



Terms of Use

GENERAL CONDITIONS

FOR SERVICES AND FACILITIES

Bharat Mumbai Container Terminals Private Limited ("BMCT")

January 2018

DEFINITIONS AND INTERPRETATION

1. Definitions

1.1 Each of the following expressions and their grammatical variations used in the Contract shall have the following meaning unless the context of the Contract requires otherwise:

1.1.1 "Application" means Terminal Service Agreement, and where a Terminal Service Agreement is not executed then Term Sheet, executed by the Customer with

1.1.2 "Claim" means any loss, damage, cost, expense and/or liability incurred due to any circumstances, including but not limited to any property or environmental damage, death or personal injury, economic or consequential loss, legal obligations or compliance with law, and all related legal costs.

1.1.3 "Conditions" means these General Conditions and "Condition" means each one of them.

1.1.4 "Container" means a receptacle 6.1 metres or more in length equipped with corner castings to facilitate handling by mechanical equipment.

1.1.5 "Contract" means the contract constituted by the Application including the Conditions and any other document expressly agreed between the Parties as forming part of such contract.

1.1.6 "Contract Period" means the period of the Contract from the commencement date until the expiry date both stipulated in the Application or in the absence of such stipulation:

- (a) until the complete performance of the Contract; or
- (b) until the termination of the Contract in accordance with the provisions of the Contract, whichever shall be earlier.

1.1.7 "Contract Sum" means all or any sums payable by or for the Customer to BMCT under the Contract or at law in accordance (where applicable) with the rate stipulated in the Contract or in the absence of such stipulation, in accordance with the rate stipulated in the BMCT Scale of Rates, and shall include without limitation any and all interest due on the same.

1.1.8 "Customer" means the party, other than BMCT, to the Application, and includes the successors and permitted assigns of such party.

1.1.9 "Customer's Representative" means any one or more persons authorised by the Customer and approved by BMCT under Condition 13.1.

1.1.10 "Dangerous Goods" means cargo falling into any of the classes of dangerous goods set out in the International Maritime Dangerous Goods Code and/or under applicable law and any empty receptacles previously used for the carriage of such goods unless already rendered safe.

1.1.11 "Delivery/Shipment Note" means the document issued by BMCT in respect of the Goods pursuant to Condition 7.4.1(c) or its duplicate issued by BMCT pursuant to Condition 7.4.3.

1.1.12 "Facilities" means all or any part of the facilities described as such in the Application or any facilities provided by BMCT, whether for use in themselves or for use in connection with the provision of the Services.

1.1.13 "Force Majeure" means any of the following events:

- (a) acts of God or other natural disaster, epidemic or pandemic;

- (b) terrorist attack, riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) any law or action taken by a government or public authority or compliance therewith, including but not limited to imposition of an export or import restriction, quota or prohibition;
- (d) any fire (including steps taken for the extinguishment thereof), smoke, haze, explosion, nuclear reaction, flood, storm, peril of the sea, breaking adrift of any vessel from BMCT Terminal, obstruction to shipping or roads that provide access to or egress from any BMCT Terminal;
- (e) any prohibition or restriction of import, export or transit, attachment or arrest of any property used for the performance of the Contract, failure of or stagnation in the supply of power, fuel, transport or equipment affecting the availability of materials or labour necessary for the performance of the Contract to a degree not existing at the time of commencement of the Contract Period, or any other similar circumstances (but shall not include lack of financial capacity or inability to make payments for any reason);
- (f) any labour or trade dispute, go-slows, strikes, industrial action (whether lawful or not), lockouts or sabotage or anything done in the course of furtherance of a labour or trade dispute;
- (g) any defect, inherent vice or natural property of the Goods and/or change in quality of the Goods through leakage, loss of weight, deterioration, decay, damage by vermin, insects, fungal attack, rot or corrosion, damage caused by other goods, any defect whether or not latent of the Facilities or defective packaging, containers or means of transport used in respect of the Goods, delay in delivery of the Goods to or from any BMCT Terminal on the part of any person other than BMCT, its employees or agents, failure in or delayed arrival of packing materials, containers or means of transport used in respect of the Goods or a third party's interference with the Services/Facilities; and/or
- (h) any other circumstances the occurrence or extent of which BMCT could not reasonably have controlled, foreseen, avoided, prevented or forestalled.

1.1.14 "Goods" means all or any part of any property of any kind whatsoever brought into any part of BMCT by the Customer or for the Customer for the purposes of the Contract including any Container.

1.1.15 "Goods Handling" means all or any of the following services and facilities provided by BMCT which are the subject of the Application:

- (a) shifting Goods between any Vessel and any part of BMCT Terminal;
- (b) shifting Goods from place to place within any part of BMCT Terminal;
- (c) shifting Containers from place to place within any Vessel;
- (d) shifting Containers from any part of BMCT Terminal to another part of BMCT Terminal;
- (e) loading or unloading Dangerous Goods in containerised or breakbulk form;

- (f) lashing/unlashing Goods;
- (g) stuffing/unstuffing Goods;
- (h) stowage planning of any Vessel;
- (i) storing Goods in any part of BMCT Terminal;
- (j) storing Goods classified by BMCT as Valuable Articles;
- (k) delivery of any Container; and
- (l) pre-trip inspection/Run test of any Container.

1.1.16 “Party” means BMCT or the Customer.

1.1.17 “BMCT” means the party designated and/or defined as such in the Application, its successors and assigns.

1.1.18 “BMCT Scale of Rates” means the document titled as such and listing charges payable to BMCT from time to time for the use of the Services/Facilities, the current edition of which has been made available to the Customer (and which the Customer hereby acknowledges as having read and agreed to) and any amendments thereto which shall be uploaded on <http://bmctpl.com/gencons> which shall also be binding on the Customer.

“BMCT Terminal” means all or any part of any land, place, structure or building in which the Services/Facilities shall be provided by BMCT irrespective of whether or not such land, place, structure, or building shall be owned, operated, managed or controlled by BMCT, including any berth, jetty or wharf.

1.1.20 “Reefer Services” means all or any of the following services and facilities provided by BMCT which are the subject of the Application:

- (a) connecting or disconnecting any refrigerated Container to or from power plugs in any reefer yard forming part of BMCT Terminal;
- (b) supplying electricity to any refrigerated Container and monitoring the temperature within the Container;
- (c) repairing the reefer machinery of any refrigerated Container; and
- (d) pre-trip inspection/Run test of any refrigerated Container.

1.1.21 “Related Corporation” of a party means:

- (a) the ultimate parent of such party;
- (b) any entity that is a subsidiary, whether directly or indirectly, of the ultimate parent of such party; and
- (c) a subsidiary of such party, whether directly or indirectly.

1.1.22 “Services” means any service described as such in the Application and/or any operation, work or services performed or provided by BMCT in connection with Goods or a Vessel, including without limitation:

- (d) Goods Handling;
- (e) berthing or unberthing of any Vessel;
- (f) shifting or hauling of Vessel;
- (g) repair of any Container;
- (h) surveyor inspection of any Goods and their contents to ascertain the nature and extent of any loss or damage of the same;
- (i) ship supplies to any Vessel;
- (j) supply of fresh water via pipeline to any Vessel;
- (k) distribution of power supply to any Vessel;
- (l) fumigation of any Goods;
- (m) supply of mechanical equipment and manpower for the lifting and moving of any Goods;
- (n) Reefer Services;
- (o) weighing of Containers;
- (p) documentation processing; and
- (q) inspection and survey of containers and vessels.

1.1.23 “Services/Facilities” means the Services and/or the Facilities, as the case may be.

1.1.24 “Valuable Articles” means any article of extraordinary value.

“Vessel” means the vessel in respect of which any Service/Facilities is provided or to be provided under the Contract.

1.1.26 “Warehousing” means all or any of the following services or facilities provided by BMCT and which are the subject of the Application:

- (r) provision of space, either open or covered, for the storage, loading, unloading, stuffing, unstuffing, repair, fumigation or inspection of any Goods;
- (s) distribution of any Goods;
- (t) quality testing of any Goods;
- (u) survey of any Goods;
- (v) repacking of any Goods; and

- (w) re-Labeling of any Goods.

1.2 Interpretation

1.2.1 Where the context so admits or requires, words denoting the singular include the plural and vice versa, and words denoting any gender include all genders.

1.2.2 Unless expressly provided otherwise in the Contract:

- (a) In case the Customer has executed a Terminal Service Agreement with BMCT, then in the event of any contradiction or inconsistency between any provision of the Terminal Service Agreement and any provision of the Conditions, the Terminal Service Agreement shall prevail over the Conditions;
- (b) In case the Customer has executed a Term Sheet (without executing a Terminal Service Agreement) with BMCT, then in the event of any contradiction or inconsistency between any provision of the Term Sheet and any provision of the Conditions, the Conditions shall prevail over the Term Sheet.
- (c) in the event of any other contradiction or inconsistency between any provision of the Contract (except the Conditions) and any other provision of the Contract, the provision with a later date shall prevail.

1.2.3 All agreements and undertakings on the part of either Party which comprise more than one person or entity shall be joint and several.

1.2.4 All applications, notices, consents and all other communication under the Contract to be made or given to BMCT shall be made or given in writing or in a mode acceptable by BMCT.

1.2.5 Reference in the Contract to any statute includes a reference to such statute in force from time to time and any rules, regulations, notifications or orders made under such statute.

1.2.6 If the whole or any part of any provision of the Contract shall be or become illegal, invalid or unenforceable for any reason whatsoever, such whole or part of such provision shall be deemed to be deleted from the Contract.

Provided that if any such deletion substantially affects or alters the commercial basis of the Contract, the Parties shall negotiate in good faith to amend the provisions of the Contract where necessary or desirable in the circumstances.

1.2.7 The headings in the Contract are for convenience only and shall not affect its interpretation.

1.2.8 Any trade term used, but not defined, in the Contract shall have (i) the meaning ascribed to the same under applicable law (including conventions and treaties having force of law) or (ii) in case no definition has been prescribed under applicable law, the meaning generally implied to such term under prevalent business/ trade practices.

1.2.9 BMCT reserves the right to review, revise, amend or replace all or any part of these conditions from time to time without notice.

The prevailing version of these conditions applicable from time to time may be found at <http://bmctpl.com/gencons>

2. CONTRACT

2.1 The Contract

2.1.1 BMCT shall provide and the Customer shall accept the Services/Facilities during the Contract Period in consideration of the payment of the Contract Sum, all in accordance with the terms and conditions of the Contract.

2.1.2 Any undertaking by BMCT under the Contract to do any act may be carried out by its authorised employees, agents or contractors, and all protection from liability afforded to BMCT by the Contract in respect of such acts or omissions shall also be afforded to such persons [to which end BMCT contracts on the Contract on its own behalf and as agent for and trustee for the benefit of its employees and contractors.

2.2 Early termination

2.2.1 Notwithstanding the other provisions of the Contract, BMCT may terminate the Contract forthwith at any time without any claim or charge by the Customer if BMCT deems it necessary to do so for the protection of its legal, commercial and/or financial position.

3. FACILITIES

Unless expressly provided otherwise in the Contract, BMCT shall allocate the Facilities in its absolute discretion.

2. INFORMATION RELATING TO GOODS

2.1 General

3.1.1 The Customer shall on or before the delivery of any Goods to BMCT, and within timelines stipulated by BMCT, provide all information required by BMCT in respect of the Goods, including but not limited to information necessary for the compliance with laws, the provision by BMCT of the Services and Facilities and/or for the safe, proper and efficient handling of the Goods.

3.1.2 BMCT shall be entitled, at any time, to inspect, weigh and/or test the Goods and do any acts necessary or desirable in BMCT's opinion.

Charges, costs and expenses arising therefrom, as determined by BMCT, shall be borne by the Customer if the inspection, weighing and/or testing:

- (a) shows that the information provided in respect of the Goods is incomplete and/or inaccurate;
- (b) is requested by the Customer and/or any competent authority; or
- (a) is conducted by BMCT to comply with any law or regulation or International Maritime Organization requirement.

Notwithstanding the foregoing, nothing relieves the Customer from its responsibility to ensure that all required information is provided to BMCT in accordance with Condition 4.1.1.

3.1.3 BMCT may accept delivery of the Goods and/or provide the Services/ Facilities in connection therewith notwithstanding BMCT's knowledge of any incorrect or incomplete information relating to the Goods and in that event:

- (a) the Customer shall bear the risk and expense of any necessary or desirable acts carried out by BMCT in respect of the Goods, Services and Facilities arising from such incorrect or incomplete information and indemnify BMCT against all Claims made by BMCT, its employees or agents, or any third party arising from such acts; and
- (b) BMCT shall not be liable for any Claim arising from BMCT's acceptance of delivery of the Goods and/or provision of the Services and Facilities in connection therewith.

3.1.4 BMCT shall be entitled to refuse to accept delivery of the Goods, refuse to provide any Services/Facilities in respect thereof and/or take any necessary or desirable acts in connection therewith, without responsibility for any loss or any liability, consequential or otherwise, if in the opinion of BMCT:

- (a) the Customer fails to provide, in part or in full, any information required by BMCT pursuant to Condition 4.1.1 or the Goods do not conform with the information provided by the Customer under Condition 4.1.1;
- (b) the Goods are delivered in an apparently damaged or defective condition; or
- (c) the provision of such Services/ Facilities may lead to a Claim against BMCT, its employees or agents.

3.1.5 BMCT shall be entitled to require payment from the Customer of any charges, cost or expense incurred by BMCT in respect of, and the Customer shall be liable to BMCT for and shall indemnify BMCT against all Claims suffered by or made against BMCT, its employees or agents arising from, BMCT's refusal to accept delivery of the Goods, BMCT's refusal to provide the Services /Facilities, any Services/ Facilities provided prior and/or pursuant to BMCT's refusal to accept delivery of the Goods pursuant to Condition 4.1.4 and/or any necessary or desirable acts taken by BMCT in connection therewith.

3.1.6 BMCT shall be entitled in its absolute discretion to rely on and accept, prima facie, any information communicated to and received by BMCT from the Customer and/or the results of any inspection, weighing or testing carried out by BMCT under Condition 4.1.2, and the Customer shall be liable to BMCT for and shall indemnify BMCT against all Claims suffered by or made against BMCT, its employees or agents arising from such reliance by BMCT and/or any incorrect or incomplete description, statement, indication, information, notice, direction or instruction made or given by the Customer to BMCT, in addition to the charges, costs and expenses payable by the Customer under Condition 4.1.2.

2.2 For duties, taxes and charges

3.1.7 For Goods subject (or that may be subject) to duties, taxes or other charges by the competent authorities, the Customer shall, reasonably in advance, provide to BMCT all information required of BMCT by such authorities in respect of such Goods.

3.1.8 The Customer shall be liable for and indemnify BMCT against any Claim, penalties, taxes or duties suffered or payable by BMCT arising from any delay in or complete or partial failure to provide the required information and/or documents.

3.2 The Customer shall not deposit any arms, explosives or Dangerous Goods with BMCT unless BMCT has provided written agreement to the same.

3. TRANSPORTATION, PACKING MATERIALS AND CONTAINERS

3.1 Standards

The Customer shall ensure at all times that the means of transportation, packing materials and containers and their accessories used in the delivery of the Goods to BMCT shall be in a sound, clean, tight and staunch condition, fit for use in respect of the Goods and in compliance with the requirements of the competent authorities. BMCT will not be liable for any Claim arising from such standards not being met and the Customer shall indemnify BMCT against such Claim.

3.2 Inspection

BMCT shall be entitled at any time on, before or after accepting delivery of the Goods, to open, weigh, measure, test or examine such means of transportation, packing materials and containers for the purposes of inspection.

3.3 Refusal to accept delivery

If in the opinion of BMCT, such means of transportation, packing materials or containers are not as that described in Condition 5.1, BMCT is entitled to refuse to accept delivery of the Goods and/or remove or require immediate removal of the Goods at the risk and expense of the Customer.

4. GENERAL CONDITION ON ARRIVAL

4.1 Acceptance of delivery not proof of condition

Any acceptance of delivery of the Goods by BMCT shall be without prejudice to Condition 5 and shall not constitute proof that the Goods were delivered in a good and undamaged condition or that the means of transportation, packing materials or containers used in respect thereof conformed with the requirements of Condition 5.

3.4 Notice of damage, defect or deterioration

BMCT shall, as soon as practicable, notify the Customer of any damage or defect of the Goods or of such means of transportation, materials or containers which is apparent at the time of delivery thereof but the Customer shall not make any Claim against BMCT, its employees or agents by reason of the fact that it has not been so notified.

3.5 Remedial measures

BMCT shall be entitled, at the expense of the Customer, to do all things deemed by BMCT to be necessary to remedy such damage or defect or to prevent or reduce further damage, defect or deterioration in the condition of the Goods or of such means of transportation, materials or containers and to arrange for a report to be made on the condition of the Goods or of such means, materials or containers without being liable for any Claim arising from doing such things and the Customer shall indemnify BMCT, its employees and agents against such Claim.

4. DELIVERY OR RE-DELIVERY

4.1 Point of delivery to BMCT

The Goods shall be deemed to have been delivered to BMCT at the Facilities immediately after the Goods have been unloaded from a Vessel or a vehicle at the Facilities or any part of BMCT Terminal, as the case may be.

4.2 Point of re-delivery to Customer

The Goods shall be deemed to have been re-delivered to the Customer from the Facilities or any part of BMCT Terminal, immediately after such Goods are loaded onto or into the Vessel or vehicle or re-delivery accepted by the Customer whether expressly or by conduct at the Facilities or any part of BMCT Terminal.

4.3 Time and date to be notified

4.1.1 The Customer shall agree with BMCT 7 days prior to the time and date when the Goods shall be delivered to BMCT or re-delivered to the Customer.

4.3.1 If the Goods shall not be delivered or taken re-delivery of at the times and dates agreed under Condition 7.3.1:

- (a) the Customer shall be liable for any Claim suffered by BMCT, its employees and agents arising there from and indemnify BMCT, its employees and agents against such Claim; and
- (b) in the case of delivery of the Goods, BMCT shall no longer be required to make available the Facilities pursuant to the Contract or in the case of re-delivery of the Goods, BMCT shall be entitled to remove the Goods forthwith from the Facilities at the risk and expense of the Customer.

4.3.2 Time shall be of the essence for the purposes of this Condition 7.3 and the Customer shall not be entitled to any notice of such failure. If any time period specified herein is extended by the mutual consent of the Parties then such time period shall be of essence of this Agreement.

4.4 Re-delivery requirements

4.1.2 Subject to Conditions 18.1 and 18.2, BMCT shall re-deliver the Goods to the Customer:

- (a) if so instructed by the Customer;

- (b) against the presentation of a receipt in a form approved by BMCT and duly signed and stamped by the Customer; or
- (c) against the surrender of a Delivery/Shipment Note (if any) issued in respect of such Goods,

Provided that the Customer shall have performed and observed the provisions of the Contract and of any other contract made between BMCT and the Customer in respect of other goods at any part of BMCT Terminal, up to the date of such re-delivery.

4.1.3 BMCT shall be entitled but not obliged:

- (d) to demand from any person purporting to be entitled or authorised to take re-delivery of the Goods, satisfactory proof of the person's identity and of such entitlement and authority; and
- (e) to satisfy itself that the signature and stamp appearing on the instructions, receipts and the Delivery/Shipment Note are correct and valid as at the date of re-delivery.

4.1.4 In the event that a Delivery/Shipment Note has been issued in respect of the Goods and the re-delivery of a part of the Goods by BMCT to the Customer such re-delivery shall be recorded in the Delivery/Shipment Note surrendered pursuant to Condition 7.4.1(c) and BMCT may then at its absolute discretion either:

- (f) return the Delivery/Shipment Note to the Customer; or
- (g) issue a fresh Delivery/Shipment Note to the Customer in respect of the remaining part of the Goods.

4.1.5 In the event of any partial or total loss or destruction of the Goods due to any cause whatsoever, the date of commencement of such loss or destruction shall be deemed to be the date of re-delivery of the Goods by BMCT to the Customer.

4.2 Discharge from liability

4.2.1 BMCT shall be discharged from all liability in respect of the Goods by re-delivery thereof to the Customer or other person presenting a bill of lading, Delivery/Shipment Note or letter of authorisation as the case may be, relating thereto and shall not be bound to make any enquiry whatsoever as to the legal entitlement or otherwise of the Customer or such person to the Goods.

4.2.2 BMCT shall be discharged from all liability for wrongful delivery of the Goods where the carrying vessel advises BMCT that it is unable to discharge the Goods therefrom by marks.

4.2.3 BMCT shall not be bound to make any enquiry as to the correctness, proper authentication or otherwise of any endorsement appearing or purporting to have been made on any of the aforesaid bill of lading, Delivery/Shipment Note or letter of authorisation.

5. MOVEMENT OF GOODS

5.1 By BMCT

BMCT shall be entitled to move the Goods from the Facilities to any other part of any BMCT Terminal from time to time.

4.5 Storage of Goods

BMCT may store the Goods in the open if deemed appropriate and suitable by BMCT.

6. SPECIFIC MEASURES

6.1 Fixtures, fittings and measures

Notwithstanding the other provisions of the Contract, BMCT shall be entitled immediately, and at the risk and expense of the Customer, to install or modify any fixture or fitting to the Facilities and take every measure reasonably deemed by BMCT to be necessary (including the cessation of the provision of the Services/Facilities or the removal or disposal of Goods) as required by any Government or public authority, and/or in order to prevent or reduce any damage (to property and the environment, personal injury or death) and/or to prevent or reduce the risk of any Claim or potential Claim against BMCT. Such fixture or fitting shall be the property of BMCT.

6.2 Notification to Customer

BMCT shall as soon as possible, notify the Customer of such installation, modification and measures but any failure by BMCT to notify the Customer shall not entitle the Customer to make any Claim against BMCT in respect thereof.

7. INSPECTION AND WORKS

BMCT is entitled to conduct any inspection of or any works to the Facilities which is required, in BMCT's opinion, due to or pursuant to any law effective during the Contract Period, at the risk and expense of the Customer. The Contract Sum remains payable in the event of such inspection/works even if the Customer is deprived of the use of the Services/Facilities. BMCT is entitled to do all acts necessary for such inspection or works to take place and the Customer shall not make any Claim arising therefrom, save where there has been wilful intent or recklessness on the part of BMCT.

8. WORKING HOURS

The Services/Facilities shall be provided by BMCT during the normal working hours stipulated by BMCT. BMCT may, at its discretion, provide the Services/Facilities outside the normal working hours (current working hours can be found on <http://bmctpl.com/gencons>), and any costs arising therefrom shall be paid by the Customer.

9. REMOVAL OF VESSELS

The Customer shall ensure that the Vessel shall be removed from the BMCT Terminal immediately upon completion of the discharge/loading of the Goods or at any time as deemed necessary by BMCT.

10. CUSTOMER'S REPRESENTATIVE

10.1 BMCT's approval

10.1.1 BMCT may grant approval for any one or more persons authorised by the Customer to deal with BMCT, its employees and agents for and on behalf of the Customer for the purposes of the Contract. All acts or omissions by such authorised person shall be deemed to be acts or omissions of the Customer.

10.1.2 Without prejudice to the foregoing Condition 13.1.1, BMCT shall be entitled to deem that any person actually (whether expressly or impliedly by way of conduct, course of dealing, usage or custom, or otherwise) or ostensibly or apparently authorised by the Customer to deal with BMCT, its servants and agents for the purposes of or in connection with the Contract (including without limitation hauliers and truckers) is the Customer's Representative, in which event all acts or omissions by such person shall be deemed to be acts or omissions of the Customer.

10.2 Customer's responsibility

10.2.1 The Customer shall ensure that only the Customer itself or the Customer's Representative shall deal with BMCT for the purposes of the Contract. Notwithstanding the provisions of this Condition 13.2, the Customer remains responsible for the due observance of and compliance with the Contract.

1.1.1 Any undertaking by the Customer under the Contract shall be deemed to include an obligation to ensure that the same shall be carried out by the Customer's Representative.

10.3 Liability and indemnity for Customer's Representative

BMCT shall not be liable for any Claim suffered by any person due to any cause whatsoever arising from the act or omission of any Customer's Representative or any other person ostensibly or apparently engaged or authorised by the Customer to deal with BMCT and the Customer shall absolve BMCT, its employees and agents in respect of such Claim and shall indemnify BMCT, its employees and agents in respect of such Claim.

11. ACCESS TO AND PRESENCE AT BMCT TERMINALS

Except with the written permission of the BMCT and subject to such terms and conditions as may be imposed by BMCT, all persons or property shall only enter or exit any BMCT Terminal through entrances or exits or means designated by BMCT for that purpose.

BMCT has the right to deny entry/exit to BMCT Terminal and any part of BMCT thereof or revoke permission for the same, and to require the Customer to remove any person or property accordingly at any time.

The Customer shall, while it remains at BMCT Terminal, obey all directions given by BMCT in respect of the Services/ Facilities and the BMCT Terminals, including without limitation as indicated by any signboard placed by BMCT.

12. ENVIRONMENT

The Customer shall not cause or permit any waste matter to be discharged in any manner onto any part of BMCT Terminal and no Vessel shall emit smoke, soot, ash, grit or oil beyond levels deemed as reasonable by BMCT at any part of BMCT Terminal.

13. PAYMENT FOR SERVICES OR FACILITIES

13.1 Charges and other sums

In consideration of the provision of the Services/Facilities by BMCT, the Customer shall pay to BMCT all charges and other sums which shall be imposed by BMCT under the BMCT Scale of Rates or under the Contract or at law. An additional shifting charge as prescribed under BMCT Scale of Rates will be applicable for the refrigerated containers that have a variance of 5 degrees from the declared temperature.

13.2 Conditions of payment

Except as expressly agreed otherwise between the Parties:

(a) The Contract Sum shall be:

- (i) payable without demand and without deduction not later than the date for payment stipulated in the BMCT Scale of Rates or under the Contract, as the case may be; and
- (ii) recoverable against the Goods and any other property delivered by the Customer to BMCT under any other contract made between BMCT and the Customer.

(b) BMCT may at any time and from time to time require the Customer to open and maintain for the duration of the Contract Period an account with BMCT subject to the terms and conditions provided in the BMCT Scale of Rates.

(c) The Customer shall furnish security for a sum and of a form approved by BMCT for the prompt and proper performance and observance by the Customer of the Contract (including without limitation the obligation to pay the Contract Sum).

(d) The sums due from the Customer or any of its Related Corporations to BMCT or any of its Related Corporations may be deducted from any sum due from BMCT to the Customer or any of its Related Corporations, including sums due pursuant to the Contract or otherwise. Each Party shall procure that its Related Corporations comply with the terms of this Condition 16.2(d).

(e) Notwithstanding the period for payment stipulated pursuant to paragraph (a)(i) above:

- (i) if the Customer is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

- (ii) if the value of the assets of the Customer is less than its liabilities (taking into account contingent and prospective liabilities);
- (iii) if a moratorium is declared in respect of any indebtedness of the Customer;
- (iv) if any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer [other than a solvent reorganisation of the Customer];
 - (B) a composition or arrangement with any creditor of the Customer, or an assignment for the benefit of creditors generally of the Customer or a class of such creditors;
 - (C) the appointment of a liquidator, receiver, trustee, judicial manager, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of the Customer or any of its assets; or
 - (D) enforcement of any mortgage, charge, pledge, lien or other security interest (or any other agreement or arrangement having a similar effect) over any assets of the Customer (including the Goods), or any analogous procedure or step is taken in any jurisdiction; or
 - (v) if the Customer ceases or threatens to cease to carry on the whole or any substantial part of its core business as at the date of the Application;
 - (vi) if the Customer shall fail to perform or observe any term or condition of the Contract, the Contract Sum shall become immediately due and payable and BMCT shall be entitled to take all necessary steps to mitigate its risks and losses, including without limitation such steps to suspend its provision of Services/ Facilities to the Customer.
- (f) Without prejudice to the generality of paragraph (e) above, if due to any reason whatsoever (except the default of BMCT) the Customer shall not pay the Contract Sum on or before the due date for payment referred to in paragraphs (a)(i), (d) and/or (d) above:
 - (i) BMCT shall be entitled to engage the services of any person(s) to recover such sum from the Customer in accordance with applicable law, at the Customer's cost;
 - (ii) Notwithstanding sub-paragraph (i) above, the Customer shall in addition to the Contract Sum and the costs described in sub-paragraph (i) above (if any), pay to BMCT interest on such sums at the rate of 2% per month or such other rate as may be notified to the Customer and the costs at the rate equivalent to the rate stipulated in the BMCT Scale of Rates or in the Contract (as the case may be), which interest shall be payable on a day to day basis from the date immediately after the due date for payment to the date of actual payment of such sums, the costs and interest thereon

or to the date of expiry or sooner termination of the Contract, whichever is earlier.

- (iii) BMCT shall be entitled to:
 - (A) suspend forthwith upon notice to the Customer any or all of BMCT's obligations under the Contract including, without prejudice to the generality of the foregoing, the provision of Services/Facilities; and/or
 - (B) terminate the Contract forthwith upon notice to the Customer.

In the event that BMCT elects to suspend any or all of its obligations under the Contract, such suspension shall subsist unless otherwise notified by BMCT. For the avoidance of doubt, BMCT's rights of suspension and termination are cumulative and not in the alternative, and BMCT's exercise of its right of suspension shall not in any way be construed as a suspension and/or waiver of BMCT's rights, the Customer's obligations under the Contract and/or the Customer's breach(es) of the Contract.

- (g) Time shall be of the essence for the purposes of this General Condition. If any time period specified in these Conditions is extended in accordance with the terms hereof then such time period shall be of essence of this Conditions.

14. THIRD PARTY CHARGES AND SUMS ON GOODS

14.1 Goods to be free of third party charges or sums

14.1 Goods to be free of third party charges or sums

14.1.2 BMCT shall be entitled to refuse to take delivery of any Goods in respect of which BMCT is not satisfied that all such charges and sums have been paid.

14.1.3 BMCT shall not be liable for nor be obliged to recover any such unpaid charges or sums or other charges or sums which have been overpaid or mistakenly paid by the Customer to any third party.

14.2 Cost of professional services

If BMCT, in its absolute discretion, deems it necessary to seek professional services or to commence legal proceedings or to take other legal measures in relation to such unpaid charges or sums payable to the third parties, all costs and expenses incurred by BMCT in respect of such services, proceedings and measures shall be borne by the Customer.

14.3 Customer's liability

Notwithstanding that BMCT may have taken delivery of the Goods, the Customer shall be liable for such unpaid charges and sums and shall indemnify BMCT, its employees and agents against any Claims against BMCT, its employees or agents arising in respect of such unpaid charges and sums, regardless of the location of the Goods at that point in time.

15. RIGHTS OVER GOODS AND VESSELS

15.1 Right of lien and retention

15.1.1 BMCT shall have the right of lien and retention over all property (including the Goods) and all sums (including any sums collected by BMCT from third parties on behalf of the Customer) and all documents which BMCT shall now or hereafter hold of or for the Customer or which is now or hereafter due to the Customer, to secure the payment of the Contract Sum and the discharge of all liabilities of the Customer to BMCT under the Contract or at law.

15.1.2 In the exercise of BMCT's right of lien and retention, BMCT shall be entitled to seize and detain such property, sums and documents until the sums due from the Customer to BMCT are fully paid.

15.1.3 BMCT's lien shall have priority over all other liens and claims in respect of such property, sums and documents.

15.2 Power to dispose of Goods remaining in custody

15.2.1 If the Goods are not removed from the Facilities within the period stipulated by BMCT under the Contract or if the Customer fails to pay to BMCT the Contract Sum for any reason, BMCT may dispose of the Goods by sale or in such other manner as it thinks fit. Provided that in the case of a hazard or an emergency or if the Goods are of a perishable nature BMCT may direct or effect their removal or disposal immediately or within such shorter period as BMCT deems fit.

15.2.2 BMCT shall render the surplus proceeds of sale (after deducting payments of the any and all sums due to BMCT, including the Contract Sum, and any other sums due to third parties payable by BMCT in relation to the Goods and/or the Customer whether under the Contract or any other contract or at law), if any, to the Customer and any other person entitled thereto on demand, and, in case no such demand is made within one year from the date of the sale of such property the surplus shall be paid to the account of BMCT, whereupon all rights to the same by such person shall be extinguished. If the proceeds of sale of the Goods by BMCT pursuant to this condition is insufficient to satisfy in full any claim of BMCT under the Contract, under any other contract made between BMCT and the Customer or at law, BMCT shall be entitled to recover the balance from the Customer as a debt in any court of competent jurisdiction.

15.3 Power to distrain for non-payment of Contract Sum

15.3.1 If the Customer fails to pay the Contract Sum in accordance with the Contract, BMCT may, in addition to any other remedy, distrain or arrest the Vessel in respect of which such Contract Sum is payable and the tackle, apparel or furniture belonging thereto or any part thereof, and detain the same until the amount so due is paid.

15.3.2 In case any part of the Contract Sum or of the costs of the distress or arrest, or of the keeping of the Vessel, tackle, apparel or furniture, remains unpaid for a period of not less than 14 days after any such distress or arrest has been so made, BMCT may cause the Vessel or other thing so distrained or arrested to be sold, and with the proceeds of the sale may satisfy those charges, other sums and costs, including the costs of sale

remaining unpaid, rendering the surplus, if any, to the master or owner of the Vessel on demand.

16. TRANSFER OF RIGHT OR INTEREST IN GOODS

16.1 BMCT not bound

16.1.1 BMCT shall not be obliged to recognise nor be bound by any transfer of ownership or the right to delivery or possession or other right or interest in respect of the Goods.

16.1.2 The Customer shall be liable for all Claims arising from any refusal of BMCT to recognise or to be bound by the intended transfer of ownership or other interest in the Goods and shall indemnify BMCT, its employees and agents in respect of such Claims.

16.2 Disputes

16.2.1 If there shall be any dispute between BMCT and the Customer or between BMCT and any third party relating to the ownership of or other right, title or interest in the Goods or if the Goods shall be attached, detained or seized by a third party in any way, BMCT shall be entitled to detain the Goods until the dispute is resolved by the court, Tribunal, Arbitral Tribunal or any other competent Judicial authority or otherwise settled, as may be the case.

16.2.2 BMCT shall be entitled:

- (a) to seek any legal and other professional services or to commence any legal proceedings or to take any measure which it deems necessary to protect its interest in such dispute, attachment, detention or seizure or to resolve such dispute, in which event the risk and expense of such services, proceedings and measure shall be borne by the Customer; and
- (b) notwithstanding Condition 7, to retain the Goods and such other goods forming part of the Goods at the risk and expense of the Customer until the resolution or settlement of such dispute to BMCT's satisfaction.

16.3 Responsibility of Customer

Notwithstanding the transfer of any right or interest in the Goods, until and unless BMCT shall have agreed to recognise and be bound by such transfer, the Customer shall continue to perform and observe the conditions of the Contract (including the obligation to pay the Contract Sum and all Claims) even insofar as they relate to any Services/Facilities provided after the transfer.

16.4 When transferee deemed to be Customer

Upon BMCT's recognition and contract to be bound by the transfer, the transferee shall be deemed to be the Customer for the purposes of the Contract and shall also be jointly and severally liable with its predecessor in title for the performance and observance of the Contract as described.

17. REMOVAL OF GOODS

Notwithstanding the other provisions of the Contract, BMCT may require the Customer to remove any Goods at any time by giving fourteen days' prior notice or shorter notice (as determined by BMCT) for perishable / hazardous Goods. The Customer shall remove all Goods from the Facilities upon expiry or termination of the Contract or as required by BMCT.

17.1 No liability

BMCT shall not be liable for any Claim arising from the removal, disposal, destruction and intermediate storage of the Goods and the Customer shall indemnify BMCT, its employees and agents against such Claims.

18. OPERATING REQUIREMENTS AND BMCT RULES

The Customer shall comply, and shall ensure that its employees, subcontractors and agents comply, with BMCT's operating requirements including without limitation as set out from time to time in port circulars available to the Customer (which the Customer hereby acknowledges as having read and agreed to) or hereafter notified to the Customer, as well as all rules, conditions, policies and directions set by BMCT in respect of the BMCT Terminals and activities therein.

19. FORCE MAJEURE

19.1 Affecting performance or observance by BMCT

BMCT shall be released from performing or observing its obligations under the Contract if such performance or observance shall be prevented by any Force Majeure.

20. LIABILITY AND INDEMNITY

20.1 Extent of liability

4.5.2 Except where expressly agreed otherwise between the parties:

(a) BMCT shall not be liable for any claim arising from:

- (i) Force Majeure;
- (ii) Any delay or error in the delivery of the goods to BMCT or re-delivery of the goods to the customer;
- (iii) Breach of any statutory duty (to the extent permitted by such statute);

OR

- (iv) Any other cause unless it is first proven by the customer that such claim has arisen from the gross negligence or the unlawful act or omission of BMCT.

(b) of any claim against BMCT, BMCT shall not be liable, in each Contractual Year (i.e. a period of twelve (12) months from the date of the commencement of the Contract), for:

- (i) Any sum exceeding INR 50 Lakhs (Indian Rupees Fifty Lakhs) in aggregate per incident or series of incidents; or
- (ii) Any damage to or loss of goods in a sum exceeding:
 - (A) INR 10 Lakhs (Indian Rupees Ten Lakhs) in the case of a Vessel;
 - (B) INR 5 Lakhs (Indian Rupees Five Lakhs) in the case of a Container of up to 20 feet in length;
 - (C) INR 10 Lakhs (Indian Rupees Ten Lakhs) in the case of a Container exceeding 20 feet in length;
 - (D) INR 10 Lakhs (Indian Rupees Ten Lakhs) in the case of a package or unit of such Goods;
 - (E) The reasonable cost of repairs as agreed between surveyor(s) appointed by BMCT and the Customer

Whichever is less; or

(iii) Any loss of profit, consequential loss or any indirect loss or damage

(iv) any third party claim made against BMCT.

Provided that BMCT is not liable for any claims less than INR 1 Lakh. (Indian Rupee One Lakh)

(v) Any death or injury suffered by any person on board any Customer Vessel while at berth pursuant to this Agreement, provided that BMCT's liability will not exceed INR 5 Lakhs (Indian Rupee Five Lakhs) for any one incident.

4.5.3 BMCT shall not be liable for any claim arising before delivery of the goods to BMCT or after re-delivery of the goods to the Customer.

4.5.4 The limitation of liability granted under this general Condition 23 shall relate to the whole of any losses and damages which may arise upon any one incident or series of incidents, although such losses or damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law and notwithstanding anything contained in such written law. [These remedies are exclusive in nature and the Customer agrees that the Customer shall waive its right to any damages that may be arise under any and all applicable laws. 4.5.5 The claim will be void if the customer shall not have notified BMCT thereof in writing:

- (a) Of damage alleged to have been caused to a vessel or any goods, and to permit inspection thereof, prior to such vessel or goods leaving the facilities or the BMCT;
- (b) Within one week after the occurrence of the event giving rise to the claim; or
- (c) Within one week after the re-delivery of the goods to the customer,

Whichever is earliest.

Such notified claim will become void if no legal proceedings in respect thereof are commenced within 6 months after the date of notice.

4.5.6 Where a container, pallet or similar article is used to consolidate goods, notwithstanding that the packages or other shipping units have been separately enumerated in the bill of lading as having been packed or consolidated in such container, pallet or article, the resultant consolidation shall be deemed and shall count as one package or shipping unit.

20.2 Customer indemnity

20.2.1 The Customer shall be liable for and shall fully indemnify BMCT its employees and agents against any liability for any Claim, including charges, costs and expenses, in respect of:

- (a) any non-compliance by the Customer with this Condition 23.2;
- (b) loss of or damage to any property, death or injury suffered by any person caused by any act or omission or misrepresentation, negligence, fraud, wilful default or misconduct of or breach of the Contract or breach of statutory duty by the Customer, its employees or agents;
- (c) any failure by the Customer to perform duly and punctually any obligation, covenant, agreement or undertaking on the part of the Customer under the Contract;
- (d) compliance by BMCT with any law or obligation in respect of the Goods or Vessel;
- (e) compliance by BMCT with any instructions issued by the Customer, its employees or agents; and
- (f) the exercise by BMCT of any of its rights in the event of any of the foregoing or any misrepresentation, negligence, fraud, wilful default or misconduct of or breach by the Customer its employees or agents.

20.3 Personal liability

Notwithstanding the other provisions of the contract, no matter or thing done and no contract of any kind entered into by BMCT and no matter or thing done by any employee or agent of BMCT or any other person whomsoever acting under the direction of BMCT shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of providing the Services/Facilities, subject any such person personally to any action, liability, claim or demand whatsoever in respect thereof.

20.4 Reasonableness [Non-Excludable Liability]

The customer expressly acknowledges that Condition 23 satisfies the requirements of reasonableness under any applicable law relating to the effectiveness of contractual provisions that seek to exclude or limit liability and that it shall be estopped from claiming the contrary at any future date in the event of any dispute with BMCT concerning BMCT's liability hereunder.

Or nothing in the Contract shall exclude or in any way limit BMCT's liability for Fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

5. DAMAGE TO BMCT TERMINAL OR OTHER BMCT PROPERTY

If any damage is caused to any BMCT Terminal or other property arising out of the provision of the Services/Facilities, BMCT may in its discretion carry out such repairs or replacements as it thinks necessary, in which event the cost of such repairs or replacements, together with all interests, expenses and legal fees that may be incurred in the collection of such costs, shall be borne by the Customer.

21. CUMULATIVE RIGHTS AND REMEDIES

BMCT's rights and remedies under the Contract are cumulative and shall not prejudice any other rights or remedies of BMCT contained in the Contract or at law, or the right of action or other remedy of BMCT for the recovery of any sums due to BMCT from the Customer or in respect of any breach of the Contract by the Customer.

6. INSURANCE

The Customer shall effect adequate insurance of the Goods for so long as they remain at any BMCT Terminal, except where expressly agreed otherwise between BMCT and the Customer.

22. COMPLIANCE WITH LAW

The Parties shall comply with all laws, rules and regulations affecting the Contract. The Customer shall obtain all requisite permissions, approvals and consents from the competent authorities and indemnify BMCT against any fines, penalties, losses, costs or expenses incurred by BMCT in respect of any non-compliance with such laws, rules and regulations.

23. ASSIGNMENT OF CONTRACT

Save as expressly permitted by the Contract, the rights and obligations of the Customer shall not be assigned to or shared in any way with any person without BMCT's prior written consent.

24. CONFIDENTIALITY

24.1 No Party shall disclose to any other person any information related to the Contract without the prior consent of the other Party.

24.2 Notwithstanding Condition 29.1, either Party may disclose information related to the Contract to:

- (a) such Party's agents or contractors who have a need to know the same provided that such agents and contractors are first subject to the same confidentiality restrictions contained herein;

- (b) any other person pursuant to a legal requirement to disclose or pursuant to any judicial authority which requires disclosure; or
- (c) any other person to the extent that such information shall already be known to such Party not due to a breach of this Condition 29 or is already a matter of public knowledge through no fault of the disclosing Party.

25. NON-DEMISE AND NO GRANT OF INTELLECTUAL PROPERTY RIGHT

25.1 The Contract shall not confer on the Customer any lease, tenancy or other interest in or possession of the Facilities or any BMCT Terminal, which possession is retained by BMCT.

25.2 No express or implied intellectual property right or licence belonging to either Party is hereby granted to the other Party.

26. COMMUNICATION

26.1 Other forms of writing

Where the Contract requires any notice or information to be in writing, that requirement is also met by electronic mail.

26.2 Acknowledgement of receipt

Except where expressly agreed otherwise, BMCT, its employee or agent is deemed to have received a Data Message when it acknowledges receipt by any communication in writing by BMCT, its employee or agent sufficient to indicate to the sender that the Data Message has been received.

26.3 Service

26.3.1 Subject to Conditions 31.1 to 31.2 (inclusive), any notice to be given by either Party under the Contract shall be deemed to be received by the other Party if sent by:

- (a) hand or local urgent mail or express mail or other fast postal service, or
- (b) registered post,

to the registered or representative office of the recipient, or by telex, facsimile or other electronic media, followed immediately by a posted confirmation copy.

26.3.2 Notwithstanding the provisions of Condition 31.3.1, BMCT may in its absolute discretion where BMCT considers appropriate or conducive to efficiency or expediency, choose to give any notice to the Customer required under the Contract, by writing addressed to users of the Services/Facilities generally.

27. PERSONAL DATA PROTECTION

27.1 Definitions

27.1.1 For the purposes of this Condition 32 and unless the context requires otherwise, "Personal Data" means data, whether true or not, about an individual who can be identified:

- (a) from that data; or
- (b) from that data and other information to which BMCT and/or the Customer has or is likely to have access;
- (c) and shall include such data which, under Indian applicable law, constitute "personal information" or "sensitive personal data".

27.2 In the event that the Customer provides Personal Data to BMCT in the course of exercising any rights, fulfilling any obligations, or doing anything related to or arising out of the Contract, the Customer undertakes and warrants that it has obtained all necessary consents required under the Indian laws for BMCT to collect, use and/or disclose such Personal Data for all the relevant purposes which BMCT requires.

27.3 The Customer agrees to fully indemnify BMCT against any and all actions, claims, legal costs, damages and/or other expenses which may arise out of the Customer's breach of Condition 32.2.

28. CONSENT OR WAIVER

No consent or express or implied waiver by BMCT to or of any breach of any General Condition or any covenant or duty of the Customer shall be construed as a consent or waiver by BMCT to or of any other breach of the same or any other Condition, covenant or duty by the Customer and shall not prejudice in any way the rights, powers and remedies of BMCT contained in the Contract or at law.

29. ARBITRATION

34.1. Any If and to the extent that amicable settlement of any dispute arising hereunder or in connection with the Contract, including any question regarding its existence, validity or termination, may not be possible, such dispute shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Mumbai, India.

34.2. Notwithstanding anything to the contrary, the provisions of Part I of the (Indian) Arbitration and Conciliation Act, 1996, shall apply to this Contract.

34.3. The Tribunal shall consist of a sole arbitrator. The language of the arbitration shall be English.

Notification of award

When and so far as it may be necessary that any award, instrument or order issued by the arbitrators or any appeal therefrom should be served on the Customer in any proceedings to be taken for the enforcement of the Contract, the Customer hereby agrees and consents that the service of such award, instrument or order on the

Customer in accordance with Condition 31.3, shall be in all respects as operative and effective as if the same were its office.

30. SURVIVAL OF OBLIGATIONS

Notwithstanding the complete performance of the Contract or the termination of the Contract insofar as it relates to the Customer, the terms and conditions of the Contract shall remain in full force and effect between the BMCT and the Customer insofar as such terms and conditions shall remain unfulfilled or relevant.

31. STAMP DUTY

The Customer shall bear the costs of and incidental to the stamping of all documents evidencing the Contract and the duplicate thereof.

32. COMPLIANCE WITH LAWS

Notwithstanding any inspection, verification, testing or any other right in relation to the Goods provided under the Contract to BMCT (whether such rights are exercised or not by BMCT), all obligations and liabilities in respect of any Goods or actions related thereto not being in compliance with applicable law shall be of the Customer.

33. FURTHER ASSURANCE

The Parties agree to do all such further and acts other things, execute and deliver all such additional documents, so as to give full effect to the terms of these Conditions.

34. GOVERNING LAW

34.1 The Contract will be governed by, and construed in all respects in accordance with, the laws of India.

34.2 Subject to Clause 34, the Customer hereby irrevocably agrees for the benefit of BMCT that the courts of India shall have exclusive jurisdiction over any dispute arising under, out of or in connection with the Contract (including any question regarding its existence, validity or termination), save that nothing in this Condition 39.2 shall limit the right of BMCT to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.