

## A. GENERAL PROVISIONS APPLICABLE TO ALL SERVICES

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## A. GENERAL PROVISIONS APPLICABLE TO ALL SERVICES

## 1. SCOPE OF APPLICATION OF THESE CONDITIONS

- 1.1. These General Terms and Conditions ("Conditions") apply to all and any business undertaken, including any advice, information, product, or service ("Services") provided by B. Pacorini S.p.A. or any of its subsidiary companies as well as all its affiliated companies, hereinafter jointly referred to as the "Company", directly and/or through any related corporations (together with the Company, the "Group") with any person, firm, corporation or other entity for which the Goods are stored or which has requested the Services and has entered into an agreement as a party thereto (the "Customer"). The procedures for scheduling London Metal Exchange (LME) Goods, if applicable, can be found at <https://pacorini.com/en/lme/>. In the event of any conflict between those procedures and these Conditions, these Conditions shall apply, unless the Company contracted is PGS Antwerp N.V., Pacorini Antwerp N.V., PGS USA LLC or PGS Nederland B.V., in which case the following General Conditions do respectively apply:
- PGS Antwerp N.V.
  - Pacorini Antwerp N.V.  
<https://pglobalservices.it/it/belgium/>
  - PGS Nederland B.V.:  
<https://pglobalservices.it/it/netherlands/>
  - PGS USA LLC.:  
<https://pglobalservices.it/it/pgsusa/>
  - .....
- 1.2. Customer's acceptance of these Conditions are a material inducement to Company's agreement to perform any services for Customer. In case of incompatibility between these Conditions and those applicable in local ports (such as, e.g., the above mentioned in clause 1.1), the most favorable provisions for the Company shall be applied.
- 1.3. The Company reserves the right to modify, amend, supplement or change these Conditions at any time without prior notice and such changes will be effective upon their publication online. Any amendment to these Conditions must be made in writing.
- 1.4. These Conditions shall apply to all legal relationships of the Company arising out of or related to any form of service to be performed by the Company or any of its sub-contractors, regardless of whether this is effected pursuant to orders or on other grounds and shall be deemed to be incorporated in and form part of any contract concluded between the Company and the Customer. Therefore, by requesting any part of the Services provided by Company, the Customer accepts that these Conditions are applicable to such Services, even when no specific reference is made to these Conditions.
- 1.5. The most current and controlling version of these Conditions is published electronically at [www.pacorini.com](http://www.pacorini.com) and are available to customers and the general public at any of the offices of the Company. They are also included in all price quotes sent. Likewise, all emails sent include a direct link to them. By accepting the Services of the Company, all Customers are deemed to have read, understood, and accepted, these Conditions in effect at the time of such Services rendered by the Company. Company specifically rejects any terms or conditions that are inconsistent with these Conditions. Any attempt to vary the terms and conditions of these Conditions shall be null and void unless specifically agreed to in writing and signed by the President of Company.
- 1.6. The use of the Customer's own forms or standard terms are specifically rejected. Customer's acceptance of the Services provided by Company shall be conclusive proof of the parties' agreement to reject any terms or conditions proposed by Customer. Failure by the Company on any occasion to invoke any of the provisions of these Conditions shall not constitute a waiver by the Company of its right to invoke the said provisions of these Conditions in other circumstances.
- 1.7. The Customer expressly warrants that it is authorized to accept and is accepting these Conditions not only for itself as the principal but also as agent for and on behalf of all persons who have or may hereafter have title to or otherwise have an interest in the property (including containers, pallets or similar articles of transport or packaging not supplied by the Company, "Goods"), and the Customer shall defend, indemnify, and keep indemnified the Company in full and on demand against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, personal injury or death, loss of profit, and all interest, penalties and legal and other professional costs and expenses, including legal costs on a full indemnity basis) and against any other consequence arising out of or in connection with the Services or the fact that such person referred to (including the Customer) shall lack the title or authority referred to above.
- 1.8. The Customer undertakes to inform any third party with whom it may have contracted or entered into a contract about the existence, validity, and acceptance of these Conditions, including but not limited to, the indemnity owed to Company provided in these Conditions. The limitations of liability defined in the stipulations of these Conditions shall apply to any claim, whether civil, commercial, criminal, extrajudicial, contractual, extra contractual or of any other nature. All rights and remedies set out in these Conditions in favor of the Company are in addition to the rights and remedies of the Company provided by any current agreement between the Company and the Customer ("Parties"), by relevant international conventions or other legal provisions in force.

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#### 2. SCOPE OF APPLICATION

- 2.1. Either when acting on its own or when acting on behalf of third parties in connection with the contract entrusting to the Company the performance of Services, the Customer explicitly agrees that these Conditions shall apply to all the contractual and non-contractual relationships with the Company and to all actions and claims against him, unless derogated by the special provisions contained in Sections n. B, C and D of the present Conditions.
- 2.2. These Conditions apply whenever any claim is made against a servant, agent or other person the Company engaged for the performance of the Services (including any independent contractor) whether such claims are founded in contract or in tort, and the aggregate liability of the Company and such servants, agents or other persons shall not exceed the price charged by Company applicable to the Service. Under no circumstances shall Company's liability exceed the price charged by Company applicable to the Service.
- 2.3. The use of the Customer's own forms or standard terms shall not alter or affect any of these Conditions, and are specifically rejected. These Conditions shall be primary between the Customer and Company. Any attempts to alter the terms and conditions of these Conditions is specifically rejected.
- 2.4. It is understood between the parties that all offers expressed by the Company with concern to the Services expressly limit acceptance by the Customer to the terms of the offer and of these Conditions and no acceptance materially altering the offer and these Conditions will be considered contractually binding by the Company.

#### 3. NOT ACCEPTABLE GOODS

- 3.1. Unless otherwise agreed in writing, Company does not accept to provide Services relating to:
  - a) goods which are officially classified as hazardous as well as goods which are or may become of a dangerous, hazardous, poisonous, flammable, radioactive, toxic or damaging nature or liable to become so in the form in which they are delivered, or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation ("Dangerous Goods"), including but not limited to those specified in the technical instructions of the International Civil Aviation Organization (ICAO), in the regulations on dangerous goods of the International Air Transport Association (IATA), in the International Maritime Dangerous Goods Code (IMDG), in the regulations of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) or in any other national or international regulations applicable to the transport or any other service relating to Dangerous Goods. Nor does it provide Services in respect of items prohibited by law;
  - b) valuables (including but not limited to bullion, coins, money, negotiable instruments, precious stones, jewelry, antiques, pictures, works of art and similar properties whose value clearly exceeds the regular value of ordinary commercial goods or merchandise; "Valuables");
  - c) perishable goods or goods subject to decomposition, unless a prior written agreement is reached whereby the Customer waives any right to claim with regard to any liability of the Company related thereto. Should these goods be sent to the Company without the agreement

referred to above, the Company shall reserve the right to reject them or, should circumstances require it to do so, to sell or destroy them, and the Customer shall be held responsible for all harmful consequences and to sustain each and every related cost.

#### 4. TARIFFS AND RATES

- Unless otherwise agreed in writing, all rates are stated in the currency as stated in the agreement and/or in any quotation and thereafter invoiced for the Services rendered and exclude any ancillary charges if any, by way of example and not limitation, customs fees, VAT and any other taxes and surcharges of whatever description, levied by public authorities, in connection with the Goods, their importation or exportation.
- 4.1. The Services are understood to be contracted according to the rates and tariffs in force at the time of contracting.
  - 4.2. In the event one or more of the cost components included in the rates and tariffs is subject to an increase after the date the agreement is concluded (e.g. supplier's prices, employee wages, rent, social and/or other charges, freights and/or import duties, and/or insurance premiums and other costs, and/or price of equipment or fuel) the Company may increase the agreed rates by a corresponding amount. The Company is under no obligation to inform the Customer of the increases that occur during the performance of the Services.
  - 4.3. Unless agreed otherwise in writing, the Company is entitled to yearly adjustments in rates and tariffs, pursuant to any increase of costs.
  - 4.4. In the event the Company carries out additional work or performs any variation to the agreement as requested by the Customer, the costs associated with the variations will be borne by the Customer.
  - 4.5. Unless the contrary is stipulated in writing, any agreement or any quotation given by the Company to the Customer excludes demurrage or detention or delay of vessels, trucks or other means of transport, quay rent, container demurrage and detention charges, as well as costs for the destruction of Goods and other costs and damages incurred to containers associated to the abandonment of cargo, which costs shall be borne by the Customer unless it is proven by the Customer that they arise from deliberate intent, gross negligence or willful misconduct on the part of the Company.
- #### 5. PAYMENT
- 5.1. The Customer shall pay the Services charges, fees and expenses incurred as invoiced by the Company within the agreed deadlines.
  - 5.2. The Company will issue invoices upon completion of each service rendered and payment shall be settled by direct transfer within the date specified in the invoice.
  - 5.3. The Customer shall provide the Company, in advance, with the funds needed to perform the Services and to fulfil all related obligations which the Company shall undertake on behalf of the Customer. If Customer refuses to pay those funds upon request, Company shall be entitled to refuse, suspend, interrupt or terminate the Services, without providing any written warning, notice of default or judicial interposition.
  - 5.4. Sums paid in advance on behalf of the Customer (including but not limited to rights and customs duties, freights and the like) shall be settled upon presentation of the related invoice or equivalent documentation. Should

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- the Company not promptly receive the funds due, Company shall be entitled to the reimbursement of any losses generated by exchange rate fluctuations, in addition to standard fees, the commission due for payments made in advance, and interest.
- 5.5. Company has the right to be paid appropriate advance payments for Services charges, fees and expenses before commencing or after having commenced the Services, at Company's sole and absolute discretion.
- 5.6. It is understood between the Parties that in case of payments made in advance by the Company on behalf of the Customer, the Company has standing to sue the Customer to recover the relevant amounts.
- 5.7. In the event that Customer disputes any invoice submitted by Company, the Customer shall immediately pay the undisputed amounts owed thereunder, and notify Company in writing within ten (10) business days describing the grounds for the dispute. The failure to timely pay any undisputed amounts owed or the failure to notify Company in writing within ten (10) business days of the grounds for the dispute shall be deemed an irrevocable waiver of Customer's right to contest any amounts described in the invoice.
- 5.8. Any challenge to an invoice from the Customer shall not suspend the Customer's payment obligations to the Company under these Conditions or any contract between the Company and the Customer.  
Any payment or other charge due and owing by the Customer not received by the Company within five (5) calendar days of the due date therefor shall be subject to a late charge in an amount equal to the greater of (i) USD \$1,000.00, or (ii) three percent (3%) of the amount due, as agreed liquidated damages in order to compensate Company for its administrative expenses and not as a penalty. Thereafter, interest on the unpaid balance shall accrue at a rate of fifteen percent (15%), or the higher interest rate set out by the law governing the Agreement, per annum until paid in full, but in no event shall the amount of interest exceed an amount based upon the highest legally permissible rate chargeable at any time by the Company under the circumstances.
- 5.9. In the event the Customer makes a partial payment of past due amounts, the amount of such partial payment shall be applied first to reduce all accrued interest, then to unpaid late charges, in inverse order of their maturity, and then to reduce all other past due amounts, in inverse order of their maturity. Acceptance by the Company of a payment in an amount less than that which is currently due shall in no way affect Company's rights and in no way be a waiver or an accord and satisfaction.
- 5.10. The aforesaid late charges and interest shall be in addition to, and not in lieu of, any other remedy Company may have under applicable law.
- 6. LIEN, RETENTION AND SET-OFF**
- 6.1. The Customer grants to Company a general lien and security interest over the Goods, including on those Goods that do not correspond to those which have generated the receivables due and not paid, and over any document relating thereto, for any amount due or that may become due at any time to the Company from the Customer. By accepting these Conditions, Customer also authorizes Company to file a procedure in the applicable jurisdiction recognizing its security interest in the Goods.
- 6.2. The Company shall have such lien and security interest against the Customer, the Shipper, the Consignee, the Owner of the Goods and / or any other party having an interest on or a title over the Goods.
- 6.3. The Company shall enforce the general lien in any reasonable manner which it may think fit.
- 6.4. Should the Company have grounds to doubt that its rights are covered by the value of the Goods assigned to it, Company shall be authorized to set a deadline for the Customer to settle all amounts due to the Company. Should the Customer fail to comply accordingly, the Company shall have the right to sell or otherwise dispose of the Goods in any manner which it may think fit, with intervention of judicial authorities if necessary by law. A sale in compliance with local jurisdictional requirements shall be deemed commercially reasonable by the parties.
- 6.5. The proceeds from such sale shall first be applied to the costs of conducting such sale (including legal costs on a full indemnify basis) and then towards satisfaction of all the outstanding monies due by Customer to Company in accordance with Section 5.9. Once all amounts owed to Company have been paid, any balance thereafter (if any) shall then be paid to the Customer. In the event that the proceeds are not sufficient to pay the outstanding balance owed to Company in full, Customer shall remain liable for any deficiency amounts owed to Company.  
In the event that Company agrees, in its sole and absolute discretion, to grant the Customer the benefit of deferred payment of the Services, Customer's failure to partially or totally comply with the terms of payment agreed, even non fulfilling one payment only, will result in the Customer's loss of the benefits of the terms and the termination for material breach of the relevant agreement and all unpaid sums will be automatically considered due and payable, so Company will have the right of retention over all the Customer's Goods in its possession. The Customer will be liable for any damage suffered by the Goods due to the lien that Company had had to enforce. If the Goods subject to a lien are lost or deteriorated, the sums due by insurance companies, transport companies, etc. to indemnify or compensate such loss or deterioration are bound to pay to Company as loss payee all of Company's claims guaranteed by the lien and security interest in the Goods set forth in these Conditions and at law, and Company shall have the same rights as mentioned above with regard to the indemnity and compensation paid by insurance companies, transport companies, etc. In addition, Company may enforce any other lien and right of retention admissible according to law.
- 6.6. The Company shall have the right, without prior notice to the Customer, any such notice being expressly waived by the Customer to the extent permissible by applicable law, upon any amount becoming due and payable by the Customer (whether at the stated maturity, by acceleration or otherwise) to set off and appropriate and apply against such amount any and all property and deposits, in any currency, and any other credit, indebtedness or claims, in any currency, in each case and at any time held or owing by the Customer to or for the credit or the account of the Company.
- 7. BASIS OF LIABILITY OF THE COMPANY**
- 7.1. The Company is liable only if it fails to exercise due diligence and take commercially reasonable measures in the performance of the Services, in which case it, subject to the limitations contained in paragraphs 8 - 12, shall compensate the Customer for loss of or damage to the Goods. In no circumstances shall Company be liable to

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Customer for any consequential damages, including but not limited to, lost profits, loss of opportunity, or loss of use. Customer hereby knowingly waives any rights to recover the foregoing categories of damages from Company.

### 8. **EXCLUSION OF LIABILITY OF THE COMPANY**

8.1. The Company shall not be liable for:

- a) loss following from delay unless expressly agreed in writing;
- b) consequential and/or indirect damages or losses including, but not limited, to income losses, loss of profits and loss of market;
- c) acts or omissions (including, but not limited to, lack of communication or incorrect or incomplete communication of information and instructions) of the Customer, its servants, agents or any third party that the Customer employs;
- d) lack, insufficiency or inadequacy of packaging, labelling or of marks or badges, unless it is proven by the Customer that the packaging, labelling or the application of marks or badges has been performed by the Company;
- e) lack of information on cargo and on packages about the necessary cautions to be used in handling and / or lifting the Goods;
- f) inherent vices or inherent nature of the Goods;
- g) shrinkage outside the acceptable limits of any commodity nor for any difference in weight of the goods due solely to atmospheric or humidity conditions;
- h) thefts of Goods;
- i) damage to the Goods, unless caused by the Company's deliberate intent, gross negligence or willful misconduct;
- j) other causes of exoneration established in current agreements or by relevant international conventions or other legal provisions in force.

### 9. **FORCE MAJEURE**

- 9.1. Any contingencies caused by neither of the parties and which are unforeseeable at the time of concluding the contract, uncontrollable and which render the further performance of the contractual obligation partially or totally impossible ("Force Majeure") shall set the Company free from any liability related to the assignments prejudiced by these events throughout their duration.
- 9.2. The contingencies mentioned under paragraph 9.1 above include, but are not limited to, the events or circumstances listed below:
  - a) wars, rebellion, revolution, insurrection, usurpation of power or confiscation of nationalization or requisition by or under the orders of a government or public or local authority;
  - b) acts of Government or any governmental authority or representative thereof (whether or not legally valid);
  - c) strike, blockades, shortage of personnel, lockout or other labour dispute affecting work;
  - d) lack or failure of supplies of power, fuel or energy;
  - e) robbery;
  - f) theft;
  - g) piracy;
  - h) damage caused by nuclear energy;
  - i) pandemic, epidemic, earthquakes, floods, hurricanes, tropical storms, whirlwinds, explosions and fires, whatever their cause, or other natural disaster;
  - j) acts of God or act of Elements;
  - k) mechanical breakdown or failure of equipment, including but not limited to, malfunctioning fire suppression systems;

l) any other circumstance beyond parties' reasonable control, as well as all force majeure circumstances and/or other related events provided for in current agreements or by relevant international conventions or other legal provisions in force.

9.3. Upon the occurrence of any such contingencies the party suffering therefrom shall notify the other party in writing as soon as possible and take all reasonable measures in order to terminate the force majeure situation and limit the consequences thereof.

9.4. In these cases, both Parties shall be entitled to terminate the agreement even if it has been partially performed. In the case of termination, the Customer shall pay the fees chargeable for the Services rendered up to the date of termination and reimburse all expenses incurred by the Company in connection therewith (including but not limited to transport, storage, freight, stocking, parking, insurance and/or delivery costs).

9.5. Neither party shall be deemed to be in default of its contractual obligations whilst performance thereof is prevented by Force Majeure.

9.6. The Customer shall be responsible for removing the Goods damaged by a Force Majeure event and cleaning the relevant storage area, or at Company's sole option, Company may do so and invoice Customer for all costs of removal and cleaning the relevant storage area.

### 10. **ASSESSMENT OF COMPENSATION**

10.1. The value of the Goods shall be determined according to the current commodity exchange price or, if there is not such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of the Goods of the same kind and quality.

### 11. **LIMITATION OF LIABILITY OF THE COMPANY**

11.1. The Company shall not be liable to the Customer or any other party claiming through the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss, cost, expenses, claims, damages, injury or death whatsoever and howsoever caused ("Damages"), arising as a consequence of the Company's providing Services to Customer or otherwise, unless it is proven by the Customer that the Damages in question have been caused by deliberate intent, gross negligence or willful misconduct on the part of the Company.

11.2. The Customer shall also provide proof of a foreseeable cause between the deliberate intent, gross negligence or willful misconduct and the Damages in question.

11.3. The liability of the Company is limited to an amount not exceeding the price paid or payable by the Customer for the single Service or task which caused the Damages.

11.4. Notwithstanding any of the provisions herein and for the avoidance of doubt, in case of incompatibility between these Conditions and those imposed by the local port related to the limitation of liability of the Company (as the case may be, e.g. see the list in clause 1.1 above), the most favorable provision for the Company shall be applied.

#### 11.5. **In case of storage Services:**

a) without prejudice to the provision of paragraph 8, the Company shall not be liable for any damage or deterioration of the Goods whilst stored in the storage facilities caused by circumstances beyond Company's reasonable control, such as e.g. damage or deterioration

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- caused by inherent vice, natural wastage or ordinary wear and tear;
- 11.6. **in case Company has undertaken the carriage of the Goods:**
- a) its liability related to any loss, damage and claim arising from the operations of shipment and/or carriage, including possible technical stops, shall not exceed the limits of liability provided to the Freight Forwarder and/or Carrier under the relevant international law applicable to each shipment or under the relevant national law applicable to each carriage or shipment, including the domestic law possibly governing the operations of shipment and/or carriage, and in any event the limits of liability cannot exceed the limits granted to the actual carrier. "Technical stop" means the stoppage of the Goods in a storage area, or in a warehouse, or in a terminal or in any other recovery area, for any need related to the performance or continuation of the carriage, or in any event related to the needs of storing the Goods during the carriage or during stops on the way to delivering the Goods to the Carrier or to the Consignee;
- b) furthermore, Company may benefit from any exemptions from liability, limitations of liability, deadlines for complain or exercise of action, and even optionally from the clauses of jurisdiction applicable to the contractual carriers or any other subcontractor that has been employed to execute the orders received;
- c) the Company is exempt from liability in the event of any consequence resulting from the delay or failure to collect Goods at destination; the Customer shall therefore indemnify and keep indemnified the Company in full and on demand against any claim or request for payment and expenses incidental thereto (including legal costs on a full indemnity basis) which, in that regard, might be addressed towards the Company.
- 11.7. Any clause in any document other than these Conditions which directly or indirectly increases the quantitative limits established in these Conditions shall be null and void.
- 11.8. The limitations set forth by these Conditions apply to all claims against the Company, regardless of whether the claim is based on contractual or non-contractual liability.
- 12. LIMITATION OF LIABILITY OF THIRD PARTIES**
- 12.1. The Company is authorized to select and contract freight forwarders, carriers, trucks, warehouse operators, stevedores, customs agents, ship-owners, shipping companies, airlines, charter brokers, insurance, all of which will be considered independent contractors of the Company. The Goods will be entrusted to them subject to the rules contained in the national regulations or international conventions applicable to the mode of transport or Services concerned as well as to all rules, regulations, stipulations and applicable conditions whether written, printed, stamped or published on the Agents' websites, appearing on waybills, delivery letters, bills of lading and receipts issued by such Agents. In no event shall Company be responsible for the negligent acts or omissions of any of the independent contractors referenced in this paragraph.
- 12.2. In the event of incompatibility between these Conditions and the general terms and conditions stated in paragraph 12.1 above, and or any general terms and condition imposed by the local port related to the limitation of liability of the Company, as the case may be, (e.g. see the list in clause 1.1 above) the most favorable provision for the Company shall be applied.
- 12.3. The Company may at any time declare applicable provisions from the conditions stipulated by third parties with whom it has made contracts for the purpose of procuring the transport, storage, handling and delivery of Goods or performing a Service.
- 13. WARRANTIES OF THE CUSTOMER**
- 13.1. The Customer undertakes that Goods:
- b) comply with all applicable international safety regulations and are properly packed and/or fit to withstand the ordinary risks of the Services;
- c) without prejudice to paragraph 2a) are not dangerous, hazardous, poisonous, flammable, toxic or liable to become so in the form in which they are delivered and/or in which they are to remain while the Services are performed, or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
- d) are accurately described and, without prejudice to paragraph 13.1 b), that it will not tender any dangerous Goods or temperature controlled Goods without first presenting to the Company a full description of the Goods and disclosing their nature, without prejudice to the entitlement of the Company in its discretion to refuse to provide Services in respect of dangerous Goods whether or not declared by the Customer;
- e) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while the Services are performed;
- f) are not over-heated or under-heated or liable to become so while the Services are performed;
- g) will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods, equipment or third party's property or the Company's premises or the water or air adjacent thereto;
- h) do not require for their safekeeping any special protection (other than as may be agreed in writing with the Company) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other Goods or from their flammability but will remain safe if left standing in the open on the Company's premises or in covered accommodation;
- i) contain no drugs, contraband, pornographic or other illegal matter;
- j) are properly and sufficiently packed, marked and weighed in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accurately documented and labelled for all shipping, cargo handling, dispatch, customs and like purposes.
- 13.2. The Company may terminate the contract if any of the warranties listed above proves to be materially false, inaccurate or misleading. The Customer shall indemnify and keep indemnified the Company in full and on demand against all damages, proceeding, claims, expenses and pecuniary penalties (including legal costs on a full indemnity basis) that the Company may suffer or incur as a result thereof.
- 14. DUTY OF INDEMNIFICATION OF THE CUSTOMER**
- 14.1. Except to the extent that the Company is liable according to the provisions of paragraphs 7 - 11, the Customer shall indemnify and keep indemnified the Company in full and on demand for all liabilities claims by third parties and expenses incidental thereto (including legal costs on a full

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indemnity basis) incurred in the performance of or related to the Services or Goods.

### 15. INSURANCE

- 15.1. Goods are not insured by the Company unless explicit, written request is received from the Customer and accepted by the Company. Customer agrees to insure its own Goods at its own cost, provide a waiver of subrogation in favor of Company, and look solely to the insurance in the event of any loss of the Goods.
- 15.2. If the Company has agreed with the Customer that it shall arrange for insurance:
- a) the Company will always contract on behalf of the Customer or of the holder of insurable interests for the coverage of risks of loss or damage to the Goods, acting as an uninsured Service provider;
  - b) the Customer shall be fully liable for all costs and expenses relating to such insurance;
  - c) all insurance effected shall be subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk;
  - d) the Company shall not be responsible as regards the choice of the insurer and its ability to pay;
  - e) the risks to be covered shall be clearly stated by the Customer's declaration of the current value of the Goods. A mere statement by the Customer of the value is not sufficient;
  - f) should the Customer fail to clearly specify the risks against which the Goods should be insured, it is understood that the Goods are covered against ordinary risks only, for whom it might concern, in Company's sole and absolute discretion;
  - g) the Customer shall be liable for all insurance premiums calculated on the basis of one full calendar month such that part of a month shall count as one full calendar month unless otherwise agreed in writing by the Company;
  - h) any insurance deductibles shall be borne by the Customer;
  - i) the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy;
  - j) the agreed insurance policy will be available to the Customer at its express request;
  - k) the Customer expressly accepts that the Company is entitled to include a clause in the insurance stating that the insurer waives all rights of recovery, under subrogation or otherwise, against the Company, its servants and Agents for any possible claims which may be made by the insurer once the claim has been paid; and
  - l) by giving instructions for effecting the insurance, the Customer shall be deemed to have appointed the Company to make all arrangements with the insurer in its sole and absolute discretion, including those regarding the conditions of insurance and settlement of claims in respect of any damage. The Company shall be entitled to collect the amount of any claims but shall only be obliged to pay the compensation received by it to the Customer after deducting all monies due and owing to the Company.
- 15.3. The Company shall not be liable for any loss arising from the failure by the insurer to pay in full or in part or because a claim in respect of damage is being disputed as a result of circumstances for which the Company cannot be held liable irrespective of the manner in which the Company was concerned in effecting the insurance.

- 15.4. If the Goods in the Company's custody are destroyed by fire or any other causes (regardless of whether the insurance was taken out through the intermediary of the Company):
- a) the date of destruction shall count as the date of delivery and all charges payable to the Company shall be due up to and including such date; and
  - b) if the Company's assistance for assessment of the damage is desirable or necessary, such assistance will be rendered by the Company at its sole and absolute discretion in return for payment by the Customer at a rate fixed by the Company and provided that all other monies due and owing to the Company have been paid in full.

### 16. TERMINATION

- 16.1. If the contract is for an indefinite period, Parties shall have the right to terminate it at any time, with the only need of a prior written notice, via registered letter or email correspondence, no less than fifteen (15) days in advance, without any of the Parties being entitled to ask for compensation for the termination even if it causes damage to them, unless otherwise expressly agreed in writing.
- 16.2. In case of termination of the contract pursuant to the previous paragraph, the Customer shall reimburse all fees accrued and expenses incurred by the Company until the latter of the time of termination of the contract or delivery of the Goods to Customer.
- 16.3. If either party believes that the other has materially breached any obligations under the contract, such party shall so notify the breaching party in writing with a detailed description of the breach. The breaching party shall have ten (10) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the ten (10) day period, the non-breaching party shall have the right to terminate the contract without further notice and claim damages. Termination is effective by the date of delivery of such a notice. Neither party may suspend the performance of its obligation during the correction period.

### 17. EXERCISE OF ACTIONS

- 17.1. Unless a mandatory rule otherwise applicable states differently, actions for any loss, cost, expenses, claims, damages, injury or death whatsoever and howsoever caused ("Damage") and for any other damage caused in the performance of the Services may not be exercised and shall be forever waived unless notice of a claim is submitted in writing and sent to the Company strictly within the deadlines and time-bars under the relevant international conventions or any applicable law or, if the relevant international conventions or the applicable law provide no deadline or time bar, not later than within three (3) days from the date the Customer became aware or should have become aware of the existence of the Damage, unless a longer period is required by applicable law, in which case the deadline or time bar for notifying Company of claims shall be the shortest applicable period allowed by law.
- 17.2. When the claim refers to losses, damages or delays occurring in the performance of a transport, claims and reservations must be submitted pursuant to the terms and conditions indicated in the relevant international convention applicable to the shipment or under the



## A. GENERAL PROVISIONS APPLICABLE TO ALL SERVICES

- relevant applicable national law, including the domestic law applicable to the modality of transport in question.
- 17.3. Without prejudice to the above, any action or claim by the Customer against the Company relating to Services performed by the Company under these Conditions, whether founded in contract or in tort, is time-barred if suit is not brought against the Company within ten (10) months.
- 17.4. The limitation period set forth under paragraph 17.3 commences on the day on which the Customer became aware or should have become aware of the existence of the Damage. However, such limitation period commences no later than sixty (60) days from the day when the event which caused the Damage occurred.
- 18. CONFIDENTIALITY**
- 18.1. Each party agrees to treat all material information received from the other party or parties as confidential, and shall take appropriate technical and organizational measures to safeguard the confidential information of the other party or parties.
- 18.2. The Customer authorizes the Company to handle all the data relevant to the Goods and the shipment, even including personal data if necessary, in order to allow the Company to handle the necessary online administrative and operating issues so to provide the Goods and the shipment with the best assistance.
- 19. SURVIVAL CLAUSE**
- 19.1. If any provisions of these Conditions is found to be unenforceable, invalid or partially invalid, the other provisions shall remain unaffected, enforceable, and valid.
- 20. NO WAIVER**
- 20.1. No failure by the Company to exercise, and no delay in exercising, any right under these Conditions shall operate as a waiver thereof. The exercise by the Company of any right under these Conditions shall not preclude the exercise of any other right and the remedies provided herein are cumulative and not exclusive of remedies provided at law.
- 21. PRIVACY**
- 21.1. Both Parties shall in accordance with market practice in the industry comply with all of their obligations under the General Data Protection Regulation 2016/679 (or, in those jurisdiction where the GDPR does not apply, under any other similar law concerning personal data protection applicable pursuant to paragraph 22.1) and any obligations which one party is obliged to impose upon the other including, in particular, the adoption of appropriate technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 21.2. Each party will indemnify and keep indemnified the other party in full and on demand against any reasonably foreseeable losses incurred by the other party as a result of a breach by the breaching party of paragraph 21.1 and / or any claims or complaints from any party contacted by the breaching party in performing the Services, provided that the party claiming under this indemnity shall take reasonable steps to mitigate such losses.
- 22. APPLICABLE LAW AND JURISDICTION**
- 22.1. Any dispute arising out of the Goods, the Services, these Conditions, or any non-contractual matters associated with, arising out of, or connected with them, shall be construed and enforced in accordance with the laws of the country in which the Company contracted by the Customer has its registered office, without regard to any conflicts of law rules or analysis.
- 22.2. The Parties agree that any dispute arising out of the Goods, the Services, these Conditions, or any non-contractual matters associated with, arising out of, or connected with them, including any question regarding their existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with those Rules.
- 22.3. The arbitration institute shall be the International Court of Arbitration of the International Chamber of Commerce.
- 22.4. The arbitration proceedings shall be conducted in English and shall take place in Paris. If the Company contracted by the Customer has its registered office in Asia the arbitration proceedings shall take place in Singapore (Singapore); if the Company contracted by the Customer has its registered office in Africa the arbitration proceedings shall take place in Johannesburg, (South Africa); if the Company contracted by the Customer has its registered office in USA the arbitration proceedings shall take place in Houston (Texas, USA); ; if the Company contracted by the Customer has its registered office in Canada the arbitration proceedings shall take place in Toronto; if the Company contracted by the Customer has its registered office in South America the arbitration proceedings shall take place in Rio de Janeiro (Brazil).
- 22.5. The Customer agrees that it shall not institute suit in any court or forum other than before the International Court of Arbitration of the International Chamber of Commerce and agrees to be responsible for the legal expenses and costs of the Company (on a full indemnity basis) in staying and/or removing a suit filed in front of a court or forum other than the one chosen in this Section. The parties agree that, with the exception of claims falling under Section 22.8, the issue of whether the disputed claim is governed by the arbitration agreement shall be submitted to the three-member arbitration panel.
- 22.6. The arbitral award shall be final and binding upon the Parties and shall be enforceable in accordance with its terms.
- 22.7. Arbitration expenses shall be paid by the losing Party or as fixed by the arbitral tribunal. If a Party needs to enforce an arbitral award by legal action of any kind, the Party against which such legal action is taken shall pay all costs and expenses and attorneys' fees (on a full indemnity basis), including any cost of additional litigation or arbitration incurred by the Party seeking to enforce the award.
- 22.8. Notwithstanding the foregoing, Company may commence litigation against Customer for the collection of past due amounts owed for Services provided, in which case the court having exclusive jurisdiction shall be the Court of the city in which the Company contracted by the Customer has its registered office, which is presumed to be the place of formation and performance of the contract.
- 22.9. Notwithstanding the preceding provisions of this clause for all disputes involving PGS China which are not foreign related such as, but not limited to, in which both parties are Chinese companies, or if the goods are stored in China, or if the transportation happened in China, or if the contract has been signed and performed in China,



A. GENERAL PROVISIONS APPLICABLE TO ALL SERVICES

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shall be referred to the exclusive jurisdiction of the local courts where the Services are performed.

- 22.10. For all disputes involving Pacorini Vietnam which are not foreign related such as, but not limited to, in which both parties are Vietnamese companies, or if the goods are stored in Vietnam, or if the transportation happened in Vietnam, or if the contract has been signed and performed in Vietnam, shall be referred to the exclusive jurisdiction of the local courts where the Services are performed.

**B. SPECIAL PROVISION APPLYING TO FREIGHT FORWARDING SERVICES****23. SCOPE OF APPLICATION**

- 23.1. Either when acting on his own or when acting on behalf of third parties in the conclusion of the contract of freight forwarding and / or carriage, the Customer explicitly agrees that the "Special provisions applying to Freight Forwarding Services" contained in this Section B of these Conditions shall also govern all the contractual and non-contractual relationships with the Company and to all the actions and claims against him.
- 23.2. This section shall be construed in addition to and not in derogation of or in substitution to any provision already stated in the present Section A "General Provisions Applicable to All Services."

**24. FREIGHT FORWARDING SERVICES**

- 24.1. By virtue of an express mandate received from the Customer, and in accordance with the instructions received, the Company shall provide for entering into the contract of carriage and shall be authorized to undertake to forward Goods either in its own name or in the Customer's name, but always on the latter's behalf, and pursuant thereto in providing all and any such Services as may be necessary in respect thereof, performing all and any required formalities and concluding such agreement as are necessary for such purpose. In such case Company acts as freight forwarder and the performance of the contract of carriage entered into by it for and on behalf of its Customer with third-parties falls outside its duties and liabilities, regardless of the agreed mode of payment.
- 24.2. Company shall not be deemed liable as carrier if the Customer has received a transport document issued by a person other than the Company and does not within a reasonable time maintain that the Company is nevertheless liable as carrier.
- 24.3. Within this Section n. B Customer means any person having rights or obligations under the contract of Freight Forwarding Services concluded with the Company or as a result of its activity in connection with such services, and shall therefore include the party appearing as shipper, or as consignor, in the contract of carriage entered into by the Company.

**25. OBLIGATIONS AND RESPONSIBILITIES OF THE COMPANY**

- 25.1. The Company shall use commercially reasonable efforts in performing the instructions.
- 25.2. The Company shall be authorized to consolidate cargo as groupage, unless otherwise explicitly agreed in writing between the parties.
- 25.3. The Company does not assume any responsibility with regard to the interpretation of instructions received from the Customer verbally or on the telephone without written confirmation, but Company may rely upon any verbal instructions without receipt of written confirmation provided by Customer in Company's sole and absolute discretion.
- 25.4. Should the Customer fail to provide the correct customs code, the Company or its representatives shall be authorized to issue the customs declaration on the basis of the information and documents provided. The Customer waives any liability of the Company in connection to, and undertakes to hold the Company and its representatives harmless of, any claim whatsoever which may be raised by control authorities or other related offices as a consequence thereof.

25.5. The Company is not liable for the performance delivered by third parties such as, but not limited to, carriers, ground transportation, storage suppliers, packers, shippers, insurers and/or bankers whose Services are required for the performance of the instructions.

25.6. The Company shall not be liable in the event of any consequence resulting from the delay or failure to collect cargo at destination: the Customer shall therefore indemnify and keep indemnified the Company in full and on demand of any claim and expenses incidental thereto (including legal costs on a full indemnity basis) which, in that regard, might be addressed against the Company.

25.7. The Company is under no obligation to:

- a) ascertain or bring the attention of the Customer to the existence of any impediments to shipment enforced by law or by any relevant authorities, including, but not limited to, importation, exportation or transit restrictions;
- b) ascertain the existence, entirety and suitability of the packaging for cargo to be shipped, and cannot therefore be held liable for any damage to cargo provided unpacked or inadequately or improperly packed;
- c) issue the declaration "of interest in delivery" as per art. 22 of the Montreal Convention 22-5-99 (and/or art. 35 COTIF-CIM), nor to declare the value of the cargo to the carrier (in compliance with art. 26 CMR, art. 4.5.a) Brussels Convention or any other relevant domestic regulation or international convention, unless explicit request to that effect is received from the Customer in writing.

25.8. The Company does not guarantee delivery deadlines nor the application of specific priorities in the completion of the shipping order even if said deadlines and/or priorities are mentioned in the shipping documents, nor does it guarantee the accuracy of the information received by carriers on the dates of loading, unloading or delivery of cargo, nor on the dates of arrival of the means of transport at destination. The Company shall be authorised to modify delivery deadlines as indicated by the Customer if they are not compatible with the carrier's compliance with safety norms governing carriage.

25.9. The Company is allowed, but is under no obligation, to inspect the cargo assigned to it at any time.

**26. METHOD AND ROUTE OF TRANSPORTATION**

26.1. The Company shall carry out the Services according to the Customer's instructions as agreed. If the instructions are inaccurate or incomplete or not according to contract, the Company may at the risk and expense of the Customer act as it deems fit.

26.2. Unless otherwise agreed, the Company may without notice to the Customer arrange to carry the Goods on or under deck. Unless otherwise agreed, the Company may, upon reasonable efforts to inform the Customer, choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.

**27. OBLIGATIONS AND RESPONSIBILITIES OF THE CUSTOMER**

27.1. The Customer shall be deemed to have guaranteed and declared:

- a) that the shipment has been correctly and accurately described in every document of carriage;
- b) that the Goods declared by the Company as non-acceptable pursuant to paragraphs 3.1 have been

**B. SPECIAL PROVISION APPLYING TO FREIGHT FORWARDING SERVICES**

- acknowledged as such by the Customer and that they have not been included into the shipment;
- c) that the nature of the Goods, number, quantity, quality and the contents of the packages, the gross weight (including the weight of packages and pallets), volume and dimension of the packages and any other information given is true and accurate;
- d) that packing and labeling related to the Goods and to the conditions of carriage, are considered as appropriate and that the labels marking the Goods allow easy and unambiguous identification of the type and characteristics of the cargo.
- 27.2. The Customer shall be deemed to have further explicitly declared to hold the Company harmless from any damage, loss, claim or cost arising from:
- a) the breach of the warranties above mentioned;
- b) the lack, insufficiency or inadequacy of packing;
- c) the lack of information on cargo and on packages about the necessary cautions to be used in handling and lifting the Goods.
- 27.3. The Customer shall in due course provide the Company with clear and precise instructions on transport, as well as the documents required for the acceptance and shipment of the cargo. Should the Customer fail to provide instructions, or should said instructions be unclear and/or impracticable, the Company shall proceed according to its own best judgement in its sole and absolute discretion. Unless otherwise agreed upon in writing, the Customer shall provide the Company, in advance, with the funds needed to execute the assignment and to fulfil all related obligations which the Company has undertaken and/or shall undertake in its own name and on behalf of the Customer. Should the Company have to sustain the necessary expenses in advance, or should it not promptly receive the funds due, it shall be entitled to the reimbursement of any losses generated by exchange rate fluctuations, in addition to standard fees, the commission due for payments made in advance, and legal interests.
- 27.4. In case the Company undertakes to perform customs operations, the Customer warrants that the documentation related to the Goods is authentic, complete and fully regular and that the Goods strictly correspond to the description provided, comply with the relevant applicable law, are importable/exportable and are regularly labelled. In addition, the Customer shall give in due time all the information, dates, customs codes, customs entries and classification of the Goods, and all the necessary documentation in order to proceed with the customs operations and formalities.
- 28. DUTY OF INDEMNIFICATION IN RESPECT OF GENERAL AVERAGE**
- 28.1. The Customer shall indemnify and keep indemnified the Company in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Company in this connection.
- 29. STORAGE**
- 29.1. Any storage of the cargo assigned to the Company for shipment under a contract of freight forwarding shall be arranged either at the Company's own facilities or at third parties' public or privately owned facilities, according to the Company's own choice.
- 29.2. Should the Company store the cargo at third parties' facilities, the same conditions in force between the Company and the Customer (including any limitations of liability) shall apply between the Company and the third party supplying storage.
- 29.3. The Company may grant the exclusive right to use parts of its warehouses to store specific Goods. The compensation for granting the aforesaid premises shall be agreed upon on a case by case basis depending on the duration of the grant.
- 29.4. Should the Customer deliver Goods to the Company for long-term storage (such being considered a period exceeding 60 days), notwithstanding paragraph 16.1, the Company may terminate the storage agreement at any time by notifying the Customer in writing, via registered letter, at least fifteen (15) days in advance. Customer shall pay all fees and expenses incurred by the Company until the day when the cargo leaves the Company's warehouses.
- 29.5. Should the cargo be subject to any inspection, processing, sampling or handling during its storage at the warehouse, prior agreements to that effect must be taken and said procedure carried out by personnel appointed by the Company or, if viable, by personnel appointed by the Customer with the assistance and supervision of a representative of the Company.
- 29.6. The liability for storage Services performed by the Company acting as Freight Forwarder related to any damage and claim arising from the operations of storage shall be limited solely to gross negligence or willful misconduct attributable to the Company.
- 29.7. The Customer shall be liable for all damages incurred by the Company arising from activities of the Customer, its servant or agents. Any person present on the Company's premises or on any premises where the Company carries out its operations shall comply with the safety norms in force as issued by relevant authorities or by the Company and act according to them in order to ensure order and safety. Customer agrees to insure, defend, and indemnify Company for any claims arising as the result of the presence of Customer personnel on Company's premises. Company may request that Customer provide Company with a Certificate of Insurance naming Company as additional insured as required by these Conditions, but Company's failure to do so shall not operate as a waiver of Customer's obligation to name Company as additional insured under these Conditions.
- 30 HINDRANCES**
- 30.1 If at any time the Company's performance is or is likely to be affected by any hindrance or risk of any kind (including the conditions of the Goods) not arising from any fault or neglect of the Company and which cannot be avoided by the exercise of reasonable endeavour, the Company may abandon the carriage of the Goods under the respective contract and, where reasonably possible, make the Goods or any part of them available to the Customer at a place which the Company may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Company in respect of such Goods shall cease. In any event, the Freight Forwarder shall be entitled to the agreed remuneration under the contract and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.
- 31 MISCELLANEOUS**
- 31.1 Any bonus, discount, brokers' commission or fee on freights and similar items obtained by the Company carriers' rates shall pertain exclusively to the Company.

**C. SPECIAL PROVISION APPLYING TO WAREHOUSE AND DISTRIBUTION SERVICES****32 SCOPE OF APPLICATION**

32.1 Either when acting on its own or when acting on behalf of third parties in the conclusion of the contract for the supply of warehouse and distribution Services, the Customer explicitly agrees that the "Special provisions applying to Warehouse and Distribution Services" contained in this Section n. C of these Conditions shall also govern all the contractual and non-contractual relationships with the Company and to all the actions and claims against him.

32.2 This section shall be construed in addition to and not in derogation of or in substitution to any provision already stated in the present Section A "General Provisions Applicable to All Services."

**33 WAREHOUSE AND DISTRIBUTION SERVICES**

33.1 The Company, when acting as a warehouse and distributor Services provider, provides various logistics Services for a broad range of commodities and general cargo related to receiving, discharging, storing, shipping, forwarding and other Services in respect of the Goods, including all related and additional activities.

33.2 In the absence of precise instructions from the Customer, the Company shall have complete autonomy to organize the Services and organize the human and material resources inherent to its activity in its sole and absolute discretion.

**34 OBLIGATIONS OF THE CUSTOMER**

34.1 The Customer shall in due course provide the Company with clear and precise written instructions relating to the protection, handling and storage of the Goods and the execution of the assignment in general, specifying in writing in time before the commencement of the work the nature of Goods, number, quantity, quality and content of parcels, their gross weight, size and any other information instrumental to the execution of the assignment, as well as the documents required for the acceptance of Goods. Verbal or telephone communications or arrangements shall only be binding on the Company if immediately followed by a written confirmation. Should the Customer fail to provide written instructions or should said instructions be unclear and/or impracticable, the Company shall proceed in its sole and absolute discretion.

34.2 The Customer warrants and is bound by the accuracy of all descriptions, particulars and/or information furnished to the Company in respect of the Goods. The Customer will be liable to and shall indemnify and keep indemnified in full and on demand the Company and / or any third parties for any injury, loss or damage whatsoever (including legal costs on a full indemnity basis) arising from the incorrect and/or misleading and/or incomplete packaging, description, particulars, indication or information in respect of the Goods including inaccuracies or omissions in the leading marks, numbers, quantity, weight, gauge, measurement, properties, contents, nature, origin, quality or value of the Goods as well as for any damage arising from defects in the Goods and/or packing, which have not been notified to the Company before the Parties enter into an agreement. Company will be exempt from any responsibility if the Goods have to be unloaded, destroyed and/or neutralized due to this lack of information. The

Customer is liable for any damage incurred by the Company owing to activities of the Customer's employees or representatives. Any person present in the Company's premises or on any premises where the Company carries out its operations shall comply with the safety norms in force as issued by relevant authorities or by the Company and act according to them in order to ensure order and safety.

34.3 The Customer guarantees that the Goods delivered are his property or that, as a representative of the owner or interested party, it can dispose of them, so that it not only accepts these Conditions itself but also explicitly on behalf of its assignor and/or any other interested party. The Customer is obliged to immediately notify the Company in writing of transfer or passing of ownership of Goods or transfer or passing of the right to take delivery of the Goods, as the case may be. Furthermore, the Customer is obliged to immediately notify the Company in writing of any dispute which may arise with third parties in regard of the ownership of Goods.

34.4 Should the Goods be subject to any inspection, processing, sampling or handling during its storage at the warehouses, tanks, yards, silos and any other facilities at which such Goods are stored by the Company ("Storage Facilities"), the Customer shall notify the Company by means of written notice at least two (2) business days in advance, and such activities shall be taken at the presence of a representative of the Company during normal business days and working hours.

**35 OBLIGATIONS OF THE COMPANY**

35.1 The Company shall use commercially reasonable efforts in storing, supervising and caring for the Goods and performing the Services.

35.2 Unless otherwise agreed in writing, the Company shall be entitled to subcontract to third parties any Services it reasonably deems necessary or convenient for the fulfilment of the Customer's instructions. In no event shall Company be liable to Customer for the negligent acts of Company's subcontractors or third parties.

35.3 Should the Customer fail to provide the correct or complete customs code, the Company and its representatives shall be authorized to issue the customs declaration on the basis of the information and documents provided. The Customer accepts and undertakes to exclude any liability of the Company and to hold the Company, its appointed agents and representatives harmless of any claim, fines, penalty, loss, damages, costs and controversy whatsoever which may be raised by control authorities or other related offices.

35.4 The Company is under no obligation to ascertain or bring the attention of the Customer to the existence of any impediments to shipment enforced by law or by any relevant authorities, including, but not limited to, importation, exportation or transit restrictions.

35.5 The Company shall not be obliged to weigh or measure the Goods received if no instructions to that effect are given, provided however that the Company shall have the liberty of weighing and measuring the Goods; if the Company then discovers that the weight or measurement differs from the descriptions provided by the Customer, the cost of weighing and/or measuring involved shall be borne by the Customer. If during the weighing of the Goods the Company detects any discrepancy, the

Company shall promptly inform the Customer about the discrepancy and the Customer shall be fully and solely responsible and liable for such discrepancy and the costs related thereto.

- 35.6 The Company is under no obligation to ascertain the existence, entirety and suitability of the packaging for Goods to be shipped, and cannot therefore be held liable for any damage to Goods provided unpacked or inadequately or improperly packed.
- 35.7 The Company does not guarantee delivery deadlines nor the application of specific priorities in the completion of the Services even if said deadlines and/or priorities are mentioned in the shipping documents, nor does it guarantee the accuracy of the information received by carriers on the dates of loading, unloading or delivery of Goods, nor on the dates of arrival of the means of transport at destination. The Company shall be authorized to modify delivery deadlines as indicated by the Customer if they are not compatible with the carrier's compliance with safety norms.
- 35.8 The Company is under no obligation to issue the declaration "of interest in delivery" as per art. 22 of the Montreal Convention 22-5-99 (and/or art. 35 COTIF-CIM), nor to declare the value of the Goods to the carrier (in compliance with art. 26 CMR, art. 4.5.a) Brussels Convention or any other relevant domestic regulation or international convention, unless explicit request to that effect is received from the Customer in writing.

### **36 RECEIPT OF GOODS AND DOCUMENTATION IN CASE OF STORAGE SERVICES**

- 36.1 Receipt by the Company of the Goods will be effected by the Customer handing over the Goods to the Company and the Company taking over the Goods at the place of storage. If the Customer instructs the Company to take delivery of Goods but the Goods fail to arrive for any reason whatsoever, the Customer undertakes to compensate the Company on an indemnity basis for all costs and expenses incurred by the Company in taking any steps in accordance with the Customer's instructions.
- 36.2 The Customer must ensure that all the necessary and proper details and documents to be provided to the Company for the performance of the Services are in the Company's possession within the time frame indicated by the Company so as to ensure compliance with all applicable rules and regulations.
- 36.3 Within twenty-four (24) hours of the receipt of the Goods at the Storage Facilities, the Company shall issue a warehouse receipt on the basis of the quantity of Goods received; however, the Company shall not be responsible or liable to the Customer in respect of:
- claims arising out of a dispute by any third party contesting title or rights of ownership to the Goods, provided always that the Company shall not under any circumstances release any of the Goods which are subject to the dispute without the prior written consent of the Customer;
  - any difference between the quantity of Goods stipulated in any warehouse receipt and that stipulated in documents issued by any shipping line, shipping agent, forwarder, haulier or any third party that may have issued documentation purporting to evidence quantity;
  - claims not arising from or caused by any Company's gross negligence or willful misconduct. Upon becoming aware of any such claim, dispute or difference, the Company shall immediately (and in any event within twenty-four (24) hours) notify the Customer of the same in writing and

use its best commercial efforts to assist the Customer to protect its rights in respect of the Goods.

### **37 RISK OF THE GOODS**

- 37.1 Company will only be responsible, with the exclusions and limitations set forth under paragraphs 8 and 11, for material damage resulting from the loss or damage to the Goods if the event that has caused the damage (i) is the result of proven gross negligence or willful breach of Company's contractual obligations, and (ii) has taken place between the time when it took charge of the Goods and the time when they were delivered. Customer expressly waives any claims for damage to the Goods against Company unless such damage (i) is the result of proven gross negligence or willful breach of Company's contractual obligations, and (ii) has taken place between the time when it took charge of the Goods and the time when they were delivered.
- 37.2 Company will not be responsible for the loss or damage to the Goods after they have left Company's custody. Company shall have no responsibility or liability towards the Customer, or any third party, for the Goods after they have been properly released from the storage facilities in accordance with Customer's release instructions.
- 37.3 Company shall not be responsible if the Goods have been carried by the Customer or his representative. Neither shall it be responsible for the consequences of loading or unloading operations that have not been carried out by it.
- 37.4 Company will only be responsible for mistakes made in documentation or delivery of the Goods if they have been caused by Company's deliberate intent, gross negligence or willful misconduct. It shall not be responsible if the error has been made following Customer's instructions.
- 37.5 At the time of delivery of the Goods, the receiver must verify the conditions in which they are received, as well as the quantity, number and weight of the packages delivered. In the event of any apparent defect or damage to the Goods or loss of any part or package, the receiver or the Customer must, under penalty of extinction of Customer's cause of action and claims, give a written notice to Company of the defect or of the damage and the general nature of such defect or damage at the time of delivery. In the event that the defect or damage to the Goods or the loss of any part or package are not apparent at the time of delivery, the receiver or the Customer must give a written notice of his reservation to the Company within forty-eight (48) hours of delivery of the Goods.
- 37.6 If the Customer does not require the Goods to be counted and/or weighed before they are stored, he waives the right to claim for any shortfalls which may occur when they are delivered.

### **38 INSURANCE**

- 38.1 Customer shall ensure that all Goods are and shall be at all times appropriately insured under an "All Risk Insurance Policy" at its own cost and expense, and shall ensure that such insurance policy/ies contain a waiver of subrogation rights in favor of the Company and its designees. Customer shall name Company as additional insured under such policies. In the event of not doing so, the Customer expressly assumes the obligation to hold the Company harmless from any claim arising from the breach of this clause.

**D. SPECIAL PROVISION APPLYING TO TERMINAL SERVICES****39 SCOPE OF APPLICATION**

- 39.1 Either when acting on his own or when acting on behalf of third parties in the conclusion of the contract for the supply of terminal Services, the Customer explicitly agrees that the "Special provisions applying to Terminal Services" contained in the Section D of these Conditions shall also govern all the contractual and non-contractual relationships with the Company and to all the actions and claims against him.
- 39.2 This section shall be construed in addition to and not in derogation of or in substitution to any provision already stated in the present Section A "General Provisions Applicable to All Services."

**40 CARGO HANDLING SERVICES**

- 40.1 The Company, when acting as a Terminal Operator, performs or procures the performance of the receiving or delivering, or loading or discharging of Goods into or from Customer's means of transport and the storing, general handling and movement of Goods ("Cargo Handling Services") at any berth operated by the Company, including any quay, transit shed or other area situated thereat (the "Berth").
- 40.2 In Section D "Customer" means the owner of the means of transport and the owner of the vessel (including the ship owner and any part owner, charterer, master or other person in charge of the vessel, disponent owner, consignee or mortgagee in possession), collectively referred to as the "Ship-owner", and the owner of any Goods (and any bailor, bailee, consignor, shipper, consignee, or other respective agents in relation thereto; the "Cargo Owner").
- 40.3 The Company shall perform or provide such of the Cargo Handling Services as the Company in its reasonable discretion considers appropriate and expedient for the particular Goods unless instructed to the contrary in writing by the Customer and agreed in advance by the Company.
- 40.4 The Company is entitled to have the Cargo Handling Services carried out in whole or in part by staff and equipment of third parties as well as, at the discretion of the Company, with the help of the loading and unloading equipment and/or drive power of the means of transport to be made available by the Customer free of charge. In no event shall Company be liable for the negligence of its subcontractors or third parties.

**41 NOTICE**

- 41.1 Use of a Berth and/or Cargo Handling Services by the Ship-owner or by the Cargo Owner shall be deemed to constitute notice of and agreement to these Conditions provided that prior to the use of the said Berth or Services the Company shall take commercially reasonable steps to ensure that the Ship-owner or Cargo Owner is aware of these Conditions and that copies are available on request. Company may satisfy this obligation by posting these Conditions online.
- 41.2 These Conditions shall be applicable during such time as a Berth is being used by a vessel for the loading, discharging or stowing of Goods by the Company or the loading, discharging or stowing of ship's stores or bunkers and at any time a berth, quay, transit shed or other area at the port is being used for the receiving,

delivering, loading or discharging, stowing, handling or storage of Goods by the Company.

**42 MANNING AND PERFORMANCE OF CARGO HANDLING SERVICES**

- 42.1 Subject to these Conditions, the Company shall provide supervision and labour as available and necessary plant and equipment for the discharging, loading, receiving, delivering, stowing, handling and storage of Goods at the Berth.
- 42.2 The Company shall not be under any obligation to receive or handle vessels or road vehicles at the Berth in any particular order.
- 42.3 The Company shall be entitled not to commence Cargo Handling Services until a suitable berth, quay and, if required, transit shed or storage area and suitable plant and equipment are available and sufficient port operations workers and other employees are available to perform Cargo Handling Services on the vessel, the quay or in the transit shed or storage area. After the commencement of Cargo Handling Services, they will be continued as and to the extent that plant and port operations workers and other employees are reasonably available in all the circumstances from time to time.
- 42.4 The Company may decline at any time to perform or provide or (within a reasonable time after detrimental information as to the nature of the Cargo Handling Services required is learnt by the Company) to continue to perform or provide all or any work or Cargo Handling Services.
- 42.5 The Company may use such plant and equipment on Cargo Handling Services as it considers suitable for the type of cargo being handled in its sole and absolute discretion.
- 42.6 No liability shall attach to the Company in consequence of its not commencing or continuing Cargo Handling Services for the reasons specified in paragraph 42.3. Customer waives any claim that it may have against Company for claims alleging resulting from Company not commencing or continuing Cargo Handling Services.
- 42.7 Without prejudice to the generality of the foregoing when Goods are exceptionally difficult to work due to unsoundness of Goods, bad or collapsed stowage, damage to the Goods or the vessel or other matter creating exceptionally difficult working conditions then the Company may in its sole and absolute discretion elect whether to perform or provide or continue to perform or provide Cargo Handling Services and if it should so elect and inform the Ship-owner or the Cargo Owner thereof, then the Company shall not be liable for any loss or damage whatsoever howsoever caused (including where caused by the negligence of the Company, its appointed agents and representatives or independent contractors) to the Goods or the vessel / means of transport, including any claim for loss of use or loss of a particular market and the said Ship-owner or Cargo Owner shall indemnify and keep indemnified the Company in full and on demand against all proceedings, claims and expenses (including legal costs on a full indemnity basis) arising out of or consequent on any such election by the Company, including all proceedings, claims and expenses relating to the handling of cargo on the quay or in a shed or store. The Company by reason of its specialized knowledge shall be the sole arbiter as to whether Goods are exceptionally difficult to work or not. The Company shall have the right, having made an election, to

subsequently reverse that election in the light of circumstances then prevailing and no liability shall attach to it thereby. Extra charges may be levied by the Company to handle unsound Goods and Goods that are exceptionally difficult to handle, and such extra charges and any costs and expenses incurred by the Company hereby shall be repaid by the Ship-owner of the vessel (o by the owner of the means of transport) on which the Goods were or were to be consigned or the Cargo Owner.

#### **43 ACCURACY OF PARTICULARS OF CARGO**

43.1 The Ship-owner or the Cargo Owner, as appropriate, shall be deemed to warrant the accuracy of all descriptions, values, weights and other particulars of any Goods supplied to the Company for any purpose whatsoever or marked thereon in relation to Cargo Handling Services and shall indemnify and keep indemnified in full and on demand the Company against all proceeding claims, expenses (including legal costs on a full indemnity basis) and pecuniary penalties that the Company may suffer or incur as a result of any inaccuracy or omission therein.

#### **44 OBLIGATIONS OF THE CUSTOMER**

44.1 If and insofar as it concerns them, the Company and the Customer shall each see to obtaining and keeping all necessary permits as well as to compliance with all applicable regulations. They guarantee compliance with said obligations by their staff, assistants and subcontractors.

44.2 All information supplied by the Company, such as the availability of berths and the time of execution of the Cargo Handling Services, is not binding.

44.3 The Customer must prepare the means of transport and the Goods to be loaded or unloaded from it at its own expense and risk such that the Company is able to carry out the Cargo Handling Services safely, in a responsible manner and without any delay.

44.4 In case of refusal, suspension, interruption or termination of the Cargo Handling Services, the Customer must ensure that the means of transport and corresponding items shall leave the Terminal upon first request thereto by the Company, for lack of which the Company shall be entitled to take appropriate measures at the expense and risk of the Customer.

44.5 The Cargo Handling Services do not entail inspection or insurance of the Goods by Company unless this has been explicitly agreed in writing, in which case the cost of inspection and insurance shall be borne by the Customer.

44.6 The Customer guarantees packing respectively packaging that is sea-proof or appropriate for the transport modality concerned (including but not limited to containers in which the goods are stowed) and clearly readable labelling of the Goods in accordance with the applicable regulations (concerning safety and the environment), and for lack thereof, in accordance with the applicable standards under current market practices and behavior.

44.7 Well in time before the start of the Cargo Handling Services, the Customer must notify the Company in writing of the possibly special nature, scale and treatment of the Goods as well as, in general, provide the Company well in time with all instructions and information of which the Customer is aware or ought to be aware that the Company needs in order to carry out the Cargo Handling Services safely, in a responsible manner and without any delay. Any additional work in connection with non-fulfilment of the aforementioned shall be at the expense of the Customer.

44.8 The Customer guarantees that anyone who enters the Terminal from the water or from the shore within the scope of the Cargo Handling Services for or on behalf of the Customer shall strictly adhere to the safety regulations and other regulations applicable to the Terminal. The Company is entitled to remove from the Terminal, or to order the removal of, anyone who does not adhere to, or threatens to act in breach of, such regulations or who is unwelcome otherwise in the opinion of the Company. Customer agrees to insure, defend, and indemnify Company for any claims arising as the result of the presence of Customer personnel on Company's premises. Company may request that Customer provide Company with a Certificate of Insurance naming Company as additional insured as required by these Conditions, but Company's failure to do so shall not operate as a waiver of Customer's obligation to name Company as additional insured under these Conditions.

44.9 In its legal relationships with third parties, the Customer shall include a third-party clause in favor of the Company, such as a so-called Himalaya clause, which entitles the Company to rely (also) on jurisdiction clauses and all limitations and exclusions of liability in favor of the Customer, including a "before-and-after" clause, for damage, loss and/or delay of the Goods (to be) transported by the Customer, which preferential treatment is accepted by the Company beforehand.

#### **45 WARRANTIES OF THE SHIPOWNER**

45.1 The Ship-owner warrants and undertakes that:

a) Vessels calling at the Berth are operated in compliance with international standards and regulatory requirements (including, by way of example only, ISM, flag state and classification society) with regard to safety, stability, seaworthiness, fitness for purpose and security ("Regulatory Compliant Vessel"). The Company will be entitled to refuse to provide the Cargo Handling Services to any Vessel that is not a Regulatory Compliant Vessel, and the Ship-owner will indemnify and keep indemnified in full and on demand the Company in respect of any consequences of a Vessel that is not a Regulatory Compliant Vessel presenting at the berth or within the Terminal that is not a Regulatory Compliant Vessel and/or arising out of the provision of the Cargo Handling Services in respect of such Vessel.

b) Vessels are covered by P&I insurance with reputable P&I in respect of third party liability risks (including but not limited to cargo damage, pollution and wreck removal) and for levels of cover as would normally be taken out by a prudent operator of comparable Vessels in similar trades, and the Ship-owner shall provide the Company with documentary evidence of such insurance cover upon request.

45.2 The Company may terminate the contract if any of the warranties listed above proves to be materially false, inaccurate or misleading. The Ship-owner shall indemnify and keep the Company indemnified in full and on demand against all damages, proceeding, claims, expenses (including legal costs on a full indemnity basis) and pecuniary penalties that the Company may suffer or incur as a result thereof.

#### **46 VESSEL ON BERTH**

46.1 The Company shall permit a vessel once on a Berth to remain at the Berth until the completion of Cargo Handling Services in relation to that vessel, but subject to the discretion of the Company in regard to its operational



- requirements for the Berth and to the statutory powers of the Harbour Master of ordering the movement of vessels within the Port.
- 46.2 The Company shall permit a Ship-owner to load and discharge stores and bunkers whilst a vessel is on a Berth.
- 47 ARRIVAL OF VESSEL**
- 47.1 The expected date of arrival of a vessel at a berth shall be given by the Ship-owner to the Harbour Master and to the Company not later than 2 days prior to the said date of arrival or such lesser period as may be agreed to by the Company and all changes to that date shall be promptly notified by the Ship-owner to the Harbour Master and the Company. The vessel's final expected time of arrival at the Berth shall be given in writing to the Harbour Master and the Company between the hours [to be checked with the local Company's office] from Monday to Friday inclusive and not later than 24 hours (excluding Bank or other National Holidays) prior to the said time of arrival.
- 48 WORKING PERIODS**
- 48.1 The agreed rates and tariffs will apply during official working hours in any business day. "Business Day" means a day (excluding Saturdays, Sundays and public holidays) on which banks are generally open for business in the country/location where the Storage Facility is located. The working hours has to be checked with the Company's local office where the Services have to be rendered, case by case.
- 48.2 Overtime Periods. Services performed outside official working hours and outside the Working day (including the evening and night shifts preceding such days) are considered to be overtime services. Special rates and tariffs apply in case of overtime services whereby overtime services are subject to the availability of the workforce.
- 48.3 Work performed or provided at the request of a Ship-owner or Cargo Owner during the above Overtime Periods or on Bank or other National Holidays or otherwise outside the Basic Working Periods indicated above (including work performed or provided during work periods which commence before but cease on or which commence on but cease after the said Holidays) will be subject to additional charges as specified by the Company from time to time. In the context of these Terms and Conditions, Bank and other National Holidays shall be deemed to commence at 07:00 hours on the relevant Holiday and be of twenty-four (24) hours duration.
- 49 TIME LOST**
- 49.1 Where labour has been ordered by the Company in reliance on the provisions contained in paragraph 47 and time is lost consequent on a vessel's late arrival or non-arrival at the Berth or where a Ship-owner wishes Cargo Handling Services to commence at a time other than at the start of any working period mentioned in paragraph 48, then the period of working time with labour standing by will be charged for as specified in paragraphs 48.1 and 48.2.
- 49.2 Time lost shall be deemed to commence at the start of a work period for which labour has been ordered and to cease when a vessel is safely secured at its intended berth or, in the event of non-arrival of the vessel, on the termination of the period for which labour has been ordered and the time lost calculated thereby shall be charged to the Ship-owner at the rates specified by the Company from time to time.
- 49.3 Time lost or work delayed due to adverse weather or material delays attributable to the Ship-owner or the Cargo Owner, their respective servants, agents or independent contractors (other than the Company) shall also be charged to the Ship-owner or the Cargo Owner, as appropriate, at the rates specified by the Company from time to time.
- 49.4 The Ship-owner or the Cargo Owner, as appropriate, shall not be liable to pay for time lost or work delayed if the time lost or work delayed is due to breakdown of the Company's plant or equipment or labour disputes between the Company and its employees but if labour is ordered for a working period referred to in paragraph 48.2 any additional charge payable thereby shall nonetheless continue to be payable despite such breakdown or dispute.
- 50 DELIVERY OF GOODS**
- 50.1 No Goods shall be available for delivery by the Company until such time as Customs clearance has been obtained in respect thereof. The Cargo Owner shall be responsible for the clearance of Goods with Customs.
- 50.2 Goods will not be delivered by the Company without production of a Delivery Order issued by, or on behalf of, the Ship-owner in his usual form authorizing such delivery and in the case of sub-orders issued by or on behalf of the Cargo Owner named in the original Delivery Order and being in a form satisfactory to the Company and authorizing such delivery.
- 50.3 The Company may by not less than 24 hours written notice given to the Cargo Owner require the removal of Goods stored at the Berth within the period specified in the notice, after expiry of which time the Goods may at the sole risk and expense of the Cargo Owner thereof be disposed of in such manner as the Company shall see fit and without any responsibility whatsoever on the part of the Company in respect of any loss or damage sustained by the said Cargo Owner arising out of or in consequence of such disposal.
- 50.4 Cargo Owners requiring delivery of Goods from the Berth must make arrangements for delivery with the Company before 24 hours on the working day prior to delivery (Monday to Friday).
- 50.5 Subject to paragraph 50.3, the Company will not execute the delivery of Goods from the Berth except upon prior production of one of the following documents:
- a) the delivery order of the Owner of the vessel upon which the cargo has been shipped;
  - b) the sub-delivery order of the Cargo Owner identifying a haulier whose name has been previously notified to the Company by the said Cargo Owner and is recorded on the Company's Terminal booking sheet;
  - c) in exceptional circumstances only, an email (in lieu of a delivery/sub-delivery order) sent by the Cargo Owner to the Company authorizing the Company to deliver to a specified person named therein.
- 51 DEMURRAGE CHARGES IN RELATION TO ROAD TRAFFIC**
- 51.1 Any appointment made with the owner of a means of transport or with the Cargo Owner or their respective employees, servants or agents for the receipt from means of transport of Goods for shipment, or for the delivery of Goods to a means of transport, at any particular time or within a particular interval of time shall (notwithstanding

any representation made by any servant or agent of the Company) be construed merely as the anticipated time when the Goods may be received or delivered and shall not oblige the Company to accept such Goods (nor refrain from accepting other Goods) at that time nor determine the order in which means of transport may unload or load.

- 51.2 No liability shall attach to the Company in consequence of any failure to permit the loading or unloading of any means of transport at or within the time or interval of time referred to in paragraph 51.1, notwithstanding any representation made by any servant or agent of the Company at the time of the making of the appointment, or at any time before or thereafter which may occur, and the owner shall release and indemnify and keep the Company indemnified in full and on demand from and against such liability.

## 52 CUSTOMS EXAMINATION

- 52.1 Extra charges will be raised for routine Customs examination, which includes random weighing but excludes weighing or taring for average for specific commodities.
- 52.2 An additional charge will be made if Customs order a more extensive or thorough examination for any reason.

## 53 NON-SHIPMENT OF GOODS

- 53.1 The receiving by the Company for and on behalf of the Ship-owner of Goods for shipment does not imply that such Goods will be shipped. The acceptance or refusal of Goods for shipment is the responsibility of the Ship-owner concerned.
- 53.2 Where Goods are not shipped the Ship-owner or Cargo Owner (as appropriate) shall pay to the Company such reasonable sum as the Company shall determine in relation to the work performed by the Company or in connection with the redelivery of such Goods to the Cargo Owner who shall take delivery of the Goods at the part of the Terminal where they are lying but the Company shall be at liberty nevertheless to transfer such Goods at the expense of the Ship-owner to another location if in the opinion of the Company such Goods could otherwise cause congestion at their existing location and to delay or decline to perform the work of redelivery until the reasonable sum aforesaid shall have been paid to them.

## 54 LIMITATION OF LIABILITY

- 54.1 Without prejudice to the right of the Company to benefit of paragraphs 8 - 11, the Company shall only be liable under these Conditions for physical loss of or damage to any means of transport, vessel or other property of the Ship-owner, to the extent that it is proven by the Customer that the damages in question have been caused by deliberate intent, gross negligence or willful misconduct on the part of the Company during the performance or provision of Cargo Handling Services hereunder, provided that the Company's liability in respect of physical loss or damage to any (a) means of transport of the Ship-owner shall not exceed USD \$500 per occurrence; (b) vessel of the Ship-owner shall not exceed USD \$500 per occurrence.
- 54.2 Any presumption of liability arising against Company in favor of Customer is specifically waived by Customer.
- 54.3 Without prejudice to the generality of the foregoing but by way of illustration the Company shall not be under any liability whatsoever for any personal injury (whether

fatal or otherwise) except where it is proven by the Customer that such personal injury has been caused by deliberate intent, gross negligence or willful misconduct on the part of the Company nor for loss, damage or delay caused to vessels or means of transport or any other description of property caused by the gangways of the vessel or arising as a result of unsuitability of the vessels or means of transport for mechanical handling operations including but without prejudice to the generality of the foregoing the use of grabs and machines (including track vehicles).

- 54.4 In particular, but without limiting the generality of the foregoing, the following will render the vessel or means of transport (as appropriate) unsuitable:
- a) vessels or means of transport whose construction or condition in any respect renders them unsuitable for mechanical bulk cargo handling operations, in particular but without limiting the generality of the foregoing by reason of such vessels not complying with Lloyds Regulations in force for the time being for bulk carriers or having inadequately protected tanks;
  - b) obstructions and impedance on decks and in hatches, including overhanging hatch covers;
  - c) appendages/fittings/structures projecting into stowage space and/or otherwise attached, and other parts of the vessel or her equipment which are vulnerable to damage by grabs and machines for example but without limiting the generality of the foregoing shell frames, shell frame heel brackets, beam knees, temporary bulkheads, hold pillars, deck beams, hopper steps, conduit casings, CO2 piping, trimming plates, brackets, frames, girders, floorings, bearers, unprotected tank tops and lids and/or protections, ladders/platforms and associated fittings, shaft tunnels, bolted plates, door screws and bolts, sounding/air pipes, wooden sheathing and securing, cargo battens/cleats, cross beam shelves or shoes, loops or cleats, stanchions or hold pillars, shifting board channels, retractable hatch covers protruding into square of hatch;
  - d) vessels or means of transport in respect of which all reasonable steps have not been taken to protect same from such damage as may otherwise occur as a result of mechanical bulk handling operations.

## 55 INDEMNITY

- 55.1 The Ship-owner and Cargo Owner shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever arising from the use of or the presence of his vessel or Goods in the Terminal and its facilities and will insure, defend, indemnify and keep the Company indemnified in full and on demand against all proceedings and claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any act neglect or default of the master of the vessel or the Ship-owner or Cargo Owner their respective contractors, agents or servants or of any inherent quality or defect of any Goods on the Terminal or on the vessel, except to the extent that such claim arises out of the gross negligence or willful misconduct attributable to the Company. Company may request that Customer provide Company with a Certificate of Insurance naming Company as additional insured as required by these Conditions, but Company's failure to do so shall not operate as a waiver of Customer's obligation to name Company as additional insured under these Conditions.

**E. SPECIAL PROVISION APPLYING TO SUPPLIERS/SERVICE PROVIDERS****56 SCOPE OF APPLICATION**

- 56.1 This section shall be construed in addition to and not in derogation of or in substitution to any provision already stated in the present Section A "General Provisions Applicable to All Services."
- 56.2 The present section will apply to all Company's Suppliers and shall apply to all Goods or Services identified in any agreement and/or quotation issued by the Supplier unless: (i) the parties have otherwise agreed in writing, or (ii) there is a superseding contract concerning the business relation. In such circumstances, provisions of the specific agreement between the Parties shall prevail over these General Terms. References to the "Supplier" in these General Terms shall include, by way of example but not exhaustive, "supplier", "service provider", "temporary supplier/lessor", "contractor", "lessor", as the case may be.
- 56.3 An offer or quotation is only an offer to enter into an agreement. A Service agreement is concluded only after Company's written confirmation of the quotation or by delivery of the Goods and/or acceptance of the service. The Parties may also formalize the agreement by entering a written contract encompassing the commercial terms and conditions of the Agreement.
- 56.4 All Company's Goods stored in a Supplier's warehouse or otherwise in Supplier's possession shall at all times remain the property of Company's customers for all purposes, and no creditor of the Supplier, or Supplier itself, shall have a lien on such Company Goods. Supplier agrees to insure, defend, and indemnify Company for any claims arising as the result of the presence of Supplier personnel on Company's premises. Company may request that Supplier provide Company with a Certificate of Insurance naming Company as additional insured as required by these Conditions, but Company's failure to do so shall not operate as a waiver of Supplier's obligations under these Conditions.
- 56.5 In order to secure all Supplier's obligations, liabilities of any kind arising from the Services to be rendered to the Company, or under the service agreement or under the quotation, Supplier shall at all times, procure and maintain a comprehensive insurance in relation to the warehouse, where the Goods will be stored, and the services to be rendered with reputable first class international insurers to cover all its liabilities. Under no circumstances will Supplier's liability be limited by its coverage under any insurance policy.

**57 RISK OF LOSS, DAMAGES**

- 57.1 Supplier shall be fully responsible for the safe storage, warehousing, security, receipt, delivery, unloading, protection of the Goods. Supplier shall immediately notify to the Company of any loss, damage to or deterioration of the Goods.
- 57.2 Supplier shall bear all liabilities, in contract, in torts (including negligence) or otherwise, for any losses, damages, expenses and costs whatsoever that may be incurred by the Company, any of its affiliated companies, its employees or its Customers during the time the Goods were in the care, custody and/or control of the Supplier or in connection to the Services.
- 57.3 Supplier shall indemnify and hold harmless the Company from and against any and all claims, losses, damages, expenses and costs, including those asserted by third parties, incurred during the time the Goods were in the care, custody

and/or control of the Supplier or in connection to the Services, including, but not limited to, losses and damages to the Goods delivered by, or on behalf of, the Company. Supplier is liable for any damages on the Goods while such Goods are in the care, custody and control of the Supplier. Supplier shall name Company as additional insured under the policies required by this paragraph to cover the indemnities owed by Supplier to Company under these Conditions.

**58 PERSONNEL, EQUIPMENT**

- 58.1 Supplier shall use best efforts and professional skills in accordance with the best industry practice in providing the services, including ensuring sufficient personnel, materials, equipment, supplies and other accessories to perform safely and efficiently the services. Supplier shall ensure that it is adequately staffed with competent personnel who are sufficiently trained and have the skills necessary to safely and efficiently perform the Services requested by the Company.

**59 CONFLICT OF INTEREST**

- 59.1 Supplier shall avoid dealing with Company's employees who have an actual or perceived conflict of interest, i.e. when Company employee's personal interests or activities in relation to the Supplier could interfere with their responsibilities as a Company employee.
- 59.2 Supplier is and will remain an independent contractor of the Company and under no circumstances will Supplier be considered a legal partner, joint venturer, franchisee, employee, agent or representative of the Company.
- 59.3 Supplier warrants that all services to be provided pursuant to an agreement or quotation shall be performed by the Supplier itself; any use of subcontractors by the Supplier will be viewed as if such services were provided by Supplier directly. Supplier shall be and shall remain liable to the Company pursuant to the terms, conditions and provisions of the present Standard General Terms and/or agreement and/or the quotation, including, without limitation, liability for delay, damage, or loss to the Goods, whether such delay, damage, or loss occurred while such Goods were in the possession of Supplier or any of its subcontractor or other person used by the Supplier to handle the Goods. Supplier will be solely responsible for the remuneration of any subcontractor performing the service on its behalf and shall remain wholly responsible for the due performance of its obligations and liabilities.

**60 ANTI-BRIBERY AND CORRUPT PRACTICES**

- 60.1 "Bribery" means: giving or receiving of anything of value (including but not limited to cash, gifts, or entertainment) in return for a business advantage or to reward or to induce improper performance.
- "Corruption" means: abuse of power for personal gain.
- 60.2 Supplier acknowledges that the Company will not tolerate any form of Bribery and Corruption in any of its business activities. Supplier shall comply fully with this position as a condition of doing business with the Company. Supplier warrants to the Company that throughout the term of the agreement and/or quotation, Supplier shall:

**E. SPECIAL PROVISION APPLYING TO SUPPLIERS/SERVICE PROVIDERS**

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- a) not engage in any activity, practice or conduct which may constitute a breach of any anti-bribery and corruption laws applicable to the Supplier or the Company in performing the Services;
- b) not use any payments received from the Company in order to procure, directly or indirectly, an improper benefit from any other purpose that would be in violation of any applicable law;
- c) establish, maintain and enforce appropriate policies, procedures and training to prevent acts of Bribery and Corruption by its directors and employees; and
- d) immediately notify the Company of any act of Bribery and Corruption committed in the course of performing the agreement and/or quotation.

**61 HUMAN RIGHTS AND LABOR STANDARDS**

61.1 Supplier shall respect human rights by adopting and maintaining standard labor practices and working conditions that comply with all applicable local legislations and international conventions. Supplier is expected to follow the spirit and intent of the following requirements to ensure respect for human rights:

- a) slavery, servitude and using forced or compulsory labor in all its forms are prohibited;
- b) human trafficking and exploitation are prohibited;
- c) child labor is prohibited. (Supplier must comply with the applicable national minimum age of employment);
- d) Supplier shall provide fair treatment and equal opportunities in terms of recruitment, compensation, access to training, promotion, termination or retirement for all employees;
- e) workers must not be subject to any physical, verbal, sexual or psychological harassment of abuse;
- f) Supplier shall ensure that working hours and remunerations comply with applicable local legislation.

**62 ENVIRONMENT, HEALTH AND SAFETY**

62.1 Supplier shall ensure safe and healthy working conditions for its employees, suppliers and visitors. Supplier shall have in place policies and management systems that ensure environmental, health and safety hazards and risks identified and assessed, and either eliminated or appropriately managed. Supplier shall also seek to optimize the use of resources, materials and utilities and minimize waste, wastewater and air emissions.

**63 DATA PRIVACY PROTECTION COMPLIANCE**

63.1 Supplier warrants that it is fully compliant with the Data Privacy Act as per the applicable local legislation and has adequate processes and policies in place to ensure the protection of the personal and sensitive personal information it receives from the Company and/or its employees, suppliers, service providers, clients, customers, etc.