

**GATEWAY TERMINALS INDIA PRIVATE LIMITED**

**STANDARD TERMS OF BUSINESS ("TERMS")**

**Definitions:**

- Act:** means the Major Port Trusts Act, 1963;
- GTI:** means Gateway Terminals India Private Limited, Mumbai;
- Berthing Window:** means the time frame within which a Vessel is to arrive on schedule, perform cargo operations and depart at the end of time frame prescribed in Berthing Program as Berthing Window; Berthing Window is not associated with a fixed berth number dedicated to any Customer. Vessels may be berthed to any berth, considering Vessel and operation specifications at the sole discretion of GTI according to the daily operation plan of the Terminal.
- Berthing Program:** Means the schedule of berthing for all ships at the Terminal.
- Cargo Cut-Off Time:** means the closing time for receipt of Containers at the Terminal and the Verified Gross Mass of those Containers on any given day as in accordance with GTI's procedures in force from time to time;
- Carriage Contract:** has the meaning given to it in Clause E1(i)b;
- Customer:** means any person or entity requesting receiving or benefiting from the delivery of services by GTI including, without limitation: (i) the owner of, charterer (of whatsoever nature) of, or any other person who is or may become interested in a Vessel calling at GTI, the Vessel's Master and any person who has control of the operation of such Vessel; (ii) the owner or any other person who is or may become interested in the Goods; (iii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; (iv) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; (v) any person who drives or operates such vehicle and any person who visits, uses and/or enters the Terminal; and (vi) Consortium Members.
- Container:** means (i) any container, whether laden or empty, 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other container developed for standard use in liner shipping at any time whilst these Terms are in force including, but not limited to, dry, open top, flat-racks, platforms, reefer and container tanks, with ISO recommended lifting arrangements and consistent with the safety requirements of CSC plates, and which can be handled by means of a standard 20', 40' and 45' spreader;  
(ii) Non-standard Container; and/or  
(iii) Out of Gauge Container;
- Container Terminal Service:** has the meaning given to it on Clause A.5;
- Consortium Members:** means the shipping line members of a consortium, vessel sharing agreement, slot charter agreement or other type of shipping line combination on whose behalf also the Customer enters into these Terms.

Container-transporter:	means any road vehicle (including articulated vehicles) used for the carriage of Containers, Non-standard Containers and Out of Gauge Containers or any vehicle other than a Vessel;
CSC:	means the International Convention for Safe Containers, 1972, as amended from time to time;
Dutiable Goods:	means dutiable Goods as defined under the relevant customs and excise, GST, or any other tax laws of India as may be applicable from time to time;
EDI Services:	means Electronic Data Interchange Services and is defined as the application-to-application transfer of business documents between computer application systems of trading partners and/or administrations with minimal manual intervention;
Force Majeure:	means an event or circumstance beyond the reasonable control of the Affected Party including, but not limited to, any act of God, act of public enemies, war, warlike acts, (cyber)terrorism, restraint of governments, princes or peoples of any nation, riots, strikes, lockouts or other labour or industrial disputes, failure of a utility service, insurrections, civil commotion, civil disobedience, floods, fire, restrictions due to quarantines, sanctions or radioactivity, epidemics, storms, tempest, typhoon, tsunami or any other event or circumstance beyond the reasonable control of the Affected Party. Notwithstanding the aforesaid the following shall be considered as Force Majeure within the meaning of these Terms: (i) restrictions on imports imposed by the Port authorities or any other authority, organ or instrumentality of India; (ii) confiscation, expropriation or nationalization of Terminal assets; (iii) commandeering or requisition of Terminal assets; (iv) any law or governmental order, rule, regulation or direction, in each case outlined in (ii), (iii) and (iv), by the Government of the country where GTI has its registered office or primary place of business; or (v) any event or circumstance of a nature analogous to any of the foregoing;
Goods:	means the whole or any part of the cargo of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container and includes non-containerized cargo, Hazardous Goods and Dutiable Goods carried on a Vessel;
Government:	means any national or local government, including any department, agency or other instrumentality thereof, and any government owned or controlled enterprise;
Hazardous Goods:	means Goods which are, or which may become, of a dangerous, noxious, toxic, poisonous, hazardous, explosive, flammable, or otherwise damaging nature (including radioactive material), or which may, or may become liable for, damage any persons or property whatsoever, and whether or not so listed in any official or unofficial, international or national code, convention, listing or table;
Intermediary Service:	means, in relation to the use of the EDI Service, services or facilities provided by an intermediary as mutually agreed by the Parties to facilitate the interchange of data by electronic means;
ISPS Code:	means International Ship and Port Security Code of the International Maritime Organization and includes any amendments or extensions thereto and any regulation issued pursuant thereto;
Master:	includes every person, except a pilot, having for the time being the command or charge of any Vessel;

Moves:	means the total number of Containers loaded or discharged, each counting as one (1) move. A Shift counts as (1) one move and a restow counts as two (2) moves; Moves includes full, empty, shifts, restows and transshipment containers loaded or discharged to or from a Vessel;
Notice of Arrival:	means the notice given by the Customer/Master to GTI in writing within twenty-four (24) hours of the arrival of the Vessel;
Non-standard Container:	means any Container which GTI cannot handle as a normal lift with a container spreader but can handle with alternative means;
Out of Gauge Container:	means any Container the Goods in which exceed the dimensions of a standard Container as specified in section (i) of the definition of Container;
Party or Parties:	have the meaning given to them in Clause A.1;
Port:	means Jawaharlal Nehru Port Trust;
Port Procedures:	means such actions or series of actions as may be laid down by the Jawaharlal Nehru Port Trust for Masters of vessels arriving at, staying in or departing from the Jawaharlal Nehru Port including but not limited to adherence to Major Port Trust Act, 1963 and providing previous notification on a variety of subjects, ranging from health & safety, environment, immigration and dangerous goods.
Public Official:	means any (a) officer or other person employed in any capacity (i) at any level of Government, (ii) any official or employee of a labour union controlled by any Government or political party, or (iii) in any public international organization, such as the United Nations or the European Union, including any department, agency or other instrumentality thereof, (b) any candidate or officer or other person employed by a political party, or (c) any person acting in any official capacity for or on behalf of any person or organization listed in (a) or (b);
Rates & Tariffs:	means the rates and tariffs published at <a href="http://www.apmtmumbai.com">www.apmtmumbai.com</a> in accordance with the scale of rates issued by TAMP, as amended from time to time, unless otherwise provided by any other authority or Courts in India;
Reefer Container:	means a Container designed for the refrigerated transportation of Goods, including its reefer machinery unit;
Shipper:	has the meaning assigned to it in the SOLAS Guidelines;
SOLAS:	means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines and as may be amended or supplemented from time to time;
SOLAS Guidelines:	means the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization, as may be amended, supplemented or replaced from time to time;
TAMP:	means the 'Tariff Authority of Major Ports' as constituted under the Act;
Terminal:	means GTI Terminal facilities at JNPT Port, Nhava Sheva, Navi Mumbai;

Terminal Services:	means the services provided by GTI to its Customers at the Terminal (type of services, service description) as set out in the Rates & Tariffs;
Unprotected Cargo:	means, where they relate to containerized cargo, shall mean cargo that is packed, stuffed or stowed either in or on a flat rack, u-rack, platform, or placed in an open-side or open-top container or in a container where the bottom is not sufficiently secured. Where they relate to bulk or break bulk, or out of gauge cargo, it shall mean cargo not placed in a carton or any form of packaging. In both containerized, bulk and break bulk cargo, the packing, stuffing or storage is such that the cargo is exposed in a manner that will result in their damage, loss in weight, value or quality;
Vessel:	means a vessel fitted for the carriage of Containers, whether above or below deck, including all lashing equipment required for the proper securing of Containers, its gear and all other equipment or other property on board;
Verified Gross Mass / VGM	means the total gross mass of a packed Container as obtained and verified in accordance with one of the two methods prescribed by SOLAS;
VGM Declarant:	means the Customer, Shipper or another person on behalf of the Customer or Shipper providing the Verified Gross Mass to GTI;
Wharf:	includes a berth, quay, pier, jetty, docks, ramp, landing place and any wall and building adjoining the foreshore, sea-bed or river bed for loading or discharging Goods; and
Working Day:	means any day (including any public holidays and Sundays) that the Terminal is open for business.

**A. Scope**

1. These Terms shall apply to any provision of Terminal Services, of any nature whatsoever, by GTI to the Customer and all Vessels which call at the Terminal and otherwise to any Customer. By requesting the delivery of Terminal Services, the Customer warrants to be authorized to enter into an agreement with GTI not only for itself but also as agent for the owners of the Vessel (if chartered), Goods and Containers and other Consortium Members. The Customer and GTI are collectively referred to as the “Parties” and each individually as “Party”.
2. GTI shall only be bound and an agreement for the provision of Terminal Services between GTI and the Customer on these Terms shall only be concluded once GTI confirms any request by Customer for the provision of Terminal Services. Notwithstanding the foregoing, the use of the Terminal or the Terminal Services by the Customer, entry into the Terminal or berthing of any Vessel at the Terminal, shall constitute acceptance of these Terms.
3. Notwithstanding any language to the contrary in any Customer documents, any correspondence or any other form of acknowledgement, the Customer shall be bound by these Terms and any other terms and conditions are hereby expressly excluded and rejected.
4. No variation to these Terms shall be binding unless agreed in writing by an authorized representative of GTI. Prior dealings, usage of trade or a course of performance shall not be relevant to determine the meaning of these Terms even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.
5. If not otherwise agreed in writing between the Parties, the scope of services (kind of services, service description, rates) shall be as set out in the applicable tariff of APM Terminals scale of rates as published and amended from time to time at [www.apmtmumbai.com](http://www.apmtmumbai.com) (“Rates & Tariff”). The terms and conditions of the applicable Tariff are incorporated herein). In the case of inconsistency between these Terms and the Tariff, the Tariff shall prevail. The services are referred to here after as “Container Terminal Services”.

**B. Payment and Rates**

1. The consideration payable by the Customer for the provision of Terminal Services by GTI shall be in accordance with the Rates & Tariffs.
2. In the event the TAMP regulated Rates & Tariffs are removed and GTI is able to decide its rates for the Terminal Services independently, any such rates shall be mutually agreed and amended between the Terminal and the Customer.
3. If not otherwise agreed in writing between the Parties, the Rates & Tariffs shall be paid in accordance with the following payment terms:
  - (i) the Customer shall pay into the designated account of the Terminal at least three (3) Working Days prior to the commencement of the Terminal Services, the Rates & Tariffs that shall be payable by the Customer to GTI for the Terminal Services;
  - (ii) the amounts paid by the Customer pursuant to Clause B3(i) shall be deducted from the invoice amount raised as per the Rates & Tariffs and the unutilized amount, if any, shall be adjusted in the next call of the Vessel that may be made by the Customer to the Terminal;
  - (iii) the Parties hereby agree that the Customer shall, maintain with GTI such amount as equivalent to two (2) weeks' pre-delivery advance (PDA) or such amount as may be mutually agreed between the Parties, as an interest free security deposit;
  - (iv) all sums payable to GTI are due on demand by GTI;
  - (v) all payments shall refer to the invoice or other reference number (if available) and the amount. If no reference to the respective invoice number and amount is indicated by the Customer, GTI reserves the right to allocate such payments to the oldest outstanding sums owed to GTI by the Customer. GTI will inform the Customer accordingly. Any payments to be made from GTI to the Customer shall only become due when the Customer is in compliance with its contractual obligations towards GTI; and
  - (vi) all payments due shall be made without any set off, counter claim, deduction or stay of execution.
4. If as a result of a change in applicable laws, rules or regulations (including SOLAS), GTI's costs in order to comply with its obligations under such are increased, GTI may recover such additional costs from the Customer.

**C. Provision of Terminal Services**

Any provision of Terminal Services shall be subject to the conditions set out in these Terms.

1. Information Exchange
  - (i) If not otherwise agreed between the Parties or specifically outlined in the Rates & Tariffs, the Customer shall provide the information requested by GTI as set out in these Terms.
  - (ii) If not agreed otherwise, the Customer shall, or shall ensure that a VGM Declarant shall, provide GTI with the Verified Gross Mass as soon as possible and in any event, no later than:
    - a. Cargo Cut-Off Time or when gated in, for all packed Containers for export; and
    - b. sufficiently in advance of outbound Vessel loading or in advance of inbound Vessel discharge or Cargo Cut-Off Time for all packed transshipment Containers, to be used by GTI to prepare and implement the Vessel stowage plan in accordance with SOLAS.
  - (iii) The Customer warrants that all information requested by GTI contained in the Rates & Tariffs or these Terms, including but not limited to any permits, the Verified Gross Mass and custom clearance documents, is complete and accurate and, where appropriate, is valid and in full force and effect and GTI can rely on any such information in good faith without further investigation and without endangering safe and secure provision of the Terminal Services in line with applicable laws, rules and regulations.
  - (iv) GTI is not obliged to provide any Terminal Services unless complete information has been provided.
  - (v) The Customer shall inform GTI about any change to the initial submitted information as early as possible but not later than four (4) hours before the change shall become effective. Any change request will only become effective upon (a) written confirmation by GTI and (b) written acceptance by the Customer of any additional payments or rate adjustments requested by GTI.
  - (vi) In cases of: (a) unannounced or not timely announced changes or (b) in the absence of an acceptance in accordance with Clause C.1(v) and no cancellation of the change request; GTI shall be entitled at its discretion to accommodate the changes or provide the Terminal Services as initially agreed. In case GTI accommodates the change, the rates as published in the Rates & Tariffs in relation to the Additional Service Request (“ASR”), shall apply. GTI reserves

the right to claim reimbursement of any additional costs that result from the provision of the Terminal Services in excess of the ASR.

- (vii) Notwithstanding anything in this Clause, GTI shall not be responsible for any information which may be received by any other means or from a third party.

## 2. Sailing Schedule and Berthing Requirements

- (i) The Customer shall provide GTI with a sailing schedule and berthing requirements in accordance with the provisions set out in the Port Procedures, not later than two (2) weeks before each Vessel's expected date of arrival at the Terminal. The berthing requirements shall include details of the projected number of any Containers, information relating to Hazardous Goods and Dutiable Goods contained in or intended to be contained in a Container to be discharged from, or loaded onto, that Vessel at the Terminal.
- (ii) Not less than ninety-six (96) hours before the estimated time of arrival of a Vessel at the Terminal, the Customer shall supply to GTI such particulars in writing as GTI may require as set out in the Port Procedures or as otherwise required from time to time of the Containers (including the contents thereof) on-board to be discharged from, or loaded onto, that Vessel at the Terminal. The particulars shall include, but shall not be limited to, information relating to Hazardous Goods and Dutiable Goods contained in or intended to be contained in a Container.
- (iii) Any changes to the berthing requirements provided to GTI in accordance with Clause C.2(ii) above, must be promptly notified to GTI, but in any event not later than seventy-two (72) hours before the estimated time of arrival of the Vessel at the Terminal or as agreed in accordance with the Port Procedures.
- (iv) The final time for arrival of a Vessel shall be confirmed in writing at least twenty-four (24) hours before the Vessel's anticipated time of arrival.
- (v) The Customer warrants that all information provided to GTI is accurate.
- (vi) The Customer is responsible for changes in berthing schedules and delays to Vessels or other Vessels arising from inaccurate information, and shall be liable for any damage whatsoever subject to the provisions of these Terms.

## 3. Arrival of a Vessel at the Terminal

- (i) Notification to the Vessel's Master that the Terminal is ready to receive the Vessel will be given by GTI in such manner as may be appropriate having regard to the current circumstances at that time. Such notification shall be given by GTI, on receipt of communication by GTI from the Pilot that the Vessel is "all fast". The Customer shall ensure that each of its Masters shall not berth or attempt to berth a Vessel at a Wharf alongside the Terminal until notice has been given by GTI to the Master that the Terminal is ready to receive the Vessel and the Customer has complied with the procedures of the Indian Ports Act 1908 and arranged to call for a Pilot or a harbour master or assistant of the port officer or harbour master.
- (ii) GTI does not give any warranty or representation that the Vessel will not ground whilst approaching, leaving or lying alongside the Terminal. Each Vessel approaching, leaving and whilst lying alongside the Terminal does so at the sole risk and responsibility of the Customer. The Customer shall indemnify GTI for any loss, damage, expense, cost or injury, including loss of business, arising as a consequence of a Vessel causing an obstruction to the approach channel or berth due to grounding or otherwise.
- (iii) GTI shall not be responsible for or liable in any way for any damage or loss suffered or incurred during the berthing and un-berthing of a Vessel.
- (iv) The berthing officer and the mooring crew shall operate under the instructions and the responsibility of the Master of the Vessel for the sole purpose of making fast or casting off the Vessel's hawsers and mooring ropes.
- (v) GTI will not be responsible for or liable in any way for latent defects in mooring bollards or posts, nor for any improper mooring of the Vessel at the Terminal, whether or not such mooring was completed with the assistance of a berthing officer and mooring crew provided by GTI.
- (vi) The Customer shall supply gangways from the Vessel to the Terminal. The safety and illumination of gangways shall be the sole responsibility of the Customer.

## 4. Vessels at the Terminal

- (i) The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Vessel and all matters whatsoever relating to the Vessel.

- (ii) The Customer shall ensure that all equipment on Vessels for discharging and loading Containers is technically compatible with GTI's equipment at the Terminal.
  - (iii) GTI shall supply labour on-board the Vessel for lashing and unlashng of Containers. However, for Out of Gauge Containers, break bulk or any other cargo, the Customer shall be responsible for providing lashing/unlashing services.
  - (iv) In case the Customer and lashing contractor has any dispute, mainly arising out of payment issues or lack of performance, the Customer shall inform GTI immediately.
  - (v) GTI shall provide all assistance to resolve disputes between the Customer and the lashing contractor(s). In case GTI incurs any expenditure on behalf of the Customer and makes any payment to the lashing Contractor, the Customer shall reimburse the same to GTI immediately.
  - (vi) The Customer may bring trucks alongside Vessels, to load and discharge Vessels' stores at such times as may be permitted by GTI and access to the Terminal to authorized personnel of the Customer to proceed on board a Vessel for carrying out repairs shall be subject to GTI written permission and to GTI's safety standards. GTI and the Customer agree that access as referred to in this Clause is permitted by GTI on condition that the same is carried out in accordance with the rules and regulations of GTI and the customs authorities and Port authorities. GTI will not be responsible or liable in any way for any loss, damage, cost, expense or injury arising in any way howsoever to any person or thing granted access in accordance with this Clause. The Customer will indemnify GTI for any loss, damage, costs, expenses or injury arising in any way howsoever caused by reason of GTI permitting access under this Clause.
  - (vii) Full and sealed Containers unloaded from a Vessel will be allowed free storage (including the day of discharge) at the Terminal as per the Rates & Tariffs.
  - (viii) The Customer will indemnify GTI for any loss, damage, expense, cost or injury in any way howsoever caused by GTI as per this Clause except when it is solely caused by gross negligence or willful default of GTI, its servants and sub-contractors.
  - (ix) The Customer shall be solely responsible for any damage to the Wharf and/or to the Port, Terminal premises, equipment, fendering or mooring bollards, Vessels and other property belonging to GTI or any third party, caused during or arising from the act of berthing or unberthing, whether by reason of incompetence or negligence of GTI, or a Pilot in charge of the Vessel, or as a result of insecure or improper mooring of the Vessel whilst lying alongside the Wharf, and shall hold GTI fully indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage, except it is solely caused by gross negligence or willful default of GTI, its servants and sub-contractors.
5. Allotment of Berths
- (i) No Vessel shall be berthed or unberthed, or be placed alongside a Wharf, without the prior written approval of GTI (or approval provided by any other mode acceptable to GTI).
  - (ii) Following receipt of a Notice of Arrival, GTI shall do its best to allocate a berth to the Customer in accordance with its requirements, as set out in the Notice of Arrival.
  - (iii) If the Vessel fails for any reason whatsoever to arrive at the Terminal and/or is unable to berth at the berth allotted to it during the Berthing Window and the Customer requests GTI to reallocate a berth to the Vessel, reallocation of such berth to the Vessel will be at the sole discretion of GTI.
  - (iv) If a Vessel defaults in occupying a berth allocated to it during the Berthing Window as result of which the berth is vacant, GTI shall be entitled to allocate such berth to any other Vessel owner/operator for optimizing the use of berths as it deems fit, during the period of such Berthing Window.
  - (v) Notwithstanding anything stated in this document, the allocation of berths shall be at the sole discretion of GTI. GTI may vary the berthing order from time to time, if it considers that it is necessary to do so.
  - (vi) GTI shall not be responsible for the following events:
    - a) any non-compliance with the ISPS Code, or any other related and necessary requirements which may prevent a Vessel from being permitted to berth at a Wharf in the Terminal;
    - b) breakdown, fire, explosion, sinking, or any accident or incident which occurs to the Vessel, due to Vessel owner's or Vessel operator's fault, resulting in the Vessel being denied permission to berth at a Wharf in the Terminal; and

- c) if the arrival of the Vessel demonstrates a significant time gap between Notice of Arrival and actual arrival which gives rise to a prolonged waiting time.
- 6. Refusal of Berths  
GTI, at its sole discretion and without any obligation to give any reasons, reserves the right to reject any Notice of Arrival if, it is of the opinion that a Vessel should not be berthed at any of the Wharves provided by GTI.
- 7. Vessels Berthed Alongside
  - (i) The Customer and the Master of the Vessel shall be in sole charge of the Vessel whilst using any of the Wharves in the Terminal, and her safety shall be the sole responsibility of the Customer. The Customer shall be held responsible for any loss and/or damage that may arise as a consequence of her faulty navigation, or by reason of her breaking adrift from her moorings, provided always that notices of danger shall, as far as possible, be given to the Vessel by GTI as and when the need arises. No instruction or direction given, or act performed by GTI or its officers or servants shall place any responsibility upon GTI, with respect to the security or safety of such Vessel.
  - (ii) When a Vessel is berthed, the Customer shall comply with all relevant laws of India, and GTI's operating procedures and safety requirements.
  - (iii) In case a Vessel drifts away from the Terminal while berthing or otherwise, it will be the sole responsibility of the Customer and Master of the Vessel.
- 8. Vessel's Discharging and Loading
  - (i) Every Vessel shall discharge or load with reasonable dispatch, and where the berth it occupies is required or shall shortly be required, or appears to be required for another Vessel, the crew shall work overtime, including working during meal hours, as may be required by GTI.
  - (ii) Where the Vessel's crew fails to effect such dispatch, or work such overtime as GTI may require, GTI may, after due warning has been given to the Customer, order the Vessel to vacate the berth and the Customer shall obey such order.
- 9. Operations at the Terminal
  - (i) At the Terminal, the Customer and its agents, employees or any third parties acting on behalf of or at the request of the Customer shall comply with laws, rules and regulations, relating to them, the Goods, the Containers, the Vessels and the use of the Port and the Terminal and any policies and instructions given by GTI unless agreed differently between the Parties or otherwise stated in the Rates & Tariffs.
  - (ii) GTI shall not be obliged to provide any services which are not permitted under, or are not in line with, the laws, rules or regulations as set forth by the authorities of the Port or other mandatory applicable laws, rules and regulations. In particular, GTI shall not load any packed Container on board a Vessel, without a Verified Gross Mass provided by a VGM Declarant in accordance with Clause C.1.
  - (iii) GTI shall not load a Container onto a Vessel if the Verified Gross Mass provided by a VGM Declarant exceeds the maximum gross weight indicated on the Safety Approval Plate under the CSC of the relevant Container ("**Overweight Container**").
  - (iv) At the request and expense of the Customer and subject to Clause C.9 (iii) above, GTI shall intimate the Customer of such Overweight Container and shall request the Customer to strip the Overweight Containers and stuff and seal two or more Containers with the contents removed from the Overweight Containers. All costs and liabilities in stripping of Overweight Containers shall rest on the Customer and GTI shall not be responsible for any loss or costs connected to or arising out of such activities.
  - (v) GTI will inform the Customer of a missing Verified Gross Mass requesting the Container to be removed from the Terminal. The Customer shall pay the rates outlined in the Rates & Tariffs as if such yard space was fully occupied by the Customer for the time between receipt and removal.
  - (vi) In order to ensure safe working practices, GTI may inspect the Vessel work areas and gear to determine that all applicable laws, rules and regulations have been satisfied. The Customer shall ensure that (a) the Vessel furnishes adequate lighting and safe ingress and egress (for GTI's personnel); and (b) maintains appropriately qualified and experienced officers and crew aboard

- (vii) The Customer agrees to allow GTI to inspect Vessels, including valid registers and certificates applicable to all gear, prior to the commencement of the provision of Terminal Services and as required under applicable laws, rules and regulations.
- (viii) GTI shall not be required to provide Terminal Services if the applicable terminal manager at the Terminal, after discussing the issue with the Vessel's Master, reasonably believes that safety violations or deficiencies exist relating to the Vessel. The preceding sentence will not preclude the applicable terminal manager at the Terminal from suspending the provision of Terminal Services on a temporary basis prior to discussing the issue with the Vessel's Master.
- (ix) All equipment on a Vessel for loading and discharging Containers must technically be compatible with ISO standard equipment provided by GTI. The Customer warrants that all Vessels are fitted with twist locks which are in good working order.
- (x) The Customer's Masters, crew and agents shall exercise due care when mooring, departing or occupying a berth or navigating in the vicinity of the Terminal.
- (xi) Terminal Services will only be provided during local gate hours for any Terminal Services provided in overtime, weekends and/or holidays the Customer shall pay for the ASR as per the Rates & Tariffs.
- (xii) The closing time for receipt by GTI, of Containers at the Terminal and the Verified Gross Mass of those Containers on any given day shall be in accordance with GTI's procedures in force at that time.

#### 10. Condition of Containers

- (i) If not agreed otherwise, GTI shall only be required to handle Containers which are (a) nominated to GTI, (b) located at the Terminal and (c) ready for operation within the Cargo Cut-Off Time. Unless otherwise agreed, Containers for export shall be customs cleared when gated in.
- (ii) The Customer warrants and undertakes that each Container which it delivers or causes to be delivered to GTI is upon delivery secure, in a good state of repair, appropriately certified and suitable for its purpose. GTI reserves the right to refuse to accept any Containers or Goods which appear to be damaged or are in its opinion in an unsatisfactory condition.
- (iii) In respect of all Goods and Containers, the Customer warrants and represents that they:
  - a. 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 Goods and the Containers;
  - b. are not liable to give off any injurious dust, gas, fumes, liquid or radiation;
  - c. are not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Terminal;
  - d. are not over-heated or under-heated or liable to become so while at the Terminal;
  - e. will not contaminate or cause danger, injury or pollution or damage to any person, the Terminal, any other goods, equipment or Vessel or the environment adjacent thereto or generally;
  - f. require for their safekeeping no special protection (other than as may be agreed in writing between the Parties) but will remain safe if left standing at the Terminal;
  - g. contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and
  - h. are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by GTI.
- (iv) GTI shall endeavor to identify and inform the Customer of any damage to any Container, its contents or packaging which comes to the attention of GTI, and may refuse to load or handle such Containers. However, GTI shall not be responsible for damage that is not identified during the loading/unloading operations and are subsequently identified after the Container leaves the Terminal.
- (v) If GTI gives notice to the Customer of damage to a Container, its contents or packaging, the Customer shall be entitled, immediately after such notice being dispatched, to inform GTI in writing that an inspection of the relevant items is required. GTI will thereafter permit the Customer or its duly appointed agents upon reasonable notice to inspect the Container, its contents or packaging. For storage and handling of any such Container, its contents or packaging the rates as agreed between the Parties or, in the absence of such agreement, as set forth in the Rates & Tariffs, shall apply.

- (vi) All Containers under the Customer's control, to be handled under these Terms, shall at all times be CSC compliant.
- (vii) With respect to the Customer's Containers laden with, or labelled as containing Hazardous Goods, which are being transported pursuant to a Customer's or Vessel's bill of lading, the Customer shall ensure that such shipments are documented, labeled, packed and secured in accordance with current International Maritime Organization (IMO) requirements for international freight appearing in the International Maritime Dangerous Goods Code and in accordance with current applicable laws, rules and regulations promulgated by any governmental authority with jurisdiction over same. If not otherwise agreed, the Customer shall inform GTI of Hazardous Goods at least forty-eight (48) hours before arrival at the Terminal including such other data as may be required by GTI.
- (viii) The Customer shall pay any costs and expenses which may be incurred by GTI in the clean-up of any leaking Container or in complying with any applicable laws, rules and regulations requiring the movement, treatment, removal or destruction of waste material of Goods or infested, contaminated or condemned Goods or the treatment of the Terminal as a result of any infestation or contamination arising from handling such. In the event that a part of the Terminal cannot be occupied as a result of GTI complying with such applicable laws, rules or regulations the Customer shall pay the rates outlined in the Rates & Tariffs as if such yard space was fully occupied by the Customer.
- (ix) If GTI carries out an instruction to open the doors of a Container or to unpack a Container for any purpose whatsoever, this shall be at the sole risk of the Customer and GTI shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Goods by reason of such deterioration. The Customer shall provide appropriate instructions to GTI to ensure compliance with the rules and regulations of customs for opening and unpacking of any Container.
- (x) Subsequent to the initial opening of the Container or the unpacking of a Container, GTI may (but under no obligation to do so) close, reconnect, or connect to a power supply (in the case of a reefer Container), repack or otherwise deal with any such Container and/or its contents at the request of and at the sole cost and expense of the Customer or its agent or any such authority as may have jurisdiction.
- (xi) Containers delivered from or to the Customer or a consignor or a consignee shall be brought for acceptance to, or received from, such area within the Terminal or other place adjacent to the Terminal as may be designated from time to time by GTI.
- (xii) GTI is not obliged to receive or deliver Containers unless full covering documentation has been provided to GTI in accordance with the Port Procedures. GTI's responsibility to the Customer for Containers shall commence only when the Containers have been delivered to the area designated and notice of acceptance has been duly given by GTI.
- (xiii) Prior to the presentation for acceptance to GTI of any Containers, the Customer shall supply to GTI such particulars in writing thereof and where appropriate of the contents of a Container including weight, dimensions and other measurements set out in the Port Procedures or as may be requested by GTI. GTI is entitled to rely upon such particulars of the Container, the contents of a Container, as are furnished by the Customer or consignor. Any damage or loss resulting from the inaccuracy of, or omission from, such particulars given by the Customer or the Consignor shall be the Customer's responsibility and the Customer shall indemnify GTI against any loss, damages, claims, costs and expenses which GTI may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.
- (xiv) Upon the delivery of any Container to GTI, the Customer shall verify and confirm and accordingly undertake to GTI that all values and other particulars in respect thereof supplied to GTI for customs or other purposes and all necessary customs removal permits are complete and accurate and, are valid and in full force and effect. The Customer shall indemnify GTI and its servants, sub-contractors or agents against all loss, damages, claims, costs, expenses, fines and penalties that GTI or its servants, sub-contractors or agents may incur or suffer directly or indirectly as a result of any breach of this undertaking.
- (xv) GTI will be responsible for correct delivery to a consignee or to a Vessel of Containers. GTI will not be responsible or liable for any incorrect or delayed delivery of any Container which is insufficiently, incorrectly or otherwise not properly marked.
- (xvi) The Customer shall be liable to GTI for any loss, damage, claim or expense arising from inaccurate, incomplete or absence of information relating to the weight, dimensions, other measurements and contents of a Container or the nature of the Goods, or from incorrect stowage of Containers or any information that is provided to GTI.

- (xvii) GTI shall be entitled at any time, and at the expense of the Customer, to reject any Container and/or Goods and/or package not conforming to the above requirements and guidelines as may be provided from time-to-time.
- (xviii) The delivery of Goods and/or Containers shall not be considered to have been made to GTI until the Goods and/or Containers have been Landed, or disconnected from the Vessel's gear (if the vessel is performing). "**Landed**" means landed on any Wharf deck, trailer or other vehicle designated for such use by GTI, whether owned by GTI or otherwise.

11. Delays

- (i) Any unlash time extending beyond the scheduled Vessel operation start time caused by the Customer or Vessel shall incur gang hour detention charges as agreed between the Parties or in the absence of any agreement in accordance with the gang hour detention charges set forth in the Rates & Tariffs.
- (ii) The Vessel shall maintain its engines in a state of readiness to respond to emergency situations and to avoid delays in leaving the Terminal as soon as GTI informs the Customer that the Terminal Services have been completed. The Customer shall pay the applicable rates for each day that the Vessel is berthed at the Terminal for any reason, including for the avoidance of doubt, if a Vessel is berthed at a Terminal due to engine failure.
- (iii) Shipment delays, charges and/or costs, including any civil fines, associated with non-compliance with the terms of this Clause 11 shall be the responsibility of the Customer. Any idle time incurred by GTI due to non-compliance by the Customer of this Clause C11 shall be charged at the "Detention Rate" as set forth in the Rates & Tariffs.

12. Damage During Cranage

- (i) Where GTI undertakes the cranage of Goods and/or Containers to and from Vessels or vehicles, except in case of sole gross negligence of GTI, its servants, sub-contractors and agents, GTI shall not be responsible for any loss, damage or costs suffered or incurred, arising out of or in connection to:
  - a) any of the cranes or the load attached thereto colliding with the rigging, spares or other equipment of the Vessel, or resulting from the shifting or movement of the Vessel or any of its equipment;
  - b) faulty slinging or improper loading of any Goods and/or Containers by persons, other than the servants of GTI acting within the scope of their employment;
  - c) the Vessel having been improperly or insecurely moored.

13. Loading or Discharging in Rain

No Goods and/or Containers that are likely to be damaged by rainwater shall be loaded or discharged whilst it is raining. The Customer shall ensure that all hatches are closed during rain.

14. Refusal of Objectionable Goods

GTI may prohibit the landing of, or refuse to receive any Goods (including, but not limited to Hazardous Goods) and/or Containers, which in GTI's opinion are detrimental to the safety of GTI, or to other Goods and/or Containers or things within the Terminal premises.

15. Unprotected Cargo

GTI shall not be liable for breakage, loss of contents, damage or complete destruction of Unprotected Cargo.

16. Reefer Containers

- (i) GTI has no obligation to check and report upon the temperature of Reefer Containers stored at the Terminal, save and except upon a written request made by the Customer.
- (ii) Notwithstanding Clause C.16(i) above, if instructions are given in writing to GTI at least two (2) Working Days in advance of receipt of a specific Reefer Container by GTI and such instructions are accepted in writing by GTI, GTI will check and report upon the temperatures of Containers as shown by GTI's equipment, twice daily.
- (iii) GTI shall not be responsible or liable in any way for any Reefer Container or the refrigeration of refrigerated Goods if the Customer fails to give written instructions in the prescribed format, or provides wrong or inadequate instructions concerning the handling thereof.

- (iv) If GTI is instructed in writing in accordance with Clause C.16(ii), GTI will, within a reasonable time of receipt of such written instructions, connect the Reefer Container to a main power supply. GTI shall not be obliged to maintain an auxiliary power supply and GTI shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the main power supply howsoever arising.
- (v) GTI shall not be responsible or liable in any way for the malfunctioning of any Reefer Container stored at the Terminal. GTI shall however, wherever possible, intimate the Customer of such malfunctioning to enable the Customer to take appropriate steps for the removal of the malfunctioning Reefer Container.
- (vi) If the Customer fails to remove the malfunctioning Reefer Container stored at the Terminal within two (2) days of receipt of such intimation, GTI shall be authorized to remove such Reefer Container from the Terminal at the cost and consequences of the Customer.

17. Stripping of Containers

If GTI carries out an instruction received from the Customer to open the doors of a Container or to unpack a Container for any purpose whatsoever, this shall be at the sole risk of the Customer and GTI shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Goods by reason of such deterioration. The Customer shall ensure compliance with the rules and regulations of customs for opening and unpacking of any Container. GTI may (but shall be under no obligation so to do) close, reconnect, or connect to a power supply (in the case of a Reefer Container), repack or otherwise deal with any such Container and/or its contents at the sole cost and expense of the Customer.

18. Hazardous Goods and Dutiable Goods

- (i) The Customer shall ensure that all goods tendered to GTI for loading and/or unloading, comply with all applicable laws, rules, regulations and guidelines for Hazardous Goods and/or Dutiable Goods and GTI's rules for Hazardous Goods and Dutiable Goods as set out in the Port Procedures, and shall indemnify GTI against any breach of this Clause.
- (ii) GTI will accept as correct details of Hazardous Goods and/or Dutiable Goods furnished by the Customer or by the Consignor or Consignee and may accept as correct the certificate which the Customer, Consignor or Consignee is required to give.
- (iii) GTI has the right to refuse to handle Goods which, upon inspection, is found not to comply with the said rules or regulations or ordinances and to reject and/or return such Goods at the sole expense and risk of the Customer.
- (iv) If GTI receives notice from the Authority that a Vessel arriving at the Terminal is carrying Hazardous Goods which should be sold, GTI shall comply with the said notice and hand over the Goods to the authority.

19. Valuable Goods

- (i) GTI shall not be bound to accept Goods of high value or which requires special care including, but without limitation:
 

a) gold;	i) lace, fur and feathers;
b) silver;	j) works of art and paintings;
c) bullion, coins and currency notes;	k) scientific instruments of all kinds;
d) precious stones;	l) revenue of postal stamps;
e) precious metals;	m) gold, silver and platinum watches;
f) securities for cash and stamping;	n) precious metal jewelry works; and
g) documents and title deeds;	o) antiques.
h) essential oils and similar valuable drugs;	p) any other valuables

The Customer shall give to GTI at least ninety-six (96) hours prior notice of its intended delivery of such Goods to the Terminal whether by Vessel or Container-transporter to enable GTI to decide whether or not it will accept such Goods. Under no circumstances shall the Customer deliver to the Terminal such Goods, without the prior written approval of GTI. If such Goods are delivered to GTI without its prior written approval, such Goods will at all times be at the sole risk of the Customer and GTI shall not be liable for any loss or damage howsoever caused to such Goods.

- (ii) Notwithstanding the prior written approval of GTI in accordance with Clause C.19 (i), GTI's liability for loss of and/or damage to valuable Goods shall be limited to the amounts as set out in Clause E (Liability) except to the extent GTI agrees in writing to a higher limit on liability in a particular case. The Customer shall be responsible for any additional costs of insurance (including, but not limited to, additional premiums and fees) that GTI incurs as a consequence of acceptance of valuable Goods.

#### 20. Lien

All Containers, Goods and all documents relating to Containers and Goods shall be subject to a particular and general lien respectively for charges due to GTI in respect of such Containers or Goods from the Customer. If any charges are not paid by the Customer in compliance with Section 58 of the Act, within one (1) calendar month after notice requiring payment has been given to the Customer, the Containers or Goods subject to such lien, may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by GTI in such sale. Any sale of Containers or Goods by GTI pursuant to these terms and conditions, may be conducted by private treaty, by public auction or otherwise in such manner as GTI shall in its sole discretion determine and GTI shall not be liable for any loss and/or damage to any person whatsoever as a result thereof. This lien shall be in addition to any other lien allowed by law.

#### D. Compliance

1. The Customer represents that in the context of these Terms and the acceptance of Terminal Services:
  - a. neither itself nor, to the best of its knowledge, any of its affiliates, directors or officers has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption, competition or anti-money laundering laws or regulations and it has instituted and maintain policies and procedures designated to prevent violation of such laws, regulations and rules; and
  - b. neither itself nor, to the best of its knowledge, any of its affiliates, directors or officers is: (i) the subject of any sanctions (a "Sanctioned Person") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of sanctions broadly prohibiting dealings with such government, country, or territory (a "Sanctioned Country").
2. The Customer undertakes that it shall not:
  - a. engage in any activity or conduct which would violate any applicable anti-bribery, anti-corruption, competition or anti-money laundering laws or regulations; and
  - b. directly or indirectly, lend, contribute or otherwise make available any amount received in connection with these Terms to a Sanctioned Person or a person located in a Sanctioned Country or otherwise violate any applicable foreign trade control regulation or sanction.
3. At the reasonable request of GTI with at least five (5) business days' prior notice, GTI may at its own expense during regular business hours inspect or have a mutually-agreed independent third party audit the Customer's books, records, and other documents as necessary to verify compliance with the terms and conditions of this Agreement.
4. If the Customer breaches any of its obligations or representations in this Clause D (Compliance):
  - a. The Customer shall indemnify and hold GTI harmless from all fines, penalties and all associated expenses arising out of or resulting from such violation; and
  - b. GTI may terminate its commercial arrangements with the Customer and recover from the Customer the amount of any loss or damage resulting from the termination.
5. The Customer will appraise and follow the principles set forth in GTI's Code of Conduct, a copy of which is available upon request.

#### E. Liability

1. Loss or damage to Goods
  - (i) GTI shall only be liable for loss of or damage to, any Goods whilst in the custody or control of GTI to the extent the same is caused by the negligence or willful misconduct of GTI and such liability shall be limited to the lesser of:
    - a. the value of the Goods actually lost or damaged, namely the reasonable repair cost or replacement cost (with Goods of the same age and in the same condition) of the Goods lost or damaged;

- b. the limits of liability upon which the Customer could rely in a claim brought against it in accordance with the bill of lading or other transport document, evidencing a contract of carriage which has been issued in respect of Goods carried by the Customer ("**Carriage Contract**"); and
    - c. 2SDRs (Special Drawing Rights) per kilo of gross weight of the Goods lost or damaged.
  - (ii) GTI's liability for loss of and/or damage to all Goods in the charge of the Customer, its sub-contractors, agents or their assignees whilst in the custody of GTI where such loss and/or damage was caused by the gross negligence or willful misconduct of GTI, its agents, servants or sub-contractors and the maximum liability of GTI to the Customer in relation to each incident for such Goods shall be limited to the following:
    - a. twelve thousand US Dollars (USD 12,000) in the case of any 20' dry Container;
    - b. eighteen thousand US Dollars (USD 18,000) in the case of any dry Container of more than 20' in length; and
    - c. one hundred thousand US Dollars (USD 100,000) in the case of any Reefer Container;

and for the avoidance of doubt, in the absence of gross negligence or willful misconduct, GTI shall have no liability for such loss and/or damage;

PROVIDED ALWAYS that in no circumstances shall GTI's liability exceed the limits of liability in accordance with the terms and conditions contained within the Customer's Carriage Contract or, if applicable, the Vessel's limitation fund except to the extent GTI agrees in writing to a higher limit on liability in a particular case.
  - (iii) In addition to being able to rely on these Terms, GTI has the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defense, right, remedy and/or law and jurisdiction clause contained in the Carriage Contract as if GTI were the carrier and Customer were the merchant referred to in the Carriage Contract.
2. Loss or damage to Containers
- (i) A Party shall not be liable to the other Party for any delay that arises due to adherence of compliance related to safety and VGM of Containers;
  - (ii) GTI shall only be liable for loss of, or damage to, any Container or other Customer equipment whilst in the custody or control of GTI to the extent the same was caused by the gross negligence or willful misconduct of GTI and such liability shall be limited to the lesser of:
    - a. the reasonable repair cost of the Container or other equipment damaged; and
    - b. the depreciated value of the Container or other equipment lost or damaged, provided that in no circumstances shall the liability exceed:
      - A. one thousand, five hundred US Dollars (USD 1,500) per Container in the case of any regular 20' dry Container;
      - B. two thousand, five hundred US Dollars (USD 2,500) per Container in the case of any regular dry Container of more than 20' in length;
      - C. ten thousand US Dollars (USD 10,000) per Container in the case of any 20' Reefer Container;
      - D. twelve thousand US Dollars (USD 12,000) per Container in the case of any reefer Container of more than 20' in length;
      - E. twelve thousand US Dollars (USD 12,000) per chassis in the case of any chassis;
      - F. fourteen thousand US Dollars (USD 14,000) per genset in the case of any genset; and
  - (iii) The depreciated value of the Container or other equipment shall be calculated on the basis of the respective values in Clause E1 and E2, with a straight-line depreciation of five per cent. (5%) per annum from the date of manufacture (as evidenced for Containers in the container safety certificate) until the day before the incident.
  - (iv) If due to the negligence or willful misconduct of GTI, GTI:
    - a) over stows any Container in such Vessel;
    - b) loads onto another vessel any Container instructed in writing by the Customer for loading onto such Vessel;
    - c) fails to load or discharge any Container onto or from such Vessel notwithstanding the earlier written instruction of the Customer to load or discharge such Container; or
    - d) discharges any Container from such Vessel notwithstanding the absence of any earlier written instruction by the Customer to discharge such Container;

then GTI shall take the following actions, as required:

- A reimburse the Customer for any necessary and reasonable stevedoring charges paid by the Customer at the port of discharge for the extra handling of each Container described in sub-clause E2(iv)(a) above;
- B reimburse the Customer for any necessary and reasonable stevedoring charges paid by the Customer at the port of discharge for the extra handling of each Container described in sub-clause E2 (iv)(b) above, and for the carriage of such Container by sea from the next port of call to the original intended port of destination;
- C reimburse the Customer for any necessary and reasonable stevedoring charges paid by the Customer at the port of discharge for the extra handling of each Container not discharged, as described in sub-clause (v) (c) above, and for the carriage of such Container by sea from the next port of call to the port or to the original intended port of destination, whichever shall be lower; or
- D waive any extra handling and storage charges which would otherwise have been payable by the Customer to GTI for each Container described in sub-clause (v) (d) above and reimburse the Customer for the carriage of such Container by sea from the Port to the originally intended port of destination.

3. Loss or damage to Vessels

GTI shall only be liable for loss of, or damage to, any Vessel whilst at the Terminal to the extent the same was caused by the negligence or willful misconduct of GTI and liability shall be limited to the lesser of:

- (i) the reasonable repair cost of the Vessel damaged;
- (ii) the replacement cost (with a Vessel of the same age and in the same condition) of the Vessel lost or damaged; and
- (iii) ten million US Dollars (US\$10,000,000) per Vessel.

4. Proof of liability

GTI shall not be liable under Clauses E.1, E.2 or E.3 unless the Customer can establish that the loss or damage was caused by the negligence or willful misconduct of GTI. If the loss or damage was contributed to by the act or omission of the Customer or any other person, GTI shall be exonerated from liability under Clauses E.1, E.2 or E.3 to the extent that such act or omission contributed to the loss or damage.

5. Limitation of liability per incident

The maximum aggregate liability of GTI for losses and/or damages under Clauses E.1, E.2 or E.3 which arises out of a single incident or series of connected incidents, and whether such losses and/or damages are sustained by more than one person, shall in no circumstances exceed ten million US Dollars (US\$10,000,000) ("**Overall Liability Cap**"). Where, in respect of a single incident or series of connected incidents, the losses and/or damages are sustained by more than one person, the Overall Liability Cap shall be applied to all claims brought by each person on a pro-rata basis (i.e. based on the proportion each person's claims bear to the total amount claimed by all such persons).

6. Delay

- (i) Except under special arrangements made previously in writing between GTI and the Customer, in no circumstances shall GTI have any liability whatsoever or howsoever arising (including negligence and willful misconduct) with regard to any failure to adhere to any timeframe or any delay.
- (ii) If GTI fails to adhere to timeframes agreed with the Customer or if (without prejudice to Clause E.6(i)) GTI is found liable for loss or damage caused by delay, the liability of GTI for such loss or damage shall not in any circumstances whatsoever exceed a sum equal to the amount of the rates in respect of the Terminal Services provided in relation to the relevant Goods, Container(s) and/or Vessel.

7. Entire liability

Save as set out in this Clause E, GTI or any other person or party shall not be liable for loss of or damage to any Goods, Container(s) or Vessel howsoever arising (whether caused by negligence or otherwise).

8. Exclusion of liability for certain losses
  - (i) GTI shall have no liability for loss of or damage to any Goods, Container(s) or Vessel howsoever arising (whether caused by negligence or otherwise) if such loss or damage has been caused by matters beyond the control of GTI including, without limitation to the generality of this exclusion:
    - a. any failure of the Customer, or any third party, to comply with the advice and recommendations of the IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units (CTU Code); or
    - b. any failure of the Customer, or any third party, to comply with the SOLAS Regulations; or
    - c. the receipt by GTI of an Overweight Container;
    - d. GTI not having received a Verified Gross Mass before the relevant deadline contained in Clause C.1;
    - e. insufficient, inadequate or defective packing or marks; or
    - f. incorrect setting of any thermostatic, ventilation or other special controls of the Container; or
    - g. inherent vice of the Goods; or
    - h. instructions of the Customer; or
    - i. the delivery of Goods, Containers or equipment to incorrect persons where delivery has been made against a fraudulent or stolen bill of lading or similar document of title; or
    - j. failure of Customer or third party to comply with any instruction/advisory that may be issued by GTI from time to time.
  - (ii) Notwithstanding any other provision of these Terms, GTI shall have no liability for any loss of profit, loss of revenue, loss of business, loss of goodwill or reputation or for any special, indirect, consequential or penal loss.
9. General liability limit

Notwithstanding any other provision of these Terms, but subject to Clause E.10, the liability of GTI in respect of any claim shall be limited to the rates payable in respect of that part of the Terminal Services to which the claim relates. This general liability limit contained in this Clause E.9 shall not apply to the liability of GTI under Clauses E.1, E.2 or E.3.
10. Exceptions

Nothing in these Terms shall exclude or restrict the liability of GTI for death or personal injury caused by its negligence or any other act or omission, for which liability may not be excluded or limited under applicable law.
11. Notification of claims

Any claim by the Customer against GTI arising in respect of any Terminal Service provided to Customer, or which GTI has undertaken to provide shall be made in writing, stating in reasonable detail the nature of the claim, and notified to GTI within a reasonable time, but in any event within thirty (30) days from the date upon which the Customer became, or ought reasonably to have become, aware of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred.
12. Time limit for claims

Notwithstanding the provisions of Clause E.10, GTI shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Terminal Service provided to the Customer, or which GTI has undertaken to provide, unless legal proceedings are commenced and written notice thereof given to GTI within twelve (12) months from the date of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to a claim.
13. Minimum claim threshold

Customer shall not be entitled to bring any claim howsoever arising (including (gross) negligence or willful misconduct) unless and until the amount of any such claim exceeds one thousand United States dollars (USD 1,000).
14. Joint and several liabilities

These Terms are between GTI and the Customer. Every person defined as the Customer is jointly and severally liable to GTI for all of the Customer's undertakings, responsibilities and liabilities under or in connection with these Terms and to pay the rates listed in the Rates & Tariffs.

**15. Application to Claims in Tort**

The defenses, exclusions and limits of liability provided for in these Terms shall apply in any claim against GTI whether the claim be founded in tort, bailment, contract, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of (gross) negligence, willful misconduct or fundamental breach of contract.

**16. Indemnity for excess liability**

The Customer shall indemnify GTI against 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 judgments of whatsoever nature howsoever assumed, incurred or suffered by GTI, as a result of, or in connection with:

- (i) any claim (including without limitation a claim made by the owner of the Goods, the Containers or the Vessel or any other person who is, or may become, interested in the Goods, the Containers or the Vessel or any customs authority) when such claim arises from or in connection with the Terminal Services (whether caused by the negligence of GTI or otherwise) or the information required under Clause C.1 and to the extent such claim exceeds the liability of GTI under these Terms;
- (ii) any breach by Customer of the obligations or warranties given in these Terms (or any combination of the foregoing);
- (iii) weighing, loading, non-loading, storage, demurrage, additional transport, shunting, handling, stripping, stuffing, release or return to the Customer or the Shipper or other charges for any packed Container which is an Overweight Container, does not have a Verified Gross Mass provided by the Customer or another VGM Declarant or has a Verified Gross Mass provided by the Customer or another VGM Declarant found to be incorrect or inaccurate by GTI;
- (iv) GTI acting in accordance with Customer's instructions; and
- (v) any death or personal injury of any person or damage to any property whatsoever arising from the presence of the Customer at the Terminal, the use by the Customer of the Terminal, the presence of the Vessel at the Terminal or the presence of the Goods on the Vessel (whilst the Vessel is at the Terminal) or within the Terminal but only to the extent that such is caused by a breach of contract, default or negligence of the Customer or its customers.

**17. Insurance**

- (i) GTI is under no obligation to maintain property insurance for Goods, Containers or Vessels.
- (ii) GTI shall, at its own expense, procure and maintain policies of insurance covering:
  - a. any liabilities assumed by it under these Terms; and
  - b. any requirements by law, including public and third-party liability.
- (iii) The Customer shall maintain or shall cause Vessels and their equipment, appurtenances, gear and machinery to be maintained in a thoroughly fit and seaworthy condition at all times. Vessels shall be kept continuously in class in accordance with the rules of their classification society. The Customer shall, and shall ensure that third-party owners of Vessels shall, maintain the following insurances and shall furnish to Terminal's representative certificates or copies of policies (or in the case of P&I cover, a certificate of entry) evidencing such insurance:
  - a. Hull and Machinery insurance, in accordance with ITC hull clauses 1983 or equivalent conditions, in an amount no less than the full market value of the Vessel; and
  - b. P&I cover on standard terms and customary limits with a member of the International Group of P&I Clubs.
- (iv) To the extent not included in the Hull and Machinery insurance or P&I Cover, Fixed and Floating Object insurance, with limits no less than 1 million United States dollars (US\$ 1 million).
- (v) Anti-pollution and pollution clean-up insurance with limits no less than one million United States dollars (US\$ 1 million), and wreck removal insurance with limits no less than one million United States dollars (US\$ 1 million).
- (vi) The Customer shall provide GTI with written notice at least thirty (30) days prior to cancellation, non-renewal or material change in any policy. Insurance must be maintained without any lapse in coverage. Failure by GTI to demand certificates or other evidence of full compliance with these insurance requirements, or failure to identify any deficiency or non-compliance with coverage requirements, shall not be construed as a waiver of Customer's obligation to maintain the required insurance.

**F. Force Majeure**

1. A Party (the “**Affected Party**”) shall be relieved from liability for any delay in the performance or failure to perform part or all of its obligations under these Terms if such delay or failure is caused by or results from Force Majeure for so long as the event of Force Majeure or the delay in the performance or failure to perform continues. Provided however that an event of Force Majeure shall not release any Party from its payment obligations arising under these Terms.
2. The Affected Party shall use all reasonable efforts to mitigate and overcome the effects of the occurrence of Force Majeure in order to maintain or resume performance. Provided that no Party shall be required under this provision to settle any strike, lockout, or other labor or industrial dispute under terms it considers as being unfavorable to itself.
3. If an event of Force Majeure occurs, the Affected Party shall notify the other Party (the “**Non-Affected Party**”), as soon as reasonably practicable and in any event within seven (7) Working Days after the Affected Party has reasonably determined that the occurrence of the event of Force Majeure may affect the performance of part or all of its obligations in a material way, of:
  - (i) the occurrence and nature of the event of Force Majeure;
  - (ii) its expected duration (so far as can be reasonably assessed);
  - (iii) the obligations of the Affected Party, which cannot be fully performed as a result; and
  - (iv) the mitigating actions and remedies, which the Affected Party proposes to take.
4. The Affected Party shall keep the Non-Affected Party fully informed of developments, including the performance by it of the mitigating actions and remedies, and the results thereof.

**G. Termination**

1. Parties may terminate this agreement at any time by giving written notice of not less than thirty (30) days unless otherwise agreed in writing by the parties.
2. GTI may terminate this Agreement at any time if customer violates the terms of this agreement.

**H. Use of EDI (Electronic Data Interchange) Communication**

1. This Clause shall apply (without prejudice to the other Clauses in these Terms) where partial or exclusive transmission and interchange of information between the Parties happens by means of an EDI communication (“**EDI Communication**”).
2. Upon such agreement, the Customer and GTI shall use EDI Communication and shall exchange all details and information required to enable the other Party to fulfill its obligations related to the provision of Terminal Services.
3. GTI shall determine and monitor the progress of the development, implementation and priority of EDI Communication.
4. All messages submitted via EDI Communication must properl any other formats agreed by both Parties. GTI reserves the right to amend these standards from time to time, such amendment to be notified to the Customer indicating the time the amendment shall become operative.
5. The service mailbox or any other receiver, receiving date and time of the transmitted message (or of the first or original transmission in case of repeated transmission of the same message) shall be treated as the receiving date and time of the message by the recipient.
6. The Parties shall maintain (without modification) a message data log containing dates and times of transmission of all EDI messages (“**Message Data Log**”). Data contained in the Message Data Log shall be retained by way of record for a period of not less than twelve (12) months. The Message Data Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the data must be capable of being readily retrieved and presented in human readable form.
7. The Parties acknowledge that in the event of any complete or partial breakdown or failure of the system supporting EDI Communication, they will take all necessary steps to ensure the continued transmission and receipt of relevant messages, notices and information by alternative and/or additional means such that the performance of the obligation under these Terms is not adversely affected.
8. Each of the Parties shall:
  - (i) take reasonable care in so far as it is within its power to do so to ensure that the transmissions of messages are secure and prevent unauthorized access to its EDI Communication and the Message Data Log;
  - (ii) ensure that messages containing confidential information as designated by the sender of the message are maintained by the recipient in confidence and are not disclosed to any person not otherwise authorized or used

- by the recipient outside the terms imposed by the sender. Any authorized disclosure to a third party shall be made only after getting a prior written approval of GTI; and
- (iii) apply special protection, where permissible, by encryption or by other agreed means unless the Parties agree otherwise.
9. GTI and the Customer accept the integrity of all messages and agree to accord these the same status as would be applicable to notices or information sent other than by electronic means, unless such message can be shown to have been corrupted as a result of technical failure on the part of any machine, system or transmission by the Customer. Where there is evidence that a message has been corrupted or if any message is identified or capable of being identified by the sender as incorrect, it shall be re-transmitted as soon as practicable with a clear indication that it is a corrected message.
10. The sender is responsible and shall use its best endeavors to ensure that messages are complete and correct. Notwithstanding the foregoing, the recipient must immediately inform the sender if it is, or should in all the circumstances, be reasonably obvious to the recipient that the transmission of such message is incomplete, incorrect or otherwise deficient and in no event, shall any of the Parties be liable in accordance with these Terms for the consequences of any such deficiency.
11. If the recipient has reason to believe that a message is not intended for it, it should take reasonable action to inform the sender and should delete the information contained in such a message from its system apart from the Message Data Log.

**I. Law and Jurisdiction**

1. These Terms their interpretation and any non-contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with the Laws of India without regard to any conflict of law rules.
2. Any dispute arising out of or connection with these Terms shall be referred exclusively to arbitration in Mumbai, India in accordance with the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof.
3. The reference shall be to three (3) arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified.
4. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.
5. The arbitration shall be conducted in the English language.

**J. General**

1. Should any term, covenant, condition or provision in these Terms be held invalid or unenforceable, the remainder of these Terms and the application of such term, covenant, condition or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant, condition or provision of these Terms shall be valid and enforceable to the extent permitted by law. However, if such term, covenant, condition or provision in these Terms is a material part of these Terms, the Parties shall use their best endeavors to agree a valid and enforceable replacement which achieves (so far as possible) materially the same effect.
2. Any party for whom GTI is responsible shall have the benefit of the exclusions of liability contained in, and shall have the right to enforce, the provisions of these Terms in accordance with the provisions of the Contracts Act, 1872.
3. Except as stated in Clause J.2 the Parties do not intend that these Terms will be enforceable by virtue of the Contracts Act, 1872 or otherwise. No consent of any person who is not a party to these Terms shall be required to amend any term of these Terms or release, settle or compromise any liability under it.
4. The relationship of GTI and the Customer under these Terms is that of independent contractors, and neither Party is an employee, agent, partner of or in a joint venture with the other. Each Party shall be solely responsible and liable for any employment-related taxes, insurance premiums or other employment benefits related to its respective performance under these Terms. Neither Party shall be responsible for the payment of any duties or taxes imposed on the income or profits of the other Party.

5. GTI has the right to assign or otherwise transfer its right, title, interest and obligations under these Terms to any affiliate, provided such entity operates in the Port. The Customer shall not be entitled to assign, or otherwise transfer or sub-contract all or any of its rights, title, interest or obligations under these Terms without the prior written consent of GTI.
6. GTI may sub-contract the Terminal Services but sub-contracting shall in no way relieve GTI of any of its obligations under these Terms and GTI shall remain responsible for its sub-contractors and their performance.
7. The failure to exercise or delay in exercising a right or remedy provided for in these Terms or by law does not constitute a waiver of the rights or remedies. No single or partial exercise or a right or remedy provided for by these Terms or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
8. The Customer undertakes that no claim or allegation in respect of the Terminal Services whether arising in contract, bailment, tort or otherwise shall be made against any member of the GTI group, sub-contractor or any of their employees, servants, agents. If any claim or allegation should nevertheless be made against any member of the GTI group, sub-contractor or any of their employees, servants, agents, the Customer agrees to indemnify and hold harmless GTI against all consequences thereof. Without prejudice to the foregoing, all defenses, exemptions, immunities, limitations, liberties and rights of GTI hereunder, including the right to enforce any law and jurisdiction clause, shall be available and extend to all members of the GTI group, sub-contractors and their employees, servants, agents who shall be entitled to enforce them against the Customer. GTI group being understood as all legal entities, that own, are directly or indirectly owned by or are under the common ownership of GTI. For the purpose of the foregoing “own” or “ownership” shall mean majority ownership or controlling interest.
9. Any notice hereunder shall be deemed to have been duly given if sent by registered post or fax to the Party concerned at its principal place of business. Notices sent by registered post shall be deemed to have been given seven (7) days after dispatch and notices sent by fax shall be deemed to have been given twenty-four (24) hours after dispatch.
10. If there is any conflict between the English version of these Terms and any translation thereof into any other language, the English language version shall prevail.