party Equipment. Despite the intervention of any statutory authority, the Third Party Equipment owners shall bear all consequences and costs to repair / replace the Port equipment to its original condition.

Any operator, with their Third Party Equipment, entering into General Cargo Terminal shall liaise with SPS HSSE department before entering the General Cargo Terminal and shall strictly comply with the said SPS Rules and Regulations.

16) Unauthorised Access to Ships

- i. The Terminal shall use reasonable endeavours to enforce strict controls to prevent unauthorised access by Ships to the Port.
- ii. The Customer shall enforce controls on its Ships whilst berthed at the Port in order to prevent unauthorised access to the Container Terminal.

17) Force Majeure

- i. Neither Party will be liable to the other for any failure in the fulfilment of any of its obligations under this TOB and or Rate Offer and will not be liable for the imposition of any penalties or be liable for damages (except for any penalties or damages then due and owing), other than any obligation to pay money under this TOB and or the Rate Offer, to the extent that such failure is due to any delay, interruption, loss or damage occasioned by an Event of Force Majeure.
- ii. An **Event of Force Majeure** means any event or circumstance, or combination of events or circumstances, which is or are beyond the reasonable control of a Party who is so affected (**Affected Party**) and which causes or results in default or delay in the performance by the Affected Party of any of its obligations under this TOB. An Event of Force Majeure includes:
 - a) war, hostilities, rebellion, revolution, usurpation of civil or military government riot, insurrection or other civil commotion, acts of terrorism, conspiracy, civil commotion or terrorist acts;
 - b) nuclear explosion, radioactive, biological or chemical contamination, ionizing radiation, or the discovery of such contamination or radiation;
 - c) acts of God, earthquake, volcanic activity, fires, flood, typhoon, cyclone, hurricane, flood, tsunami, storms, sandstorm, lightning or other natural disaster or calamities or due to any effect of natural elements;
 - d) explosion (other than nuclear explosion or an explosion resulting from an act of war);
 - e) epidemic or plague;
 - f) blockade, embargo or sanctions; and
 - g) actions or inactions of Government Body or any branch or agency of them including confiscation, nationalisation, commandeering or requisition by or under the order of any government or de facto authority or ruler or any other act of national authority;
 - h) sabotage, embargo, interruption of work due to strikes, lockouts or other industrial dispute, epidemics, quarantine or plague (provided such strike or industrial action is not due to the acts of the Parties, their subcontractors); and

- i) ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

or other like causes beyond the control of a Party claiming an Event of Force Majeure.
- iii. Each of the following events will be interpreted as a cause reasonably within the control of a Party and therefore not of themselves capable of constituting an Event of Force Majeure:
 - a) lack of funds or Personnel and equipment for any reason; and
 - b) the inability to use available funds due to any reason, including (but not limited to) due to the occurrence of an Event of Force Majeure.
- iv. The Affected Party must give the other Party notice in writing of an Event of Force Majeure immediately and in any case no later than three (3) Business Days after the occurrence of such event.
- v. The Party giving Force Majeure notice under this clause, the Affected Party will be relieved of its obligations under this TOB and or the Rate Offer so far as those obligations are affected by the Event of Force Majeure, for the time necessary to remedy the effect of that event.
- vi. Suspension of any obligations under this Clause will not affect any obligations which may have accrued prior to such suspension or, if such circumstances affect only some obligations, any other obligations of the Affected Party.
- vii. If an Event of Force Majeure occurs and prevents the Affected Party from performing the entirety of its obligations for more than six consecutive months or eight months during any 12 month period or is reasonably expected to prevent the Affected Party from performing its obligations for more than six consecutive months or eight months during any 12 month period, then the Parties will meet to discuss what actions, if any, should be taken including termination of this TOB by mutual agreement).
- viii. The Affected Party must give written notice to the other Party of:
 - a) the cessation of the relevant Event of Force Majeure; and
 - b) the cessation of the effects of such Event of Force Majeure on the performance by such Party of its obligations under this TOB and or the Rate Offer,

as soon as practicable after becoming aware of such cessation, but in each case within three (3) days after becoming so aware. Thereafter, the Affected Party will resume performance of its obligations which have otherwise been excused as a result of such Event of Force Majeure.

18) Dispute Resolution:

- i. Any dispute or difference arising between the Parties out of or in connection with these TOB shall promptly and in good faith be negotiated with a view to its amicable resolution and settlement.

- ii. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the dispute or difference arose, such disputes and/or differences shall be referred to the arbitration as per clause E(14) of these TOB.
- iii. The decision of the Terminal shall be final and binding on the Parties.

19) Law and Jurisdiction

- i. These TOB shall be governed by and construed in accordance with the Laws of Sultanate of Oman.
- ii. Any dispute arising out of or connection with these TOB shall be referred exclusively to arbitration in Salalah in accordance with the Royal Decree 47/97 (Rules). And shall be finally settled under the above Rules. The arbitration will be held in Muscat, Oman and the arbitration panel will consist of three qualified arbitrators appointed in accordance with the ICC Rules. Arbitration will be conducted and all the documentation presented to the arbitrators in the English language.
- iii. The decision of the arbitration panel will be final and binding on the Parties and their legal successors, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction over the Party against whom judgment is sought.
- iv. Nothing in this Clause E (14) shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

F. Obligations, representations, warranties and undertakings of the Customer

- 1. The Customer agrees to pay the Rates and/or the Tariffs (as applicable) for the Terminal Services and SPS Services or otherwise, for any other additional services, actually rendered, and all other undisputed amounts due and owed under this TOB and or Rate Offer.
- 2. The Customer agrees that the Customer shall at all times, comply fully with:
 - a. the terms of this TOB and the Rate Offer;
 - b. the SPS's Rules and Regulations; and
 - c. all applicable Law and any other acts, conventions, and regulations issued by any competent authority having jurisdiction over the Port of Salalah (including, but not limited to, the Government).
- 3. The Customer agrees that the Customer must at all times:
 - a. act in a safe and efficient manner and in accordance with best international practices; and
 - b. act in accordance with any reasonable directions given from time to time by SPS for proper compliance of this TOB.

4. The Customer hereby represents, warrants and undertakes to SPS that:
 - a. it has duly executed and delivered its Rate Offer by virtue of executing and accepting the Rate Offer had agreed and accept to comply with and adhere to the terms of this TOB;
 - b. it has the full power and authority to execute, perform and observe this TOB and the Rate Offer;
 - c. it has obtained all necessary governing body and shareholder approvals and all other necessary governmental and other consents, approvals and registrations to authorise the execution, performance and observance of the Rate Offer and this TOB;
 - d. the execution, performance and observance by it of this TOB will not result in any breach of its constitutional documents, or any provision contained in any agreement or instrument to which (or in the context of the Customer any member of its corporate group of companies) it is a party or by which such company is bound or any law applicable to it;
 - e. this TOB will when executed constitute legally valid and binding obligations on such Party, enforceable in accordance with its terms;
 - f. there is no pending or, to the best of that Party's knowledge threatened, action, suit, investigation, arbitration or other proceeding that would impair the ability of that Party to perform its obligations under this TOB; and
 - g. all information furnished to SPS at any time prior to the execution of or during the term of Rate Offer relative to the subject matter of this TOB was at the time it was provided (and remains at the date hereof) true and accurate in all material aspects, and that there is no information relating to the subject matter of this TOB of which it is aware which has not been disclosed and which would if disclosed adversely affect or prejudice SPS's decision to enter into this TOB.
5. The Customer acknowledges that SPS is entering into the Rate Offer and this TOB in reliance upon each of the warranties in this Clause.
6. The Customer agrees to furnish to SPS such evidence of its due authorisation and execution of this TOB as SPS may reasonably require.
7. The Customer must give SPS such prior information as is reasonably required for the efficient conduct and performance of this TOB.
8. If the Customer occupies or uses, without the prior written approval of SPS to be provided at SPS's sole discretion, any part of the Port of Salalah other than the Allocated Land (**Unallocated Land**), then the Customer must pay to SPS the Penalty Rate for each day that the Customer occupies or uses the Unallocated Land until SPS provides its written approval. For the avoidance of any doubt, where SPS has provided written approval for the purposes of this clause, all land to which SPS's approval applies will be deemed to be

part of the Allocated Land on and from the date of SPS's written approval and SPS has no obligation to provide any written approval.

9. The Customer acknowledges that SPS has the right to re-claim any Allocated Land at any time during the Term by providing a written notice to the Customer specifying the date by which the Allocated Land must be surrendered to SPS and vacated by the Customer (**Vacation Date**).
10. If the Customer fails to vacate the Allocated Land by the Vacation Date or otherwise by the date on which the Customer's right to occupy that Allocated expires (as may be agreed with SPS from time to time) (**Expiry Date**), the Allocated Land will be deemed to be Unallocated Land and the Customer must pay to SPS the Penalty Rate for each day that the Customer occupies or uses such Unallocated Land after the expiry or the Expiry Date (as applicable).

F. INVOICING AND PAYMENT

1. In consideration for the provision of the Terminal Services by the Terminal to the Customer as per these TOB, the Customer shall pay the Terminal the applicable Public Tariff rates or at such other rate as is mutually agreed between the parties under the specific agreement or the Rate Offer.
2. If any tax in the nature of a withholding tax, consumption tax, a value-added tax, a goods and/or services tax or similar tax (the “**Tax**”) is, or becomes payable in relation to these TOB under applicable law, and in case the Services rendered under these TOB, come directly under the purview of such an enactment/ amendment and the Tax becomes payable by or is recoverable from the Customer in terms and in accordance with such law, then the Customer shall, in addition to the applicable such Tariff rates / Rate Offer shall also pay or reimburse the Terminal for an amount equal to such Tax.
3. All Taxes, duties, fees, charges, royalties and other costs, incurred in compliance with Terminal Services and SPS Services shall be for the account of the Customer, including but not limited to, business tax, VAT or other similar taxes imposed or levied whether by way of deductions, withholdings, assessments or otherwise on the Customer or its employees, contractors, sub-contractors, consultants or agents including duties, penalties, fees and other amounts related to Customer’s obligations under these TOB. All payments shall be exclusive of withholding tax as per Oman Tax Laws.
4. Unless agreed otherwise in writing with the Terminal, the Customer shall pay all taxes and charges in advance to the Terminal before requesting for any of the Terminal Services under these TOB.
5. SPS will, within [3] days after the end of each calendar month submit an invoice covering the Terminal Services and or SPS Services (or any other additional services instructed by the Customer to be provided by SPS from time to time) provided by SPS during the period specified in the invoice and the amount payable by the Customer in respect of those SPS Services (or any other additional services instructed by the Customer to be provided by SPS from time to time) as calculated in accordance with the Rates and/or the Tarrifs (as applicable) including any disbursements incurred by SPS on behalf of the Customer in providing the Services (or any other additional services instructed by the Customer to be provided by SPS from time to time).
6. All sums payable by the Customer pursuant to this Agreement must be paid in full to SPS within:
 - i. for Customers who are deemed to be credit customers and have provided a bank guarantee or cash deposite to SPS, within 30 days of the date of the relevant invoice
 - ii. for all other Customers, within five (5) Business Days of the date of the relevant invoice.
7. In so far as an amount of an invoice is disputed such dispute will be resolved between the Parties in accordance with the provisions of Dispute Resolution clause herein, save that for a period of 15 Business Days from the date on which the Customer raised the dispute the Parties will use reasonable endeavours to resolve the same amicably through good faith

negotiations. Following resolution of the dispute, any amount agreed or found to be payable by the Customer must be paid within 5 Business Days of the date of such resolution.

8. All invoiced amounts which remain unpaid and undisputed in good faith beyond the permitted credit period referred to in the Rate Offer shall bear interest at the rate of 7% (seven per cent) per annum for any period after such amount has become overdue till the date of its realisation in full.

G. EDI SYSTEM

1. This Section G shall apply (without prejudice to the other Sections in these Terms of Business) only where the Terminal has agreed in writing with the Customer for the partial or exclusive transmission and interchange of Messages between the parties by means of an EDI System.
2. Upon such agreement, the Customer and the Terminal shall become subscribers to the Intermediary Service and shall exchange all identification details and similar information to enable each party to effectively utilise the Intermediary Service.
3. Application
 - a. Until such time as the parties mutually agree that the EDI System shall be used exclusively, it is agreed that the EDI System shall be operated in parallel with an accepted manual system. In case of inconsistencies arising before implementing EDI System, any message transmitted through the manual system shall prevail. In case of inconsistencies arising after implementing EDI System, any message transmitted through the EDI System shall prevail.
 - b. The Terminal shall determine and monitor the progress of the development, implementation and priority of the EDI System.
 - c. All Message Transmissions must properly identify the sender and recipient and comply in all respects with the User Manuals and such of the Intermediary Service standard conditions as may be applicable from time to time.
 - d. If the sender issuing a Message Transmission requires a confirmatory receipt and does not receive the same, the original Message should be retransmitted until a receipt is received.
 - e. The Intermediary Service mailbox receiving date and time of the Message (or of the first or original Message in case of repeated transmission of the same Message) shall be treated as the first receiving date and time of the Message by the recipient.
4. Message Data Log
 - a. The parties shall maintain (without modification) a Message Data Log including details of times of transmission and examination of the Intermediary Service mailbox. Data contained in the message Data Log shall be retained by way of record for a period of not less than twenty-four (24) months.

- b. The Message Data Log shall be maintained on computer media or other suitable means provided that, if it is necessary to do so, the data must be capable of being readily retrieved, printed and presented in human readable form.
 - c. Each of the parties shall be responsible for making such arrangements as may be necessary for the data contained in its Message Data Log to be prepared and maintained as a correct record of each Message Transmission and Message Retrieval.
5. The parties acknowledge that in the event of any complete or partial breakdown or failure of the EDI System and/or the Intermediary Service, they will take all necessary steps to ensure the continued transmission and receipt of relevant messages, notices and information by alternative and/or additional means such that the operation of these TOB is not adversely affected.
6. The Terminal reserves the right to amend the User Manuals from time to time, such amendment to be notified to the Customer at which time the amendment shall become immediately effective.

7. Security of Messages

Each of the parties shall:

- a. take reasonable care in so far as it is within its power to do so to ensure that Messages are secure and that any unauthorized access to its EDI System, Message Data Log and the Intermediary Service system is prevented;
- b. ensure that Messages containing confidential information as designated by the sender of the Message are maintained by the recipient in confidence are not disclosed to any person not otherwise authorised or used by the recipient outside the terms imposed by the sender. Any authorized disclosure to a third party or for reasons arising due to a judicial action shall be made only after getting a prior written approval of the Terminal;
- c. apply special protection, where permissible, by encryption or by other agreed means, to those Messages which the parties agree should be so protected. Unless the parties otherwise agree, the recipient of a Message so protected shall use at least the same level of protection applied for its confidential message, for any further transmission of such Message.

8. Integrity of Messages

- a. The parties accept the integrity of all Messages and agree to accord the same status as would be applicable to notices or information sent other than by electronic means, unless such Messages can be shown to have been corrupted as a result of technical failure on the part of any machine, system or transmission by the Customer.
- b. Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified by the sender as incorrect, it shall be re-transmitted as soon as practicable with a clear indication that it is a corrected Message.
- c. The sender is responsible and shall use its best endeavours to ensure that Messages are complete and correct. Notwithstanding the foregoing, the recipient must

immediately inform the sender if it is, or should in all the circumstances, be reasonably obvious to the recipient that the transmission of such Message is incomplete, incorrect or otherwise deficient and in no event shall any of the parties be liable under this Clause G 8 (iii) for the consequences of any such deficiency.

- d. If the recipient has reason to believe that a Message is not intended for it, it should take reasonable action to inform the sender and should delete the information contained in such a Message from its system apart from the Message Data Log.
- e. It is the obligation of the Customer to prove that such Message has been transmitted.

9. Limitation on Liability (EDI use)

- a. Without prejudice to the other provisions of these TOB, none of the parties shall be responsible for any direct, indirect or consequential loss or damage suffered by the other party or any third party howsoever arising solely as a consequence of the use of the EDI System, whether caused by the parties or otherwise, including but not limited to the use or misuse of the User Manuals, the interruption or failure of the Intermediary Service, the EDI System, machines or transmission lines contributory thereto, or any other failures whether or not attributable to human error.

10. Termination

- a. The use of the EDI System by the parties shall be terminated (without prejudice to the continuing application of the remaining clauses of these Terms of Business) by one party giving to the other not less than three (3) months' notice or otherwise automatically upon termination of the Rate offer / TOB / Understanding had between the parties, whereupon the transmission of any message, notice or information between the parties shall revert to the existing manual or other agreed system.
- b. Notwithstanding the termination of the use of the EDI System for any reason: -
 - a) Each of the parties shall comply, complete and/or implement any action required by any Message sent prior to such termination; and
 - b) The rights and obligations of each of the parties as to the maintenance of a Message Data Log and the Security of Messages shall continue after such termination and the termination of the Contract.

H. GENERAL

1. Compliance with Law; Prohibition on Violation

The Customer hereby agrees and warrants that it shall not take, and it is not authorised to take, any action in the name of or otherwise on behalf of Terminal which would violate any applicable law or to make any other actions of the Customer undertaken pursuant to these TOB illegal, and should any of Customer's actions or omissions described above, as the case may be, expose Terminal to any such actual or potential liability for violation of, or non-conformity with, such laws, the Customer hereby agrees to Indemnify the Terminal from any and all repercussions, costs, damages, expenses, liabilities, and/or any other effects of such actions, including, without limitation, all direct, indirect, and

consequential damages, including lost profits, and reasonable attorneys' fees, in connection with the Terminal involvement in such matter.

2. Conflict of Interest

The Customer shall use reasonable care to avoid actions and conditions that conflict with the interests of Terminal. This obligation also applies to Customer's employees and their relationship with Terminal and its subcontractors, representatives, and/or their families. The Customer shall take all necessary precautions to prevent its employees from making, offering and/or receiving gifts, including, without limitation, entertainment, payment, loans or other valuable goods or services for the purpose of influencing any person to act or refrain from acting on either its behalf or the behalf of Terminal. The Customer shall promptly notify the Terminal of any employees or representative of Terminal that have or obtain a material or substantial interest in any business of the Customer or its subcontractors. The Customer shall intimate in writing immediately to Terminal about its director or partner or their families having / acquired any shareholding interest in Terminal or its affiliates or associate companies.

The rights and obligations of each Party under this TOB are personal to that Party and shall not be assigned, delegated, sub-contracted or otherwise disposed of without the prior written consent of the other Party. The rights and obligations of each Party under this TOB are personal to that Party and may not be assigned, delegated, sub-contracted or otherwise disposed of without the prior written consent of the other Party.

3. Waiver & Severability

- i. If any provision of these TOB is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of these TOB and the remainder of such provision shall continue in full force and effect. The parties shall renegotiate and conclude a new draft clause to the extent of such severed clause or terms.
- ii. Failure or breach or delay by Terminal in enforcing or partially enforcing any provision of or a right under these TOB shall not be construed as a waiver or continuous or subsequent breach or failure or waiver of any of its rights under these TOB or for enforcing the same in future. Any waiver granted shall be in writing or by email by either Party to this TOB and or Rate Offer.
- iii. Any waiver by Terminal of any breach of, or any failure or default under, any provision of these TOB by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this TOB and or the Rate Offer.

4. Assignment

- i. The Customer shall not assign or transfer or novate these TOB either in part or whole to any party without the prior written consent of the Terminal.

- ii. The Terminal shall reserve its right to assign or transfer either part or whole of these TOB to any entity affiliated to or group of Terminal upon written intimation notice to the Customer. The Terminal may not otherwise assign these TOB to any other third party without prior intimation of the Customer.

5. Conflict

- i. In the event of a conflict between the provisions of these TOB and any specific agreement or the Rate Offer for the provision of Terminal Services that is entered into between the Customer and the Terminal (such as a Terminal User Agreement or Rate Offer or its equivalent), the provisions of that specific agreement will prevail.
- ii. In the event of a conflict between the provisions of these TOB and the Port Rules and Regulations the provisions of these TOB will prevail.

6. Notice

Any notice to be given by a Party will be in writing in English and will be deemed duly served if delivered personally or by recognised courier service or sent by facsimile transmission with a confirmation of successful transmission to the recipient Party's physical address or facsimile number as specified in the Rate Offer executed between the Customer and Terminal.

7. Confidentiality

The Parties will not disclose, or permit to be disclosed, any Confidential Information to any third party, unless:

- a. in compliance with this TOB and Rate Offer;
- b. such information has come into the public domain (other than as a result of breach of any obligation of confidence by a Party);
- c. the disclosure of such information has been authorised in writing by the other Party;
or
- d. the disclosure of information concerned is required by Government Bodies or the Laws of Oman.

No Party will make or authorise any public announcement relating to this TOB and or the Rate offer (or its subject matter) without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) except as required by the Laws of Oman.

8. Limitation of liability

Other than in cases of fraud, negligence or wilful misconduct of SPS, the Customer shall be liable for and shall indemnify (and keep indemnified) SPS and its Personnel, proeprty and equipment against any liability for all claims or legal actions of any kind, including reasonable costs and expenses incidental thereto, in respect of:

- a. all Losses incurred by SPS incurred due to or in connection with the Customer's:
 - i. breach of the terms of this TOB and or Rate Offer, the HSSE Regulations, the Approved HSSE Plan, any Law or the SPS's Rules and Regulations;
 - ii. use or occupation of the Allocated Land or any Unallocated Land; or
 - iii. fraud, negligence or wilful misconduct.
- b. any loss of life, personal injury, loss or damage to SPS employees, any third parties (including SPS's or the Customer's representatives, agents and contractors) or any of its property, equipment or vehicle within the Port of Salalah (including any third party property, equipment, vehicle), howsoever caused, arising due to or in connection with:
 - i. a breach of this TOB and or Rate Offer, the HSSE Regulations, the Approved HSSE Plan any Law or the SPS's Rules and Regulations by the Customer; or
 - ii. negligence or wilful misconduct of the Customer;
 - iii. any incident happening during the operation in the Port

Notwithstanding anything else contrary in this TOB, neither Party will be responsible or liable to the other for any consequential, punitive or other similar indirect loss or damages, whether foreseeable or not, which will include, without limitation, loss of profits, loss of revenue or business or goodwill and even if such claim or liability were to be based upon any breach by a Party of its obligations under this TOB or any negligent act, fault or omission by a Party.

Unless agreed otherwise, the Customer shall not make any claim against SPS for:

- a. an amount less than USD 500 for any single incident or series of incidents arising from a common cause;
- b. other than in cases of fraud, negligence or wilful misconduct of SPS, any Losses (howsoever arising and including any Loss due to any third party claims) incurred by the Customer in connection with the use of the Land;
- c. any Loss suffered by the Customer due to a change in policies, practices or procedures at the Port of Salalah as notified by SPS from time to time; or

complying with any lawful and reasonable directions given from time to time by SPS within the scope of this TOB.

Notwithstanding to what has been stated herein above, at point of time during the Term of Rate Offer and application of the terms of this TOB, SPS liability shall not exceed at any time USD 500 for any single incident or series of incidents in aggregate.

9. Events of Default and termination

The following will constitute an Event of Default under this TOB:

- a. a breach of any material term or condition of this TOB including, but not limited to, any non-payment of amounts due hereunder and or the Rate Offer, any breach of a representation, warranty, or covenant made in this TOB;
- b. any negligence, misrepresentation or wilful misconduct of a Party;
- c. any assignment by a Party of its rights in violation of this TOB;
- d. a resolution is passed or court order issued to wind up or liquidate a Party whether voluntary or compulsory; and
- e. in respect of the Customer only:
 - i. a material adverse change occurs in the financial condition of the Customer which would affect the Customer's ability to fully perform all of its obligations under this TOB; and
 - ii. the Customer's failure to obtain, maintain and comply with the insurance requirements of this TOB.

Upon the occurrence of any Event of Default, the Party not in default will give written notice of the Event of Default to the defaulting Party. Such notice will set forth, in reasonable detail, the nature of the Event of Default and, where known and applicable, the steps necessary to cure such Event of Default. If the Event of Default is not remedied to the satisfaction of the non-defaulting Party within 30 days from the notice, the non-defaulting Party may terminate the application of the Rate Offer with immediate effect by written notice.

If this Rate Offer is terminated, then the Parties will be released and discharged from any obligations and liabilities arising or accruing under this TOB from and after the date of such termination. Termination of this TOB and the Rate Offer will not discharge or relieve either Party from any obligations or liabilities which may have accrued under this TOB and the Rate Offer Agreement prior to such termination.

10. Penalty

Subject to periodical Audit shall be conducted by SPS in the presence of the Customer and or its personnel, representatives, sub contractors and Penalty shall be levied, as specified in the Rate Offer, applicable only in case of any failure or breach or deviation by the Customer from the agreed terms and conditions of this TOB and that of Rate Offer.

11. Responsible Procurement

The Customer shall comply with all applicable laws, rules, regulations, orders including ministerial decisions and royal decrees, conventions, and or ordinances of Oman where Services/goods are / is performed or where Goods are supplied and/or relate to the provision, licensing, approval or certification of the Services / Goods, including, but not

limited to, those relating to occupational health and safety, environmental matters, wages, working hours and conditions of employment, subcontractor selection, discrimination, data protection and privacy. Further the Customer shall respect and commit to implementing APMM's Company Code of Conduct ("the Code") as amended from time to time and found at: <http://www.maersk.com/Sustainability/Pages/ThirdPartyCodeofConduct.aspx> or alternatively an internationally recognized standard within the areas of human rights, anti-corruption, environment and labour, such as, but not limited to, the United Nations Global Compact (UNGC), and the Customer agrees to provide necessary documentation as well as permit audit by SPS in this regard. The Customer shall require their own sub-contractors to implement similar rules and, as appropriate, pass on such requirements to their sub-contractors and so on. The original English version shall prevail in the event concerning the content and obligations of either Party. Should the Customer be unable to meet the listed requirements, the Customer will agree to develop and execute an improvement plan.

SPS may with evidentiary valid justification have the right to appoint at its own cost, charge and expense a well reputed third party auditor to audit and verify all matters in connection with the Customer's compliance with the above Clause provided that It gets the Customer's reasonable approval. The Customer shall co-operate with such auditor and provide access to all relevant sites, personnel (including interviews) and documents. Alternatively, the Customer shall appoint at its own cost, charge and expense a well-reputed third party auditor subject to the appointment and scope of the audit being approved in advance in writing by SPS.

If such third party auditor uncovers any material concern(s), the Customer shall without any delay present SPS with an improvement plan to comply the above and ensure that any severe violation of the Code is ceased and are immediately remediated in a manner and timeline satisfactory to SPS.

The Customer 's repeated violation of the Code/UNGC/International Bill of Human Rights and/or its failure to collaborate with the auditor during an audit and/or its failure to collaborate with SPS in implementing or developing improvement plans shall be considered a material breach of this Agreement. If the Customer commits any such breach of or fails to observe or perform any material obligation contained in the Code/UNGC/International Bill of Human Rights, and/or any agreed improvement plan, and such breach or failure has not been remedied to the satisfaction of SPS within the period as specified in the said notice received by the Customer from SPS requiring Customer to remedy the same, SPS shall be entitled to terminate the Rate Offer.

12. Breach

Notwithstanding any other remedies available under the Laws, SPS shall, in case of any breach, deviation or failure or delay or failure in compliance of its terms and conditions under this TOB by the Customer, then be entitled to terminate the Rate Offer and this TOB with a right to claim direct damages, including but not limited to cost of damage to SPS's or to third parties Personnel, property as well as loss of business resulting from such failure or breach or deviation by the Customer.

13. Export Control

The Customer shall comply with and shall ensure that all its sub-contractor's comply with all laws, regulations and rules applicable to delivery of the goods and services including without limitation United States and European Union ("U.S. or EU") regulations and controls involving export and re-export of goods, software and technology as well as in regards to any countries embargoed under U.S. laws or regulations or any decision, directive or regulation issued by the Commission or Council of the EU plus all other relevant Trade Regulations including but not limited to USA, EU and Singapore if applicable. To the extent any goods or parts of goods (including software and technology) transferred or transported or supplied by Customer are subject to any such economic sanctions or export control laws and regulations of the U.S., EU or Singapore the Customer shall with all export control regulations as in force. This information shall be stated on quotations / order confirmations / commercial invoices / packing lists, when and where relevant. All costs incurred in complying with this clause shall be for the sole account of Customer and the Customer shall indemnify and hold SPS harmless from all fines, penalties and all associated expenses arising out of or resulting from the violation by the Customer of any of its obligations in this clause. SPS shall have the right, to appoint at its own cost, charge and expense a firm of chartered accountants to audit and verify Supplier's compliance with this clause. Equipment, components, parts or other items falling under the United States International Traffic in Arms Regulations (ITAR) and/or EU regulations covering items on the EU Common Military List or similar items subject to other national regulations governing military related items may only be supplied subject to prior written agreement with SPS. If Customer anticipates that of the items that are contemplated as being transferred or transported under this TOB and the Rate Offer may be within such categories of controlled items the Customer shall immediately notify SPS thereof

14. Anti-Corruption

As regards this agreement each Party shall (i) comply with all applicable anti-corruption laws and regulations, including without limitation the US Foreign Corrupt Practices Act and the UK Bribery Act of 2010 and (ii) undertakes and warrants to the other Party that it and its officers, directors, shareholders, employees, agents and other intermediaries, and any other person acting directly or indirectly on its behalf, shall not, directly or through third parties, give, promise or attempt to give, or approve or authorize the giving of, anything of value (including facilitation payment) to any person or any entity where such action would be prohibited by applicable law, for the purpose of (i) securing any improper advantage for Customer or SPS, (ii) inducing or influencing a public official improperly to take action or refrain from taking action in order for either Party to obtain or retain business, or to secure the direction of business to either; or (iii) inducing or influencing a public official to use his/her influence with any government or public international organization for such purpose.