

**MOTUKEA INTERNATIONAL TERMINAL  
LIMITED  
(MIT)**

**TERMINAL SERVICES  
STANDARD TRADING CONDITIONS  
("STANDARD TERMS & CONDITIONS")**

**2018**

# RECORD OF VARIATIONS

(Reverse Chronological)

Date Posted	Description of Variation	Page	Effective Date	Authorized

TERMINAL SERVICES  
STANDARD TRADING CONDITIONS 2018  
(‘STANDARD TERMS & CONDITIONS’)

**THE USER’S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE  
TERMINAL OPERATOR’S LIABILITY AND THOSE WHICH REQUIRE THE USER TO INDEMNIFY THE  
TERMINAL OPERATOR IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME, BEING  
CLAUSES 5, 6 AND 10**

**1. DEFINITION AND INTERPRETATION**

1.1 In these Standard Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“**Agent**” shall have the meaning given to it in Condition 8.1;

“**Berth**” means a safe mooring place alongside the key used for stevedoring operations.

“**Booking note or Pre-advice**” means the declaration of the Customer, shipper or packager in respect of the Container or Cargo being exported.

“**Business day**” means a day on which banks are open for business in Port Moresby, Papua New Guinea (PoM, PNG)

“**Cargo**” means good of any kind, size or weight/measurement whatsoever, transported or to be transported.

“**Charges**” shall have the meaning given to it Condition 9.1;

“**Claim**” means any claim by the User for the loss or damage arising out of or relating to any or all of the cargo, any container, any Vessel or Vessel’s equipment, the Terminal Services or any delay or other failure in supplying the Terminal Services pursuant to these Standard Conditions.

“**Commencement date**” means the date when the services are performed by the terminal operator and these Standard Conditions shall commence and take effect.

“**Confidential Information**” means the provisions of these Standard Conditions and all information in any form of medium which is secret or otherwise not publicly

available (either in its entirety or in part including the configuration or assembly of its components) including commercial, financial, marketing or technical information, know-how, trade secrets, business methods and other information in any form or medium whether disclosed orally or in writing, together with any reproductions of such information in any form or medium or any part(s) of this information.

“**Container**” means any full, partly load or empty standard ISO container with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers), and which can be handled by means of a container spreader;

“**Container Ship**” means a cellular ship fitted for the carriage of Containers, Out of Gauge Containers and/or Non-Containerized Cargo whether above or below deck, including all lashing equipment required for the proper securing of Containers on board.

“**Custody**” means:

a. In respect of import Containers (laden or empty) or Non-containerized Cargo: (i) the period which begins when the Container or Non-containerized Cargo is physically lifted off from the Vessel’s deck, hold or from the top of the Container on the Vessel and ends when the Container or Non-containerized Cargo is mounted onto the withdrawing truck or rail wagon by the Terminal Operator’s cargo handling equipment for delivery to consignee, or if shorter, (ii) the period during which the User is responsible for the Cargo under the bill of lading

or other transport document if one has been issued;

b. In respect of export Containers (laden or empty) or Non-Containerized Cargo the period which begins when the Container or Non-Containerized Cargo is physically lifted off from the truck or rail wagon by the Terminal Operator’s cargo handling equipment for stacking at the yard of the Terminal and ends when the Container or Non-Containerized Cargo is laid to rest on the Vessel;

c. In respect of transshipment Containers (laden or empty) or Non-Containerized Cargo the period which begins when the Container or Non-Containerized Cargo is physically lifted off from one Vessel’s deck, hold or from the top of other Containers and ends when the Container or Non-Containerized Cargo is laid to rest in another Vessel;

d. In respect of Transit Containers or Non-Containerized Cargo the period which begins when the Container or Non-Containerized Cargo is physically lifted off from the Vessel and ends when the Container or Non-Containerized Cargo is mounted onto the withdrawing truck or rail wagon by the Terminal operator’s cargo handling equipment for delivery to consignee, or if shorter the period during which the User is responsible for the Cargo under the bill of lading or other transport document if one has been issued; or the period which begins when the Container or Non-Containerized Cargo is physically lifted off from the truck or rail wagon by the Terminal Operator’s cargo handling equipment for stacking at the yard of the Terminal and ends when the Container or Non-

Containerized Cargo is laid to rest on the Vessel.

**“Dispute”** means a dispute arising out of or relating to these Standard Conditions, including without limitation, a dispute about breach, termination, validity or subject matter of these Standard Conditions, or a claim in equity or in tort relating to the performance or non-performance of such Standard Conditions.

**“EDIFACT”** means the United Nations standards for Electronic Data Interchange for Administration, Commerce and Trade.

**“Health and Safety Rule”** means the health and safety rules of the Terminal Operator notified to the User from time to time.

**“ISPS code”** means the International Ship and Port Facility Security Code forming part of the Safety of Life at Sea (SOLAS) Convention of International Maritime Organization.

**“Liabilities”** means any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgements of whatsoever nature;

**“Non-Containerized Cargo or General Cargo”** means cargo not contained in a Container, accepted for transport/carriage on a Vessel which cannot be handled by means of normal use of a container spreader even with special attachments;

**“Operations Regulations”** means Terminal Operator’s specific rules and regulations attached hereto as Appendix “A”;

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

**“Planning Department”** means the Operator’s planning Department responsible for planning of the Port operations.

**“Port or Terminal”** (as the case may be) means such wharf area contained within the port presently owned, operated and managed by the terminal Operator and

any other wharf area within the Port which the Terminal Operator may in future own, lease or have access to, together with adjacent area in which containers or cargo are received, handled and stored for the purpose of loading onto or discharging from a vessel. “Terminal” means Motukea International Terminal Limited or “MIT” in short, the international terminal facilities located in Motukea Island off Napanapa road, Port Moresby, Papua New Guinea.

**“SDR”** means Special Drawing Rights as defined by the International Monetary Fund;

**“Services”** means any services that are provided by or arranged by the Terminal Operator, including without limitation the handling of Container and Cargo;

**“Tariff”** means the Terminal Operator’s tariff of charge included herein as Appendix “B” and Appendix “C” respectively.

**“Terminal Operator”** means Motukea International Terminal Limited or “MIT” in short.

**“TEU”** means twenty feet equivalent unit and in calculating TEUs, a 20’ Container comprises one (1) TEU and a 40’ and a 45’ Container each comprises two (2) TEUs respectively;

**“TOS”** means Terminal Operating System

**“User”** means (i) any person who receives or benefits from the Services, including, without limitation, the owner of, charterer (of whatsoever nature) of, or any other person who is or may become interested in a Vessel calling at the Terminal, the Vessel’s master and any person who has control of the operation such as Vessel, the owner or any other person who is or may become interested in the Cargo; (ii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; IMDG cargo (iii) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; and (iv) any person who drives or operates such vehicle and any person who uses and/or enters the Terminal.

**“Vessel”** means any Container Ship or vessel owned, chartered, operated or leased by the User and notified in writing

by the User to the Terminal Operator at any time during the application of these conditions.

1.2 *In these Standard Conditions:*

1.2.1 A statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made or other thing done under the statutory provision or under such re-enactment;

1.2.2 A person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership;

1.2.3 A person includes reference to that person’s legal personal representatives, successors and permitted assigns;

1.2.4 The singular includes the plural and vice versa (unless the context otherwise requires);

1.2.5 Any words following the word “including” shall be interpreted without limitation to the generality of the preceding words;

1.2.6 A reference to a condition, unless the context otherwise requires, is a reference to a clause of these Standard Conditions.

1.3 *The headings in these Standard Conditions do not affect their interpretation.*

## **2. SERVICES**

2.1 *The Terminal Operator will:*

2.1.1 Provide the Services subject to and in accordance with these Standard Conditions;

2.1.2 Provide the Services using reasonable care and skill;

2.1.3 Comply with all laws and regulations in force and applicable to the relevant Services;

2.1.4 Obtain all necessary licenses and permits required to operate as a terminal operator and provide the Services.

2.2 Subject to specific written instructions given by the User and accepted by the Terminal Operator in writing, the Terminal Operator reserves to itself complete freedom in respect of the means and

procedures to be employed in the provisions of the Services. The Terminal Operator may deviate from the User's instructions (whether or not accepted by the Terminal Operator) in any respect if the Terminal Operator considers it is necessary in the interest of the User and the User shall reimburse the Terminal Operator with all reasonable expenses incurred thereby.

2.3 The Terminal operates on vessel side every calendar day, twenty-four (24) hours a day, unless otherwise advised by the Terminal Operator. On landside the Terminal shall operate for twelve (12) hours a day and shall be closed on public holidays. Invoicing services are operation every business day and Saturdays and shall be closed on public holidays. As follows:

2.4 Terminal Operating Times: Gate operation; Vessel Operations and Billing/Documentation office. Excludes public holidays as declared by the government of Papua New Guinea.

Gate Operations (Receival/Delivery)	from	To	remark
Day Shift – 7 days a week	08:00	20:00	* Night shift is an overtime shift. Not a standard operating time. It is shown here for purposes of user understanding of overtime deployment being billed per shift basis irrespective of full shift utilization or part thereof, reflective of the labour commitment to the shift
Night shift * – Upon user request	20:00	08:00	

Vessel Operations	from	To	remark
Day Shift – 7 days a week	08:00	20:00	hot seat operation (no breaks)
Night Shift – 7 days a week	20:00	08:00	hot seat operation (no breaks)

Billing office (Invoicing)	from	To	remark
Monday to Friday	8:30	17:30	
Saturdays	8:30	12:30	

- 2.5 Any Services required outside the Terminal Operating Times shall be pre-agreed with the Terminal Operator prior to 15:00 on the day of requirement. Overtime rates shall apply as per the Tariff in Appendix c
- 2.6 Users are informed that overtime requirements at the Lae Main Wharf, must also be separately communicated to PNGPCL with any charges settled directly with PNGPCL as maybe required.

### 3 SCOPE AND APPLICATION OF THESE STANDARD CONDITIONS

- 3.1 These Standard Conditions shall apply to:
  - 3.1.1 All services provided to the User;
  - 3.1.2 The use by any User of the Terminal and/or the facilities at the Terminal;
  - 3.1.3 All Vessels which berth at the Terminal;
  - 3.1.4 And shall be binding on all Users who receive or benefit from the Services, use and/or enter the Terminal.

### 4 REQUEST FOR BERTH

- 4.1 Berths will be provided on a first come first served basis.
- 4.2 The User shall give the Terminal Operator notice in compliance with the Request to berth form of its requirement to berth at the Terminal at least forty-eight (48) hours before the estimated time of arrival of the Vessel.
- 4.3 If a Vessel arrives at the Terminal outside the notice period of the agreed time of arrival, the Terminal Operator shall review the early request to berth and shall use reasonable endeavours to approve a berth within a reasonable time.

- 4.4 In respect of each Vessel, the User shall also give the Terminal Operator all the relevant details of the Containers, Out of Gauge Containers and/or Non-Containerized Cargo in respect of which the Services will be required at least twenty-four (24) hours before the estimated time of arrival of the Vessel (details to include number, type, weight, dimension, and IMDG). The Terminal Operator and the User shall agree the maximum number of moves required prior to arrival of the Vessel. Based on the agreed maximum number of moves, the Terminal Operator will allocate the Vessel a berthing window (confirmed through the Berthing Request Form) during which the Services will be provided (in this Condition "Berthing Window"). The User shall procure that the Vessel shall vacate the berth at the end of the Berthing Window.

## 5 USER'S OBLIGATIONS AND WARRANTIES

- 5.1 The User shall provide all the documents and information detailed in the Operations Regulations at least twenty-four (24) hours before the estimated time of arrival of the Vessel.
- 5.2 At all times when a Vessel is berthed at the Terminal, the User shall ensure that the Vessel:
- 5.2.1 furnishes adequate lighting and safe ingress and egress (for the Terminal Operator's personnel);
- 5.2.2 maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Terminal Operator to provide the Services;
- 5.2.3 maintains engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth;
- 5.2.4 that its crew members adhere at all times to all Health and Safety Rules; and
- 5.2.5 complies with all applicable laws and legal requirements relating to them, the Cargo, the Containers, their activities and the use of the Terminal.
- 5.2.6 Shall not drift away from the quayside while berthing or otherwise; and should this occur, it shall be the sole responsibility of the master of the ship and the user.
- 5.2.7 The user and master of the ship shall be in sole charge of the ship while using any of the berths managed by the operator, and her safety shall be the sole responsibility of the user. The user shall be held responsible for any loss and/or damage that may arise from faulty navigation, or by reason of her breaking adrift from her moorings. No instruction or direction given, or act performed by the terminal operator or its officers, employees or sub-contractors shall place any responsibility upon the terminal operator, with respect to the security or safety of such ship.
- 5.2.8 Maintains appropriate insurance coverage, the User shall:
- 5.2.9 take out and maintain adequate hull and machinery and protection and indemnity (P&I) Insurance in respect of its Container Ship/s, the latter from a Club being a member of the International Group of P&I Clubs, together with insurances adequate to cover its liabilities under this Standard Conditions.
- 5.2.10 If so requested, provide the Terminal Operator with a copy of the certificate of insurance confirming that these insurance requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the User's obligations to obtain insurance required by law or under this Standard Conditions.
- 5.2.11 The Terminal Operator reserves the right to not allow those vessels to berth, which have not complied with the insurance requirements herein.
- 5.2.12 The User will be solely responsible for complying with all formalities, procedures and regulations prescribed by the relevant customs authority and any governmental authority or other agency having legal jurisdiction over the relevant matter and which arises in connection with the Cargo, Containers and/or the Ship and for obtaining all necessary licenses, and authorisations required for the transportation, exportation or importation of the Cargo. Further, The User is responsible for berthing and Un-berthing of the Vessel and pilotage.
- 5.3 User's Warranties
- 5.3.1 The User warrants and represents that:
- 5.3.1.1 it is authorised to contract with the Terminal Operator on the terms of these Standard Conditions in respect of the Vessel, the Cargo and the Containers, and that it is accepting these Standard Conditions not only for itself, but also as agent for and on behalf of the owners of the Vessel (if it is chartered by the User), Cargo and Containers or any other person who is or may become interested in the Cargo;
- 5.3.1.2 all the documentation and information provided by the User or its representatives in relation to any Cargo and/or Containers is full and accurate.
- 5.3.2 In respect of all Cargo and Containers, the User warrants and represents that they:
- 5.3.2.1 are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Cargo and the Containers;

- 5.3.2.2 are liable to give off any injurious dust, gas, fumes, liquid or radiation;
- 5.3.2.3 are not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Terminal;
- 5.3.2.4 are not over-heated or under-heated or liable to become so while at the Terminal;
- 5.3.2.5 will not contaminate or cause danger, injury or pollution or damage to any person, the Terminal, any other cargo, equipment or ship or the environment adjacent thereto or generally;
- 5.3.2.6 require for their safekeeping no special protection (other than as may be agreed in writing between the parties) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other cargo or from inflammability but will remain safe if left standing in the open or in covered accommodation at the Terminal if agreed in writing with the Terminal Operator;
- 5.3.2.7 contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and
- 5.3.2.8 are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by the Terminal Operator.

#### 5.4 Indemnity

- 5.4.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator (including its wharf, port, fender, mooring bollards, quay cranes as well as other infrastructure and equipment), its customers (including other Users, Container Ship and third parties) its employees, servants, agents, insurers or re-insurers as a result of or in connection with any of the following:
  - 5.4.1.1 any breach by the User of the obligations, representations and/or warranties given in Condition 5;
  - 5.4.1.2 the Terminal Operator acting in accordance with the User 's instructions;
  - 5.4.1.3 any damage to the wharf and or/to the port, Container Terminal, equipment, fenders, mooring bollards, ships, vessels belonging to the Terminal or any third party, caused during or arising from the act of berthing or unberthing, whether by reason of incompetence or negligence of the pilot in-charge of the ship belonging to the User, or as a result of improper mooring of the ship while alongside the wharf/berths, and shall hold the Terminal Operator indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage, except it is solely and directly caused by gross negligence or wilful misconduct of the Terminal Operator, its servants or sub-contractors.

### 6 DANGEROUS CARGO

- 6.1 Except with the Terminal Operator's express prior consent in writing, the Terminal Operator will not accept to deal with Cargo which is or may become dangerous (whether or not so listed in international codes or manuals), inflammable, damaging, injurious (including radioactive materials), noxious or which are or may become liable to damage any property or person whatsoever. Where the Terminal Operator expressly accepts in writing to deal with Cargo of a dangerous nature:
  - 6.1.1 the User shall promptly provide the Terminal Operator with such information twenty-four (24) hours prior as is necessary for it to perform its obligation in connection with such Cargo in accordance with all applicable laws, regulations and/or requirements, including without limitation information about the nature of the Cargo, the appropriate manner and method of storage, handling and transportation; and
  - 6.1.2 the Container or the Cargo must be distinctly marked on the outside so as to indicate the nature and character of any such Cargo and so as to comply with all applicable laws, regulations and/or requirements.
  - 6.1.3 Dangerous goods maybe accepted by the user for shipment only after written confirmation by the Terminal Operator of its agreement and ability to handle such said dangerous goods.
- 6.2 If the User fails to provide such information and the Terminal Operator is unaware of the dangerous nature of the Cargo and the necessary precautions to be taken and if, at any time, it is deemed to be a hazard to life or property, it may be destroyed or rendered harmless, as circumstances may require, without compensation, and the User shall be liable for any and all Liabilities arising out the Services, the destruction or rendering the Cargo harmless. The burden of proof that the Terminal Operator knew the exact nature of the danger constituted by the carriage of the Cargo shall rest upon the User.
- 6.3 The User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any breach of the provisions of this Condition 6.



## **7 SAFETY OF LIFE AT SEA (SOLAS)**

- 7.1 The International Maritime Organization (IMO) has amended the Safety of Life at Sea (SOLAS) Convention to require that a packed Container's gross weight be verified before the Container can be loaded on board a ship. The SOLAS amendment provides that no Container without a verified gross mass (VGM) can be loaded on board a ship.
- 7.2 The user must provide the terminal operator a final load list with confirmation that the user holds the appropriate VGM certification for all nominated container and uncontainerised general cargos to be loaded to the specified vessel. The user's submission of the final load list is accepted as the user's instruction to the terminal operator to load all listed cargo as being VGM certified to the satisfaction of the user.
- 7.3 The responsibility for obtaining and documenting the verified gross weight of a packed Container (for containerized cargo) and loose packages (for uncontainerised cargo) lies with the shipper. Unless otherwise directed by the relevant government authority, the shipper shall provide this information before or by the time the Container/cargo is delivered to the Container Terminal. The user shall indemnify and shall hold the Terminal Operator free and harmless from any liability, loss or damage arising from an erroneous VGM of a packed Container (or containerized cargo).
- 7.4 However, if the Terminal Operator addresses an uncertainty about the gross mass of a packed Container by weighing the Container, the weight obtained by the Terminal Operator shall be used for vessel stowage planning. The shipper recognizes that, if he fails to provide a verified container weight as called for by the SOLAS amendments, the Terminal Operator may refuse gate-in of the Container subject to the regulations of the local port authority. In the event that the Terminal Operator is mandated to be the official VGM source by the relevant authority or is contracted to obtain a verified container weight, there shall be a cost for such services that the affected parties will need to address.
- 7.5 SOLAS regulation VI/5 requires that a Container not be packed to more than the maximum gross mass indicated on the Safety Approval Plate under the IMO's Convention for Safe Containers (CSC), as amended. A Container with a gross mass exceeding its maximum permitted gross mass may not be loaded onto a ship.

## **8 TERMINAL OPERATOR'S RIGHTS**

- 8.1 The Terminal Operator may at any time inspect any Vessel, vehicle, Cargo, Container, equipment (including vessel and gear) or other property in the User's possession or control for the purposes of ensuring compliance with these Standard Conditions safety standards.
- 8.2 The Terminal Operator reserves the right to suspend the provision of any Services in the event of any breach of these Standard Conditions.
- 8.3 The Terminal Operator may refuse acceptance of damaged or distorted Containers or of any Container which in its opinion is in an unsatisfactory condition.
- 8.4 The Terminal Operator may refuse to handle any Container or Cargo with a weight which exceeds its stated weight or the safe working load of any cargo handling equipment. Should any of the Terminal Operator's cargo handling equipment be used in handling an overweight Container or Cargo, the User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any loss or damage to property or death or personal injury arising out or caused by the handling of the overweight Container or Cargo.
- 8.5 The Terminal Operator may install and operate any surveillance device to protect the safety and security of its property and that of its customers and third parties and to assist in the investigation and/or prosecution of any illegal act or any alleged breach of these Standard Conditions.
- 8.6 Berthing order right – the terminal operator shall have the flexibility to modify the berthing schedule.

## **9 AGENT**

- 9.1 The User may, subject to prior notification in writing to the Terminal Operator, appoint an agent in respect of the Services (in this Condition the "Agent"), in which event the User shall be deemed to have authorised the Agent to act on the User's behalf in respect of all matters hereunder including to pay to or receive from the Terminal Operator all sums due under these Standard Conditions unless the User notifies the Terminal Operator to the contrary at any time hereafter and:



- 9.1.1 the Terminal Operator shall be entitled at any time and from time to time hereafter, to act upon any instruction, request, notice or other communication from the Agent without prior reference to the User and to receive from and to pay to the Agent any sums due under these Standard Conditions (including any rebate);
- 9.1.2 any payment made by the Terminal Operator to the Agent pursuant to these Standard Conditions shall be held by the Agent in trust for the User and the receipt by the Agent of such payment shall be a full and sufficient discharge of the Terminal Operator in respect of such payment; and
- 9.1.3 the power granted to the Terminal Operator under Condition 8.1.1 above shall continue until the Terminal Operator receives written notice from the User to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Agent thereafter.

## 10 RATES AND PAYMENT

- 10.1 In consideration of the provision of the Services, the User will pay the charges calculated in accordance with the Tariff ("Charges"), provided herein Appendix B and Appendix C respectively. The Terminal Operator shall be entitled to vary its Tariff at any time by giving a minimum of thirty (30) days written notice to the User.
- 10.2 Unless otherwise agreed in writing with the User, all Charges are payable prior to the final delivery or receipt of the Cargo. All invoices are to be first settled, where thereafter a credit or debit note will be issued on settlement of Dispute, as the case may be.
- 10.3 All Charges are exclusive of GST and any other taxes, duty or fee imposed from time to time by any government or other authority which shall be paid by the User at the rate and in the manner prescribed by law.
- 10.4 All payments due from the User under these Standard Conditions shall be made in full without any set-off, abatement, restriction or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counter claim.
- 10.5 The Terminal Operator reserves the right to charge interest at a rate of 8% percentage points above the Bank of PNG base rate from time to time, calculated on a daily basis, on all amounts not received by the due date for payment.
- 10.6 Without prejudice to any other rights and remedies the Terminal Operator may have under these Standard Conditions or otherwise, the Terminal Operator shall have a general as well as a specific lien on the Cargo, the Containers and any documents relating thereto for all sums whatsoever due at any time to the Terminal Operator under these Standard Conditions or otherwise. To enforce and satisfy the Terminal Operator's lien, the Terminal Operator shall have the right, at the User's expense, to sell the aforementioned Cargo, Containers and documents by public auction or private treaty, without notice to the User and without any liability towards the User and to apply the proceeds in or towards the payment of such sums. The Terminal Operator shall, upon accounting to the User for any balance remaining after payment of any sum due to the Terminal Operator, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Cargo, Containers or documents.

## 11 LIABILITY

### 11.1 Vessel

- 11.1.1 The Terminal Operator shall only be liable for loss of or damage to any Vessel including its gear and all other equipment to the extent the same was caused by the negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.
- 11.1.2 The Terminal Operator's liability under Condition 11.1.1 shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Vessel and (b) **US\$1,000,000** per incident or series of connected incidents.

### 11.2 Containers

- 11.2.1 The Terminal Operator shall only be liable for loss of or damage to any Container to the extent the same was caused by the negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.
- 11.2.1.1 The Terminal Operator's liability under Condition 11.2.1 shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Container; and (b) US\$1,700 per TEU

### 11.3 Cargo

11.3.1 The Terminal Operator (or any other party for whom Terminal Operator is responsible) shall be entitled to avail itself of the defences, limitations and exclusions of liability which are available to the User under the bill of lading or other transport documents, evidencing a contract of carriage, which has been issued in respect of Cargo carried by the User.

11.3.2 Where no bill of lading or other transport document as aforesaid has been issued in respect of the Cargo, the Terminal Operator shall only be liable for loss of or damage to any Cargo to the extent the same is caused by negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible, and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Cargo; and (b) US\$100 per consignment covered under a single Bill of Lading.

#### 11.4 Delay

11.4.1 The Terminal Operator accepts no responsibility whatsoever and howsoever arising (including negligence) with regard to any failure to adhere to any timeframe or any delay in the performance of the Services (including to Containers, Cargo or Vessels).

11.4.2 Without prejudice to Condition 11.4.1, if the Terminal Operator is found liable for loss or damage caused by delay or if the Terminal Operator fails to adhere to timeframes agreed under Condition 11.4.1, the Terminal Operator's liability for the same shall not in any circumstances whatever exceed a sum equal to the amount of the Charges in respect of the Services provided in relation to the relevant Containers, Cargo or Vessels.

11.4.3 All Vessel delays are for the User's account, including the decision to close the hatch due to weather conditions, the cost associated with such delays are indicated in the rates in the Tariffs in Appendix B and Appendix C respectively.

#### 11.5 Exclusions

11.5.1 The Terminal Operator shall not be liable for loss of or damage to any Vessel, Container or Cargo under the provisions of this Condition 11 unless the User can establish that the loss or damage was directly caused by the Terminal Operator or any other party for whom the Terminal Operator is responsible whilst (in respect of Cargo or Containers) the same was in the Custody of the Terminal Operator or any other party for whom the Terminal Operator is responsible. If the loss or damage was contributed to by the act or omission of the User or any other person, the Terminal Operator shall be exonerated from liability under Condition 11 to the extent that such act or omission contributed to the loss or damage.

11.5.2 The Terminal Operator shall not be liable for loss of or damage to any Vessel, Container or Cargo under the provisions of this Condition 11 unless the Terminal Operator's cargo handling equipment was used.

11.5.3 Save as set out in Condition 11, the Terminal Operator shall not be liable for loss of or damage to any Vessel, Cargo or Container howsoever arising (whether caused by negligence or otherwise).

#### 11.6 General liability

11.6.1 Notwithstanding any other provision of these Standard Conditions, the Terminal Operator shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss in respect of all claims, losses or damages, whether arising from tort (including negligence), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Standard Conditions, performance or any failure or delay in performance of the Services or any obligation under these Standard Conditions (including delay to a Vessel or Cargo) or termination of the agreement constituted by these Standard Conditions.

11.6.2 Nothing in these Standard Conditions shall exclude or restrict the Terminal Operator's liability for death or personal injury caused by its gross negligence or any other act or omission, liability for which may not be excluded or limited under applicable law.

#### 11.7 Applicability to actions in tort

11.7.1 The defences, exclusions and limits of liability provided for in these Standard Conditions shall apply in any action against the Terminal Operator whether the action be found in tort, bailment, contract, and breach of express or implied warranty or otherwise.

#### 11.8 Notification of claims

11.8.1 Any claim by the User against the Terminal Operator arising in respect of any Service provided for the User, or which the Terminal Operator has undertaken to provide must be made and notified in writing to the Terminal Operator within a reasonable time, but in any event within thirty (30) days from the date of the event or occurrence alleged to have given rise to a cause of action against the Terminal Operator. In the event that damage is observed; a real-time assessment at the time of the event must be undertaken

by the User and the Terminal Operator. The Terminal Operator may call on the assistance of a third-party assessor to provide a survey report of the incident.

11.8.2 The parties agree that any claim not made and notified in accordance with Condition 11.8.1 shall be deemed to be waived and absolutely barred.

11.9 Time limit for claims

11.9.1 Notwithstanding the provisions of Condition 11.8, the Terminal Operator shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Service provided for the User, or which the Terminal Operator has undertaken to provide, unless legal proceedings be brought and written notice thereof given to the Terminal Operator within thirty (30) days from the date of the event or occurrence alleged to give rise to a cause of action against the Terminal Operator.

11.10 De-Minimis

11.10.1 The User shall not be entitled to bring any claim howsoever arising (including negligence) unless and until the amount of any such individual claim exceeds US\$500.

11.11 Indemnity for excess liability

11.11.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator, its employees, servants, agents, insurers or re-insurers as a result of or in connection with any claim made by any third party (including without limitation a claim made by the owner of the Cargo or any other person who is or may become interested in the Cargo or any customs authority) (in this Condition a "**Third Party Claim**"):

11.11.1.1 when the Third Party Claim arises from or in connection with the Services (whether caused by the Terminal Operator's negligence or otherwise); and

11.11.1.2 To the extent the Third Party Claim exceeds the Terminal Operator's liability to the User under the Standard Conditions.

11.12 Without prejudice to any other provisions of these Standard Conditions, the User shall incorporate into the bill of lading and other transport documents evidencing contracts of carriage issued in respect of Cargo carried by the User, a clause to the effect that while acting in the course of or pursuant to these Standard Conditions, the Terminal Operator shall be entitled to the benefit of all provisions or clauses in the bill of lading or other transport document to the extent such provisions and clauses benefit the User, but no further, and the Terminal Operator for itself and any party for whom it is responsible hereby accepts such benefit.

11.13 The Terminal Operator authorises, empowers and directs the User to act, and the User hereby agrees to act, as the Terminal Operator's trustee and/or agent for the limited purpose only of complying with Condition 11.12

## 12 INSURANCE

12.1 The Terminal Operator is under no obligation to maintain property insurance for Containers, Cargo or Vessel.

12.2 The Terminal Operator shall, at its own expense, procure and maintain policies of insurance covering:

12.2.1 any liabilities assumed by it under these Standard Conditions; and

12.2.2 any requirements by law, including public and third-party liability.

## 13 FORCE MAJEURE

13.1 Neither party shall be liable to the other for any loss or damage to any Cargo, Container or Vessel, delay or non-performance of its obligations under these Standard Conditions to the extent that such delay or non-performance is due to any acts of God, flood, severe weather condition, storm, tempest, epidemic, pandemic compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light) criminal acts, computer viruses, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce) shortages of labour, materials and services and inability or delay in obtaining supplies and other events beyond a party's reasonable control.

## 14 CONFIDENTIALITY

14.1 The parties undertake that they shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 13.2 and 13.4.

14.2 Each party may disclose the other party's Confidential Information:

14.2.1 to its employees, officers, agents, representatives or professional advisers who need to know such information for the purposes of carrying out the party's obligations under these Standard Conditions; and

14.2.2 as may be required by law, court order or any governmental or regulatory authority.

14.3 If either party breaches this Condition 14, the other party shall have the right to immediately obtain an injunction to prevent the further disclosure of any confidential information, in addition to any other right it may have at law or otherwise.

14.4 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under these Standard Conditions.

## 15 ASSIGNMENT AND SUB-CONTRACTING

15.1 The Terminal Operator may assign any or all of its obligations under these Standard Conditions.

15.2 The User may not assign, novate or otherwise dispose of its rights or obligations under these Standard Conditions or any part thereof without the prior written consent of the other party (such consent not to be unreasonably withheld or unduly delayed).

15.3 The Terminal Operator may sub-contract any part of its obligations under these Standard Conditions.

## 16 GENERAL PROVISIONS

16.1 These Standard Conditions (together with any document expressly incorporated by the parties (if any)) comprises the entire agreement between the parties with respect to the provision of the Services and any representations or statements whether made orally or written elsewhere are hereby excluded (including without limitation where such representations or statements were made negligently) provided always that this Condition shall not exclude or limit any liability or any right which any party may have in respect of pre-contractual statements made or given fraudulently supersedes all previous agreements and arrangements between the parties with respect to the provision of the Services. If the User's documentation contains terms or conditions additional to or at variance with these Standard Conditions every such additional or varying term or condition shall be of no effect.

16.2 The User acknowledges that it does not enter into these Standard Conditions in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of these Standard Conditions and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

16.3 If any provision of these Standard Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, then these Standard Conditions will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Standard Conditions, valid and enforceable. If a court declines to amend these Standard Conditions as provided herein, the invalid, illegal or unenforceable provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if these Standard Conditions had been executed with the invalid, illegal or unenforceable provision eliminated.

16.4 In the event of any such severance as described in Condition 15.3, the parties will negotiate in good faith with a view to replacing the provisions so severed with legal and enforceable provisions that have similar economic and commercial effect to the provisions so severed.

16.5 The failure of either party to insist upon strict performance of any provision of these Standard Conditions, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by these Standard Conditions.

16.6 A waiver of any breach of contract shall not constitute a waiver of any subsequent breach of contract.

16.7 No waiver of any of the provisions of these Standard Conditions shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

- 16.8 Except as expressly stated in these Standard Conditions, no right or remedy conferred upon any party by these Standard Conditions shall be exclusive of any other right or remedy howsoever arising and all such rights and remedies shall be cumulative.
- 16.9 Any modification, variation, amendment or addition to these Standard Conditions must be in writing and signed by a duly authorised representative of each party.
- 16.10 Any party for whom the Terminal Operator is responsible shall have the benefit of the exclusions of liability contained in, and shall have the right to enforce, the provisions of these Standard Conditions in accordance with the Provision of the Contracts (Rights of Third Parties) Act 1999.
- 16.11 A person who is not a party may not enforce, or otherwise have the benefit of, any provision of these Standard Conditions under the Contracts (Rights of Third Parties) 1999.
- 16.12 The Terminal Operator is an independent contractor under these Standard Conditions. Nothing in these Standard Conditions shall be construed or interpreted to constitute a partnership, association or joint venture between the parties, or to make one party an agent or representative of the other party. Neither party shall hold itself out as an agent of or in a joint venture with the other party. The User shall have no authority to act on behalf of the Terminal Operator, and the Terminal Operator shall have no authority to act on behalf of the User, except to the extent necessary for the Terminal Operator to accomplish its obligations under these Standard Conditions.
- 16.13 Notices which serve to alter or revise the terms of or to terminate the agreement constituted by these Standard Conditions, or notices in respect of claims or legal actions or which otherwise have a material impact on these Standard Conditions shall be in writing in English and served to the registered office of the other party by:
- 16.13.1 registered mail, or courier service, and shall be deemed served if sent by courier, on the date and at the time of signature of the courier's delivery receipt, or
- 16.13.2 fax (confirmed without undue delay by courier service or registered mail), and shall be deemed served when the sender receives one or more transmission reports showing the whole of the notice to have been transmitted to the correct fax number.
- 16.13.3 Electronic mail shall be deemed served when the recipient responds with non-automated confirmation that the notices have been received and read.
- 16.14 These Standard Conditions and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.
- 16.15 Any claims against the Terminal Operator under these Standard Conditions or otherwise arising from the Services shall be determined exclusively by the courts of Papua New Guinea to which jurisdiction the User irrevocably submit.

The Terminal Operator shall be entitled to bring legal proceedings against the User in the courts of Papua New Guinea or in any other jurisdiction (including jurisdiction(s) where the User has a place of business or assets) and legal proceedings by the Terminal Operator in one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.