

GENERAL CONDITIONS – ANNEX (B) FOR SERVICES AND FACILITIES

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 the application for the Services/Facilities, made by or for the Customer to MPS in writing or by any other mode required or accepted by MPS and granted by MPS.

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, or legal obligations and all related legal costs or arising from compliance with applicable laws (including any requirement imposed by the International Maritime Organization) and/or obligations,.

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

1.1.4 “Container” means any box or article of transport equipment designed for the transportation of Cargo but not forming the primary business of MPS operations.

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

1.1.6 “Contract Period” if applicable means the period of the Contract from the commencement date/Signing Date until the expiry date (if any)

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 MPS 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 Mawani Port Tariffs, and shall include without limitation any and all interest due on the same.

1.1.8 “Customer” means the person whose Application has been granted by MPS, or the successors and permitted assigns of such person.

1.1.9 “Customer's Representative” means any one or more persons authorised by the Customer and approved by MPS 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 as and when specified by any competent authorities in the KSA, and any empty receptacles previously used for the carriage of such goods unless already rendered safe.

1.1.11 “Facilities” means all or any part of the facilities described as such in the Application or any facilities provided by MPS, whether for use in themselves or for use in connection with the provision of the Services.

1.1.12 “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, including but not limited to imposition of an export or import restriction, quota or prohibition;
- (d) any fire, explosion, nuclear reaction, shortage of power, fuel, transport or materials necessary for the performance of the Contract, abnormally high prices, obstruction of access to any MPS Terminal, or accident including but not limited to the breaking adrift of any vessel from any MPS Terminal;
- (e) any labour or trade dispute, strikes, industrial action, lockouts or sabotage;
- (f) any defect, inherent vice or natural property of the Goods and/or change in quality of the Goods or its packaging, Goods or means of transport, and damage caused by other goods, delay in delivery of the Goods to or from any MPS Terminal on the part of any person other than MPS, its employees or agents, failure in or delayed arrival of packing materials, Goods or means of transport used in respect of the Goods or a third party's interference with the Services/Facilities; and/or
- (g) any other circumstances the occurrence or extent of which MPS could not reasonably have controlled, foreseen, avoided, prevented or forestalled, including, without limitation, a third party's interference with MPS's computer systems, hacking, cyber-attack, computer viruses, the stability or availability of the Internet or a portion

thereof or a network or device failure external to MPS's data centre.

1.1.13 General Cargo/cargo means any packed or unpacked freight/goods whether containerized or otherwise, including without limitation, Bulk Cargo, Break-Bulk Cargo, Wheeled Vehicles, anything stowed within a Container or loose cargo not so stowed but which has been unpacked from or is intended for packing into a Container.

1.1.14 "Goods" means all or any part of any property of any kind whatsoever brought into any MPS Terminal by the Customer or for the Customer for the purposes of the Contract including any Cargo or RORO.

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

- (a) shifting Goods between any Vessel and MPS Terminal;
- (b) shifting Goods from place to place within MPS Terminal;
- (c) shifting Goods from place to place within any Vessel;
- (d) shifting Goods between MPS Terminal and any intermodal freight wagons;
- (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 MPS Terminal;

- (j) delivery of any Goods; and
- (k) pre-trip inspection of any Goods.
- (l) loading or unloading of General Cargo, including Break-Bulk Cargo, from or onto vessels;
- (m) loading or unloading of Bulk Cargo (Grain Bulk, Industrial Bulk) from or onto vessels or shore-based facilities;
- (n) handling of RoRo / Wheeled Vehicles, including driving on / off vessels, storage, and positioning;
- (o) storage of Cargo and/or Vehicles within the Terminal, whether in open yards or covered warehouses;
- (p) lashing / unlashings of Cargo and/or Vehicles;
- (q) stowage planning of Cargo and/or Vehicles on vessels where applicable;
- (r) delivery of Cargo and/or Vehicles to the consignee or its agent.

1.1.16 Grain Bulk: means bulk Cargo consisting of agricultural grains, including but not limited to wheat, corn, barley, soybeans, rice, oats, rye and other similar grain products, transported in loose, unpackaged form.

1.1.17 Industrial Bulk: means bulk Cargo consisting of industrial raw materials or products, including but not limited to cement, clinker, coal, minerals, ores, gypsum, fertilizers, chemicals, scrap metals, and similar bulk industrial commodities transported in loose, unpackaged form.

1.1.18 “Mawani Port Tariffs” refers to Law of Port Service Fees and Charges the Port’s tariff payable by the Customer in accordance with the Rates of the Kingdom of Saudi Arabia Ports Authority (“Mawani”), from time to time in force as notified by Mawani. As at the date of this contract, the Law of Port Service Fees and Charges issued by the royal decree number M/42 dated 24/03/1985 or Hijri calendar dated 02/07/1405H as amended and restated from time to time.

1.1.19 “MPS” Modern Port Services Company Limited a single shareholder limited liability company established under the laws of the Kingdom of Saudi Arabia with commercial registration number 2050202892, unified number 7043110043 and its registered address at 6850, 42 King Abdulaziz Port, Dammam 32211-2621, Kingdom of Saudi Arabia.

1.1.20 “MPS Rules” has the meaning given in clause 13.5.

1.1.21 “MPS Safety Rules” means the instruction containing the rules set by MPS from time to time governing the safety of activities and persons within the MPS Terminals, the current edition of which has been made available to the Customer (which the Customer hereby acknowledges as having read and agreed to).

1.1.22 “MPS Security Rules” means the instruction containing the rules set by MPS from time to time governing the security of persons and property within the MPS Terminals, the current edition of which has been made available to the Customer (and which the Customer hereby acknowledges as having read and agreed to).

1.1.23 “Party” means MPS or the Customer.

1.1.24 “Reefer Services” means all or any of the following services and facilities provided by MPS 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 a MPS Terminal; and
- (b) supplying electricity to any refrigerated Container and monitoring the temperature within the Container.

1.1.25 “RoRo/ Wheeled Vehicles” shall include any motor car, single deck bus, articulated lorry, tractor unit, general goods vehicle, container chassis, trailer, tracked vehicle, bulldozer, crane truck, crawler crane, excavator, tank lorry, fire engine, refuse collection vehicle, forklift, double deck bus, bus chassis and any other industrial or construction equipment or vehicle.

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

1.1.27 “MPS Terminals” means all or any part of any land, place, structure or building in King Abdulaziz Port Dammam, Jubail Commercial Port, King Fahad Industrial Port Jubail and Ras Al Khair which the Services/Facilities are provided by MPS irrespective of whether or not such land, place, structure, or building is owned, operated, managed or controlled by MPS, including any berth, jetty or wharf.

1.1.28 “TON” means, unless otherwise specified, be regarded as “Freight Ton” and shall be determined by a weight of 1000 kilos or a measurement of one cubic meter, whichever is greater.

1.1.29 “Services” means any service described as such in the Application and/or any operation, work

or services performed or provided by MPS in connection with Goods or a Vessel, including without limitation:

- (a) Goods Handling;
- (b) berthing or unberthing of any Vessel;
- (c) surveyor inspection of any Goods and their contents to ascertain the nature and extent of any loss or damage of the same;
- (d) ship supplies to any Vessel;
- (e) providing Container handling and transportation services for any customs related inspections;
- (f) distribution of power supply to any Vessel;
- (g) supply of mechanical equipment and manpower for the lifting and moving of any Goods;
- (h) Reefer Services; and
- (i) Warehousing.
- (j) Any other related services to be agreed between parties.

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

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

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

- (a) provision of space, either open or covered, for the storage, loading, unloading, stuffing, unstuffing, repair, and/or inspection of any Goods;
- (b) distribution of any Goods; and
- (c) repacking 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) these Conditions shall prevail in the event of any contradiction or inconsistency between any Condition and any other provision of the Contract; or

(b) 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 MPS shall be made or given in writing or in a mode acceptable by MPS.

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

1.2.6 If the whole or any part of any provision of the Contract is, or is found by any authority or

court of competent jurisdiction to be, invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the other provisions or terms (or parts thereof) in that jurisdiction or the whole of the Contract in any other jurisdiction, all of which shall remain in full force and effect. The provision or term (or part thereof) which is or has been found to be invalid, illegal or unenforceable 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.

2. CONTRACT

2.1 The Contract

2.1.1 MPS 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 MPS 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 MPS by the Contract in respect of such acts or omissions shall also be afforded to such persons.

2.2 Early termination

2.2.1 Notwithstanding the other provisions of the Contract, MPS may terminate the Contract forthwith at any time without any claim or charge by the Customer by sending a written notice to the Customer.

3. FACILITIES

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

4. INFORMATION RELATING TO GOODS

4.1 General

4.1.1 The Customer shall on or before the delivery of any Goods to MPS, furnish all information required by MPS in respect of the Goods, including but not limited to information necessary for the safe, proper and efficient handling of the General Cargo, Bulk Cargo (Grain Bulk and Industrial Bulk), RoRo and Wheeled Vehicles, and any additional certificates or documents required by applicable law, competent authorities, or MPS in respect of the Goods.

4.1.2 MPS shall be entitled, at any time, to inspect, weigh and/or test the Goods and do any acts necessary for this purpose. Costs arising therefrom, as determined by MPS, 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
- (c) is conducted by MPS to comply with any law or regulation or IMO requirement.

4.1.3 MPS may accept delivery of the Goods notwithstanding MPS'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 measures carried out by MPS in respect of the Goods arising from such incorrect or incomplete information and indemnify MPS against all Claims made by MPS, its employees or agents, or any third party arising from such measures; and

(b) MPS shall not be liable for any Claim arising from MPS's acceptance of delivery of the Goods.

4.1.4 MPS shall be entitled to refuse to accept delivery of the Goods or refuse to provide any Services/Facilities in respect thereof, without responsibility for any loss or any liability, consequential or otherwise, if in the opinion of MPS:

- (a) 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 MPS, its employees or agents or if the Goods are classified as prohibited goods under applicable laws or international conventions.

4.1.5 MPS shall be entitled to require payment from the Customer of any cost or expense incurred by MPS in respect of the Services /Facilities provided prior to MPS's refusal to accept delivery of the Goods pursuant to Condition 4.1.4.

4.1.6 The Customer shall be liable to MPS for and shall indemnify MPS against all Claims suffered by or made against MPS, its employees or agents arising from any incorrect or incomplete description, statement, indication, information, notice, direction or instruction made or given by

the Customer to MPS, in addition to the costs payable by the Customer under Condition 4.1.2.

4.2 For duties, taxes and charges

4.2.1 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 MPS all information required of MPS by such authorities in respect of such Goods.

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

4.3 The Customer shall not deposit any arms, explosives or Dangerous Goods or any other hazardous substances with MPS unless MPS has provided written agreement to the same.

5. TRANSPORTATION, PACKING MATERIALS AND GOODS

5.1 Standards

The Customer shall ensure at all times that the means of transportation, packing materials and Goods and their accessories used in the delivery of the Goods to MPS 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. MPS will not be liable for any Claim arising from such standards not being met and the Customer shall indemnify MPS against such Claim.

5.2 Inspection

MPS 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 Goods for the purposes of inspection.

5.3 Refusal to accept delivery

If in the opinion of MPS, such means of transportation, packing materials or Goods are not as that described in Condition 5.1, MPS 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.

6. GENERAL CONDITION ON ARRIVAL

6.1 Acceptance of delivery not proof of condition

Any acceptance of delivery of the Goods by MPS 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 Goods used in respect thereof conformed to the requirements of Condition 5.

6.2 Notice of damage, defect or deterioration

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

6.3 Remedial measures

MPS shall be entitled, at the expense of the Customer, to do all things deemed by MPS 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 Goods and to arrange for a report to be made on the condition of the Goods or of such means, materials or Goods without being liable for any Claim arising from doing such things and the Customer shall indemnify MPS, its employees and agents against such Claim.

7. DELIVERY OR RE-DELIVERY

7.1 Point of delivery to MPS

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

7.2 Point of re-delivery to Customer

The Goods shall be deemed to have been re-delivered to the Customer from the Facilities or MPS Terminal, immediately after such Goods are loaded onto or into the Vessel or vehicle at the Facilities or MPS Terminal.

7.3 Time and date to be notified

7.3.1 The Customer shall agree with MPS 5 days prior to the time and date when the Goods shall be delivered to MPS or re-delivered to the Customer.

7.3.2 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 MPS, its employees and agents arising therefrom and indemnify MPS, its employees and agents against such Claim; and

(b) in the case of delivery of the Goods, MPS shall no longer be required to make available the Facilities pursuant to the Contract or in the case of re-delivery of the Goods, MPS shall be entitled to remove the Goods forthwith from the Facilities at the risk and expense of the Customer.

7.3.3 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.

7.4 Re-delivery requirements

7.4.1 Subject to Conditions 18.1 and 18.2, MPS 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 MPS 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 ; and/or

(d) instructed by any competent authorities.

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

7.4.2 MPS shall be entitled but not obliged:

(a) 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

(b) 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.

7.4.3 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 MPS to the Customer such re-delivery shall be recorded in the Delivery/Shipment Note surrendered pursuant to Condition 7.4.1(c) and MPS may then at its absolute discretion either:

(a) return the Delivery/Shipment Note to the Customer; or

(b) issue a fresh Delivery/Shipment Note to the Customer in respect of the remaining part of the Goods.

7.4.4 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 MPS to the Customer.

7.5 Discharge from liability

7.5.1 MPS 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, letter of authorisation and/or any relevant documents 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.

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

7.5.3 MPS 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.

8. MOVEMENT OF GOODS

8.1 By MPS

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

8.2 Storage of Goods

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

9. SPECIFIC MEASURES

9.1 Fixtures, fittings and measures

Notwithstanding the other provisions of the Contract, MPS 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 MPS 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 MPS. Such fixture or fitting shall be the property of MPS.

9.2 Notification to Customer

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

10. INSPECTION AND WORKS

MPS is entitled to conduct any inspection of or any works to the Facilities which is required, in MPS'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. MPS 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 MPS.

11. WORKING HOURS

The Services/Facilities shall be provided by MPS during the normal working hours stipulated by MPS. MPS may, at its discretion, provide the Services/Facilities outside the normal working hours, and any costs arising therefrom shall be paid by the Customer.

12. REMOVAL OF VESSELS

12.1 The Customer shall ensure that the Vessel shall be removed from the MPS Terminal immediately upon completion of the discharge/loading of the Goods or at any time as deemed necessary by MPS and/or as instructed by any competent public authorities.

12.2 The Customer shall pay MPS liquidated damages at the rate prescribed by MPS, as amended from time to time. Such damages shall accrue from the scheduled vessel removal date until the actual removal date.

13. CUSTOMER'S REPRESENTATIVE

13.1 MPS's approval

MPS may grant approval for any one or more persons authorised by the Customer to deal with MPS, its employees and agents 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.

13.2 Customer's responsibility

13.2.1 The Customer shall ensure that only the Customer itself or the Customer's Representative shall deal with MPS 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.

13.2.2 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.

13.3 Liability and indemnity for Customer's Representative

MPS 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 MPS and the Customer shall absolve MPS, its employees and agents in respect of such Claim and shall indemnify MPS, its employees and agents in respect of such Claim.

13.4 MPS Rules

The Customer shall comply with the MPS Rules, including but not limited to the MPS Safety Rules, Security Rules, Traffic Rules, and any other rules

or conditions imposed by MPS from time to time regarding the MPS Terminals and related activities.

14. ACCESS TO AND PRESENCE AT MPS TERMINALS

Except with the written permission of MPS evidenced by any permanent or temporary pass or permit issued by MPS subject to such terms and conditions as may be imposed by MPS, all persons or property shall only enter or exit any MPS Terminal through entrances or exits or means designated by MPS for that purpose. MPS has the right to deny entry/exit to any MPS Terminal and any part thereof or revoke permission for the same, and to require the Customer to remove any person or property accordingly at any time.

15. ENVIRONMENT

The Customer shall not cause or permit any waste matter to be discharged in any manner onto MPS Terminal.

16. PAYMENT FOR SERVICES OR FACILITIES

16.1 Charges and other sums

In consideration of the provision of the Services/Facilities by MPS, the Customer shall pay to MPS all charges and other sums which shall be imposed by MPS under the Mawani Port Tariffs or under the Contract or at law.

16.2 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 Mawani Port Tariffs or under the Contract, as the case may be; and

(ii) recoverable against the Goods and any other property delivered by the Customer to MPS under the Contract and any other contract made between MPS and the Customer.

(b) MPS 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 MPS subject to the terms and conditions provided in the Mawani Port Tariffs and/or the Contract.

(c) The sums due from the Customer (or any of its related corporations) to MPS (or any of its related corporations) may be deducted by MPS from any sum due from MPS 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).

(d) 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:

1) 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;

2) 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;

3) 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

4) 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 MPS 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.

(e) Without prejudice to the generality of paragraph 16.2.d(iv) above, if due to any reason whatsoever (except the default of MPS) 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 (c) above:

(i) MPS shall be entitled to engage the services of any person(s) to recover such sum from the Customer, at the Customer's cost;

(ii) MPS shall be entitled to suspend providing its provision of Services/Facilities to the Customer; and

(iii) 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 MPS, liquidated damages amounting to 0.003% of the Contract Sum and the costs at the rate equivalent to the rate stipulated in the Mawani Port Tariffs or in the Contract (as the case may be), which 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 thereon or to the date of expiry or sooner termination of the Contract, whichever is earlier.

(f) Time shall be of the essence for the purposes of this Condition.

17. THIRD PARTY CHARGES AND SUMS ON GOODS

17.1 Goods to be free of third party charges or sums

17.1.1 The Customer shall ensure that the Goods are delivered to MPS free of any charges or sums due to third parties including any freight, port

charges, taxes, duties, contributions, fines and any other costs.

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

17.1.3 MPS 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.

17.2 Cost of professional services

If MPS, 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 MPS in respect of such services, proceedings and measures shall be borne by the Customer.

17.3 Customer's liability

Notwithstanding that MPS may have taken delivery of the Goods, the Customer shall be liable for such unpaid charges and sums and shall indemnify MPS, its employees and agents against any Claims against MPS, 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.

18. RIGHTS OVER GOODS AND VESSELS

18.1 Right of lien and retention

18.1.1 MPS shall have the right of lien and retention over all property (including the Goods) and all sums (including any sums collected by MPS from third parties on behalf of the Customer)

and all documents which MPS 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 MPS under the Contract or at law.

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

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

18.2 Power to dispose of Goods remaining in custody

18.2.1 If the Goods are not removed from the Facilities within the period stipulated by MPS under the Contract, or a period of 30 calendar days (if not so stated in the Contract), or if the Customer fails to pay to MPS the Contract Sum for any reason, MPS 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 MPS may direct or effect their removal or disposal immediately or within such shorter period as MPS deems fit.

18.2.2 MPS shall render the surplus proceeds of sale (after deducting payments of the any and all sums due to MPS, including the Contract Sum, and any other sums due to third parties payable by MPS 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 MPS, whereupon all

rights to the same by such person shall be extinguished. If the proceeds of sale of the Goods by MPS pursuant to this Condition is insufficient to satisfy in full any claim of MPS under the Contract, under any other contract made between MPS and the Customer or at law, MPS shall be entitled to recover the balance from the Customer as a debt in any court of competent jurisdiction.

18.3 Power to distrain for non-payment of Contract Sum

18.3.1 If the Customer fails to pay the Contract Sum in accordance with the Contract, MPS 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.

18.3.2 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, MPS 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.

19. TRANSFER OF RIGHT OR INTEREST IN GOODS

19.1 MPS not bound

19.1.1 MPS 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.

19.1.2 The Customer shall be liable for all Claims arising from any refusal of MPS to recognise or to

be bound by the intended transfer of ownership or other interest in the Goods and shall indemnify MPS, its employees and agents in respect of such Claims.

19.2 Disputes-third parties

19.2.1 If there shall be any dispute between MPS and the Customer or between MPS 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, MPS shall be entitled to detain the Goods until the dispute is resolved by the competent court or otherwise settled.

19.2.2 MPS 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 MPS's satisfaction.

19.3 Responsibility of Customer

Notwithstanding the transfer of any right or interest in the Goods, until and unless MPS 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.

19.4 When transferee deemed to be Customer

Upon MPS'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.

20. REMOVAL OF GOODS

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

20.1 No liability

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

21. OPERATING REQUIREMENTS AND MPS RULES

The Customer shall comply, and shall ensure that its employees, subcontractors and agents comply, with MPS's operating requirements set out 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 MPS in respect of the MPS Terminal and activities therein.

22. FORCE MAJEURE

22.1 Affecting performance or observance by MPS

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

23. LIABILITY AND INDEMNITY

23.1 Extent of liability

23.1.1 Except where expressly agreed otherwise between the parties:

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

(i) Force majeure;

(ii) Any delay or error in the delivery of the goods to MPS or re-delivery of the goods to the Customer;

(iii) Unavailability of labour and/or other services or utilities;

(iv) Act neglect default or omission of whatever nature of the Customer or its or Act neglect default or omission of whatever nature of the Customer or its or their servants or agents or of any person having an interest in the Cargo;

(v) Latent or inherent vice of goods, vermin, white ants, rust, dry rot, wastage due to natural deterioration or contamination by other goods, inadequately packed or fragile Cargo;

(vi) The failure of the Customer or its servants or agents or of any person having an interest in the Cargo to take or accept delivery within such reasonable time as may be required by the MPS.

(vii) Breakdown failure or malfunction of equipment cranes or like machinery (other than breakdown failure or malfunction caused by the fraud or wilful act, neglect or default of the Company or its servants, agents or employees).

Or

(viii) Any other cause unless it is first proven by the Customer that such claim has arisen from the gross negligence or the wilful act of MPS.

(b) Liability limit for cargo:

Subject always to the limitations and exclusions of liability contained herein the maximum liability of MPS for any loss, damage, claim, cost and/or expense in respect of any one event, or occurrence shall be the lowest of the following as may be applicable:

(i) The market value of the goods/cargo to which the claim relates at the time of the damage or loss; or

(ii) The cost of repairing the damage; or

(iii) An amount of SAR 45,000 (Forty-Five Thousand Saudi Riyals) in aggregate per incident or series of incidents.

(c) Liability limit for vessel

Subject always to the limitations and exclusions of liability contained herein the maximum liability of MPS for any loss, damage, claim, cost and/or expense in respect of any one event, or occurrence shall be the lowest of the following as may be applicable:

(i) The cost of repairing the damage; or

(ii) An amount of SAR 3,000,000 (Three Million Saudi Riyals) in aggregate per incident or series of incidents.

PROVIDED THAT the maximum liability of MPS in totality shall in no event exceed the sum of SAR 3,000,000 (Three Million Saudi Riyals) in aggregate for loss or damage resulting from or otherwise arising out of any one event or occurrence, regardless of whether there shall be one or more claimants and irrespective of the nature or ground of the claim(s).

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

23.1.3 MPS's shall not be liable to the extent of any claim with a value of less than SAR 10,000.

23.1.4 The limitation of liability granted under this 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. To avoid any doubts MPS shall not be liable for any claim arising from any loss of profit, consequential losses or any other indirect loss or damage.

23.1.5 The claim will be void if the customer shall not have notified MPS 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 MPS terminals;

(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.

23.1.6 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.

23.2 Personal liability

Notwithstanding the other provisions of the contract, no matter or thing done and no contract of any kind entered into by MPS and no matter or thing done by any employee or agent of MPS or any other person whomsoever acting under the direction of MPS 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.

23.3 Reasonableness

The customer expressly acknowledges that Condition 23 satisfies the requirements of reasonableness under the Governing Laws of the Kingdom of Saudi Arabia and/or nothing in the contract shall exclude or in any way limit MPS'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.

24. DAMAGE TO MPS TERMINAL OR OTHER MPS PROPERTY

If any damage is caused to any MPS Terminal or other property arising out of the provision of the Services/Facilities, MPS 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.

25. CUMULATIVE RIGHTS AND REMEDIES

MPS's rights and remedies under the Contract are cumulative and shall not prejudice any other rights or remedies of MPS contained in the Contract or at law.

26. INSURANCE

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

27. 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 MPS against any fines, penalties, losses, costs or expenses incurred by MPS in respect of any non-compliance with such laws, rules and regulations.

28. 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 MPS's prior written consent.

29. CONFIDENTIALITY

29.1 Without prejudice to clause 38. No Party shall disclose to any other person any information related to the Contract without the prior consent of the other Party.

29.2 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 and such Party remains liable for any breaches by such agents or contractors;
- (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.

30. NO GRANT OF INTELLECTUAL PROPERTY RIGHT

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

31. COMMUNICATION

31.1 Other forms of writing

Where the Contract requires any notice or information to be in writing, that requirement is also met by electronic mail or any other forms of communication ("Data Message")

31.2 Acknowledgement of receipt

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

31.3 Service

31.3.1 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.

31.3.2 Notwithstanding the provisions of Condition 31.3.1, MPS may in its absolute discretion where MPS 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 or by posting a copy of such notice at the custom office of MPS Terminal.

32. CONSENT OR WAIVER

No consent or express or implied waiver by MPS to or of any breach of any Condition or any covenant or duty of the Customer shall be construed as a consent or waiver by MPS 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 MPS contained in the Contract or at law.

33. Amicable Settlement and Dispute resolution

33.1 Amicable Settlement:

Any dispute, controversy or claim arising from or connected with this contract, including one regarding the existence, validity, breach or termination of this Contract or the consequences of its nullity or relating to any non-contractual or other dispute arising from or connected with this Contract (each, a "Dispute"), shall be referred in writing to the other Party in an endeavour to settle the Dispute amicably. If the Dispute cannot be settled between the Parties within thirty (30) days of it being referred in writing to either Party, it shall be resolved by clause 33.2 ("Dispute Resolution").

33.2 Dispute Resolution

(a) In case of the disputed amount is lower than two million Saudi Riyals:

This contract and the interpretation of its terms shall be governed by and construed in accordance with the laws of the Kingdom of Saudi Arabia and subject to the exclusive jurisdiction of the courts located in Dammam, Kingdom of Saudi Arabia.

(b) In case of the disputed amount is equal or higher than two million Saudi Riyals:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration administered by the Saudi Centre for Commercial Arbitration (SCCA) in accordance with its Arbitration Rules (the "Rules"). The Tribunal shall consist of three (3) arbitrators, one

(1) to be appointed by each Party and the two arbitrators shall jointly nominate the presiding arbitrator within thirty (30) days of their appointment, failing which the presiding arbitrator shall be appointed in accordance with the Rules. The seat and venue of the arbitration shall be Riyadh, Saudi Arabia. Notwithstanding anything to the contrary, the provisions of clause 50(2) of the Arbitration Law will apply to this Contract. The language of the arbitration shall be English. The cost of the arbitration shall be borne by each party equally.

34. 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 MPS and the Customer insofar as such terms and conditions shall remain unfulfilled or relevant.

35. STAMP DUTY

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

36. PERSONAL DATA PROTECTION

Each Party shall process any Personal Data obtained in the course of the performance of this Agreement in accordance with applicable data protection legislation in the Kingdom of Saudi Arabia (KSA)

If Customer determines the purpose and means of processing personal Data (as defined under Data Protection Laws) , Customer is a Controller and fully responsible.

If Customer processes Personal Data on behalf of MPS, Customer is a Processor and must follow MPS's instructions only.

Customer shall implement appropriate technical and organizational measures to protect Personal Data.

Customer shall notify MPS without undue delay of any Personal Data Breach.

Customer shall not transfer Personal Data outside KSA without prior written consent from MPS.

Customer shall not appoint any sub-processors without MPS'S prior written approval.

Upon termination, Customer shall return or delete Personal Data as instructed by MPS.

Customer shall indemnify MPS against any losses due to Customer's breach of these obligations or Data Protection Laws.

37 . GOVERNING LAW

The Contract will be governed by, and construed in all respects in accordance with, the laws of the Kingdom of Saudi Arabia.

38. MODIFICATION

MPS makes these Conditions available on its website and reserves the exclusive right to amend them at its discretion. MPS shall notify the Customer of any updates and publish the revised version on its website. Unless the Customer submits a written objection within seven (7) days of such notification, the updated Conditions shall be deemed accepted and binding upon the Customer.

Signed by

for and on behalf of Moden Port Services
Company Limited

Signed by

for and on behalf of

The Customer in the presence of:

END

MPS Security Rules