

TERMS AND CONDITION OF BUSINESS

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NORTHPORT (MALAYSIA) BHD (146850-A) is licensed by the Klang Port Authority to operate, manage, maintain, develop and provide port facilities and services at Port Klang.

The port facilities and services are provided to the Users subject to the following Terms and Conditions of Business (hereinafter referred to as "Terms and Conditions").

PART I

STANDING OFFER, DEFINITIONS, CONSTRUCTION AND SAVINGS, APPLICABLE LAWS

1. STANDING OFFER

- 1.1 These Terms and Conditions constitute a standing offer upon which Northport (Malaysia) Bhd (hereinafter referred to as "the port") makes its port facilities and services available to the Users.
- 1.2 The standing offer shall be deemed to be accepted either upon
- (a) receipt by the port of notification in whatever manner from the User, of the intention to berth a vessel or use the facilities and services at Port Klang, or
 - (b) the User doing or transacting business with the Port or the engagement of the Port by the user for its port facilities and services, whether by agreement or otherwise.

2. DEFINITIONS

- 2.1 In these Terms and Conditions and in any agreement / contract entered into by the Port, which includes these Terms, and Conditions, the following words and expressions shall, unless the context otherwise requires, have the following meanings: -

"agent" includes direct and indirect subcontractors and their respective servants and agents;

"authority" means, Klang Port Authority, a statutory authority established under the Port Authorities Act, 1963;

"cargo" includes livestock, minerals, wares, vehicles and merchandise of every description whether containerized or otherwise, and includes any passenger luggage and effects;

"Chief Marine Officer" means the officer appointed by the Port to be in charge of the Marine Services Department and includes his assistants and any other officer acting under or with his authority;

"container" or "containers" means any box or article of transport equipment (including tanks and flats) having a permanent character and being specially designed for the transportation of cargo by one or more modes of transport, without intermediate reloading, and fitted with devices permitting its ready handling particularly its transfer from one mode of transport to another;

"Manager, Shipping Control " means the officer appointed by the Port to be in charge of the Shipping Control Department and includes his assistants any other officer acting under or with his authority;

"excepted articles," means the cargo specified in the APPENDIX II hereto;

"line" includes any person (including without limitation shipping companies, shipowners and charterers) having any interest in a vessel and may include a person who is an operator;

"master" includes every person, except the Port's pilots, having for the time being the command or charge of any vessel;

"operator" includes any person who directly or indirectly enters into any arrangement, contract or agreement with the Port in relation to the transport, storage or distribution of cargo or containers including break bulk cargo or any matter connected therewith and includes without limitation exporters, importers, consignors and consignees thereof and may include, if appropriate, a person who is a Line;

"owner" when used in relation to goods includes any consignor, consignee, shipper or agent for the sale, custody, shipping or landing of such goods; and when used in relation to any vessel includes any part-owner, charterer, consignee or mortgagee in possession of the vessel;

"persons" includes corporations whether aggregate or sole;

"pilot" means any person not belonging to vessel who has conduct thereof;

"pilotage districts" shall mean the pilotage district of Port Klang;

"port," means Northport (Malaysia) Bhd;

"terminal Manager" means the Head of the Cargo Division or Head of the Container Division;

"unprotected cargo" where they relate to containerized cargo, shall mean cargo which are packed, stuffed or stored in or on a flat rack or u-rack or placed in an open sided or open-top container or in a container where the bottom is not sufficiently secured. Where they relate to bulk or breakbulk cargo, it shall mean cargo not placed in a carton or any form of packaging. In both containerized, bulk and breakbulk cargo, the packing, stuffing or storage is such that the cargo is exposed in such a manner that will result in their loss in weight, value or quality or in their damage;

"user" means the owner, part owner, master, charterer, or mortgagee in possession of the vessel including a person who is a Line, and or their respective agents or employees which uses the services of the Port and or any person, firm or corporation which uses the services of the Port including a person who is an operator, and or the owner of the cargo, consignee, shipper or agent for the sale, custody, shipping or landing of such goods or any persons transacting business or entered into a contractual obligation with the Port;

"vehicle" includes a carriage travelling on its own wheels or runners and used or intended to be used for the conveyance or carriage of persons, animals or goods;

"vessel" includes barges, lighters and any mechanically propelled ship or boat or any seagoing or inland water craft including any floating objects used in navigation for the carriage of goods or passenger;

"wharf" includes any quay, dock, pier, jetty, ramp or landing place and any wall or building adjoining the foreshore, seabed or river bed.

3. **CONSTRUCTION**

- 3.1 In the construction of these Terms and Conditions no clause or paragraph of any condition shall be taken to derogate from the generality of other clause or paragraph. Acceptance shall be deemed to create a distinct contract in respect of each clause or paragraph such that if any clause or paragraph is found void, unenforceable or otherwise invalid, the same shall not affect any other clause or paragraph of any of these Terms and Conditions. Headings are for convenience and shall not affect the interpretation of these Terms and Conditions.

Where the context permits singular includes the plural and male gender includes female and neuter gender. Whenever in these Terms and Conditions there is a reference to more than one person it shall be construed as a reference to such persons or any one of them.

4. **SAVINGS**

- 4.1 All assistance, port services, facilities and business are conducted by the Port subject to the exclusions and limitations of liability set out in these Terms and Conditions. The liability of the User and the Port under these Terms and Conditions shall be deemed to operate in addition to and in no way derogate from any liability which but for these Terms and Conditions would arise by contract, in tort, by statute or otherwise on the part of the User of the port.

5. **APPLICABLE LAWS**

These Terms and Conditions shall be governed, construed and interpreted in all respects according to the laws in force in Malaysia and all parties to these Terms and Conditions shall submit to the jurisdiction of the Malaysian courts.

PART II

SERVICES IN RELATION TO VESSELS, CARGO AND CONTAINERS

6. APPLICATION FOR BERTH

6.1 Notification of Arrival

The User intending to call at Port shall, as early as possible and in any case not less than forty-eight (48) hours prior to the estimated time of arrival, provide adequate notice in writing to the Manager, Shipping Control or Terminal Manager of the expected time and date of arrival and supply information relating to such vessel as he may reasonably require. The User supplying such information shall ensure that the information is accurate.

The Port shall not be responsible for changes in berthing schedules and delays of the vessel or other vessel arising from inaccurate information and shall not be liable for any damage whatsoever resulting therefrom, and the User may be penalized in the manner determined by the Port.

7. ALLOTMENT OF BERTHS

7.1 Allotment of Berths

No vessel shall be berthed or unberthed to be placed alongside the wharf without the written approval of the Manager, Shipping Control or Terminal Manager.

No vessel shall be allocated a berth except upon a written application made by the User to the Manager, Shipping Control in the form prescribed by the Port in accordance with the procedure prescribed at each terminal.

The allocation of a berth shall be at discretion of the Manager, Shipping Control or Terminal Manager and a vessel shall only be allocated berth based on the berthing procedures determined by the Port or otherwise in the order of its arrival in Port but the Manager, Shipping Control or Terminal Manager may vary the order of berthing if he considers it advisable to do so from time to time.

Notwithstanding all the above, the Port however, is not responsible in the event where a vessel could not be berthed at any of the Port's wharf.

7.2 The User shall where and if applicable provide the Port with all necessary information and instructions including adequate notice in writing relating to:

- (a) the overall length of the vessel;
- (b) the cargo to be landed or loaded;
- (c) the conditions of containers and its contents;
- (d) embarkation or disembarkation of passengers;

- (e) packages over ten (10) deadweight tonnes;
- (f) special cargo which require special handling;

8. REFUSAL OF A BERTH

8.1 The Port reserves the right to reject any berthing application or if the Manager, Shipping Control or Terminal Manager is of the opinion that a vessel should not be berthed at any of the wharf provided by the Port or at a particular berth.

9. BERTHING AND UNBERTHING OF VESSELS

9.1 No Warranty While Approaching, Leaving Or Lying Alongside

The Port does not and shall not be deemed to give any warranty or representation that the vessel will not ground while approaching, leaving or lying alongside the Port's wharf. Without prejudice to the foregoing, each vessel approaching or leaving or while lying alongside the Port's wharf does so at the sole risk of the Master or the Line.

9.2 Berthing And Unberthing

A vessel shall be berthed and unberthed to the satisfaction of the Terminal Manager by her Master and at the sole risk and responsibility of the Master or the Line. The Port will provide, without prejudice to the foregoing, berthing / unberthing personnel and mooring crew on the wharf to render assistance under instruction from the Master of the vessel for the sole purpose of making fast or casting off the vessel's hawsers and mooring ropes. Every vessel which berths at the Port's wharf shall remain under the charge of the Master and the Port shall not be responsible for or liable in any way for any damage or loss suffered or incurred during the berthing and unberthing of a vessel.

The Port shall not be liable in any manner whatsoever for any latent defects in mooring bollards or posts, not for any improper mooring of the vessels at the Port's wharf.

9.3 Liability for Damage to Property

The Master of the vessel shall be responsible for any damage to the wharf and to the Port's premises, equipment, fendering or mooring bollards and other property belonging to third parties caused during or arising from the act of berthing or unberthing whether by reason of incompetence or negligence of Port's officer or pilot in-charge or as a result of insecure or improper mooring of the vessel whilst lying alongside the wharf and shall hold the Port fully indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage.

10. VESSELS BERTHED ALONGSIDE

10.1 Responsibilities Of The Master Of The Vessel

Every vessel while using any of the Port's wharf, shall be deemed in charge of, and her safety shall be at the sole risk of its Master and Owner of the vessel. The Master or Owner of the vessel shall be held responsible for any loss and damage that may arise in consequence of her faulty navigation or by reason of her breaking adrift from her moorings, provided always notices of danger shall be given to the vessel when the need arises. No instruction or direction given, or act performed, by Port's officers or servants shall place any responsibility upon the Port with respect to the security or safety of such vessel.

When a vessel is berthed the Master or Owner of the vessel shall comply with all relevant laws of Malaysia and the Port's operating procedures and safety requirements.

10.2 Vessels Discharging and Loading

- (a) Every vessel shall discharge or load with reasonable despatch, and where the berth is occupied or shall shortly be required, or appears to be required for another vessel, the vessel shall work overtime, including working during meal hours as may be required by the Terminal Manager.
- (b) Where a vessel fail to effect such despatch or work such overtime as the Terminal Manager may requires, the Terminal Manager may, after due warning has been given to the User order the vessel to vacate the berth and the User shall obey such order.

11. RECEIPT AND DELIVERY OF CARGO AND CONTAINERS

11.1 Document And Manifest

- (a) Before any cargo or containers are landed or discharged a true copy of inward manifest certified by the User as being correct in respect of goods to be discharged or transhipped, shall be provided to the Manager, Shipping Control or Terminal Manager. Such manifest shall contain all particulars as to gross weight, measurement, marks, numbers, contents and any other information as may be required of each package of the goods and shall be deposited at the office of the Manager, Shipping Control or Terminal Manager not less than twenty four (24) hours before the arrival of the vessel.
- (b) The User of any vessel which loads cargo or containers at any wharf shall lodge at the office of the Manager, Shipping Control or Terminal Manager a copy of outward manifest and it shall be certified as being correct and shall be furnished within seven (7) days of the departure of such vessel.

- (c) Any alteration to the information contained in the documentation after presentation by the User and any additional services required by the User shall be advised on a prescribed form.
- (d) The User shall provide the Port with all necessary information and instructions including adequate notice relating to the conditions of cargo or containers and their contents which require special handling.
- (e) The User shall further undertake to co-operate fully with the Port in arranging for speedy receiving and delivery of such cargo or containers in accordance with the requirements of the Port, the Authority and the relevant authorities.
- (f) The User shall be responsible to the Port for any loss, damage, claim or expense arising from inaccurate, incomplete or an absence of information relating to weight and the container content or the nature of the cargo, or from incorrect stowage of containers where the User has previously approved the order of loading. The Port shall be entitled at any time and at the expense of the User to reject any cargo or container not conforming to the above requirements.

11.2 When Cargo Or Containers Are Considered Landed

The delivery of cargo or containers shall not be considered to have been made to the Port until cargo or containers have been landed or disconnected from the vessel's gear. 'Landed' means landed on any wharf deck or trailer or other vehicles designated for such use by the Port whether own by, or being used with permission of the Port.

11.3 Damaged during Cranage

Where the Port undertakes the cranage of cargo or containers to and from vessel or vehicles, the Port shall not be responsible for loss or damage in consequence of :

- (a) any of the Port cranes or the load attached thereto colliding with the rigging, spars 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 cargo or containers by persons, other than the servants of the Port acting within the scope of their employment.
- (c) the vessel having improperly or insecurely moored.

11.4 **Loading Or Discharging In Rain**

No cargo or containers which are likely to be damaged by rain water shall be loaded or discharged during rain. The Master of the vessel shall ensure that all hatches are closed during rain.

11.5 **Disposal Of Dunnages**

All stages, dunnages, planks and other articles not provided by the Port shall, after use in discharging or loading a vessel, be removed from the Port premises immediately upon completion of works.

11.6 **Refusal Of Objectionable Cargo**

The Terminal Manager may prohibit the landing of, or refuse to receive any cargo or containers which in his opinion is detrimental to the safety of the Port, or of all other cargo or containers, or things within the premises of the Port.

11.7 **"Unprotected Cargo"**

The Port shall not be liable in respect of breakage, loss of contents, damage or complete destruction of unprotected cargo or containers.

PART III

PILOTAGE AND TOWAGE SERVICES

12. **PILOTAGE SERVICES**

12.1 **Navigating In Port Pilot District**

No vessel for which pilotage is compulsory as specified by the Authority from time to time shall navigate in the Port Pilotage District without the assistance of a pilot.

12.2 **Requirement To Use Port's Pilotage Services**

No vessel requiring pilotage for the purpose of approaching or leaving or operating within the Port shall engage a pilot other than a pilot provided or authorised by the Port who is duly licensed to act as a pilot in the Port Pilotage District by the Pilotage Committee of the Authority.

For the purpose of performing the pilotage services, the Port may at any time make use of its own pilots (who are under its employment) or pilots supplied by another party (pilot contractor) under a contract with the Port (hereinafter referred to as contract pilot) provided the contract pilots are duly licensed by the Pilotage Committee of the Authority.

12.3 **Use of Pilotage Services**

Pilotage services shall be undertaken by the Port upon the following terms and conditions:

- (a) Pilotage services in respect of an incoming vessel shall be deemed to commence only when the pilot has boarded the vessel and to end when the vessel has been anchored, moored or otherwise secured to the satisfaction of the Master.
- (b) Pilotage services in respect of an outgoing vessel shall be deemed to commence only when the pilot has boarded the vessel and to end when he leaves the vessel.
- (c) Pilotage services in respect of any other movement of a vessel shall be deemed to commence when the pilot has boarded the vessel and to end when he leaves the vessel.
- (d) A pilot supplied by the Port whilst engaged in any pilotage act shall be deemed to be the servant only of the Master or Owner of the vessel under pilotage and neither the Port nor the pilot contractor shall be liable for any loss or damage occasioned by any act, omission or default of such pilot.

- (e) The Master or Owner of the vessel, navigating in circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel by fault of the navigation of the vessel in the same manner as he would be if the pilotage were not compulsory.
- (f) When a Port's pilot taking over the conduct of a vessel finds that for any reason such vessel is not, in his opinion, fit to proceed in her existing condition, he may refuse to continue the services for which he has been engaged and may anchor or otherwise secure such vessel as safely as possible.
- (g) If a Port's pilot finds that a vessel of which he has the conduct appears to be overloaded he shall have the right not to undertake the pilotage of the vessel.
- (h) Vessels requiring the services of any Port's pilot shall comply with the Authority Act and By-laws and other Acts, rules and regulations issued and enforced by relevant Government Authorities and with all International Conventions ratified by the Government of Malaysia relating to pilotage and pilotage operation including any other direction stipulated by the Port from time to time for the safe pilotage and convenience of pilotage operation.

13 **TOWAGE SERVICES**

13.1 **Requirement To Use Port's Towage Services**

No vessel requiring towage for purpose of approaching or leaving or operating within the Port shall make use of any towage or other assistance other than that provided by the Port save with the written permission of the Chief Marine Officer.

13.2 **Use Of Towage Services**

Towage and assistance connected with the towage of vessels shall only be undertaken by the Port upon the following terms and conditions :

- (a) The towage shall be deemed to commence only when the tug is in a position to receive orders direct from the tow or to pass or to receive the tow-rope, whichever is the earlier, and to end when final orders from the tow to cease attending have been carried out or when the tow-rope has been finally slipped and the tug is safely of the tow, whichever is the later.
- (b) The Master and crew of any tug whilst performing towage services shall be deemed to be the servants of and shall be under the order and control of the Master of the vessel receiving the service.
- (c) The Port shall not be liable to the User for any loss or damage which it may suffer. The User shall bear, pay and indemnify the Port against any loss or damage which it may suffer arising during the course of, or in

connection with, the towage services from any cause whatsoever including unseaworthiness, unfitness or breakdown of the tug, its equipment or towing gear, lack of fuel, stores or speed or otherwise but not including negligence at any time of the Port, its employees or agents.

Provided that such loss or damage is not caused by want of reasonable care before and at the beginning of the towage or assistance connected with the towage on the part of the Port to make the tug seaworthy for the towage or assistance connected with the towage services.

- (d) The burden of proving any such want of reasonable care as is referred to in sub-clause 13.2 (c) shall be upon the User and the mere fact of unseaworthiness of any kind shall not be taken to be evidence of such want of reasonable care.
- (e) The Port may at any time, whether before or after the commencement of the towage services may substitute one tug for another and may tow or otherwise assist in matters connected with the towage more than one vessel at a time. The Port shall be at liberty to employ a tug belonging to other tug owners for the whole or any part of the towage services.
- (f) No sum payable by the User under the provisions of this part shall be discharged or diminished by any sums recovered by the Port from its insurers in respect of the same loss or damage, and the User shall not be entitled to be subrogated to any rights of the Port or have any right of contribution from the Port insurers.
- (g) In the event of the Port employing a tug belonging to other tug owners, for the whole or any part of the towage services, the User shall not bring any suit against the other tug owners in respect of any matter arising out of such towage services.
- (h) These Terms and Conditions shall remain in full force notwithstanding any deviation or interruption or failure in the performance of the towage services and whether or not there has been any substitution of tugs.

PART IV

RULES FOR DANGEROUS & OBNOXIOUS GOODS

14. DANGEROUS GOODS

14.1 "Dangerous Goods" means all cargo defined as dangerous or hazardous by any Statute, Statutory Instrument or Order, any Regulation or recommendation made the Government or the relevant authorities or by any local by-laws relating to the handling, storage or carriage of cargo; likewise all cargo which although not so defined, are known to have properties likely to endanger life or property.

14.2 The following shall apply to Dangerous Goods tendered to the Port :

- (a) the provision of the International Maritime Dangerous Goods Code (IMDG Code) Standards as amended from time to time;
- (b) the provision of the Port Authority Act 1963;
- (c) the provision of any of the Port By-Laws amended from time to time;
- (d) the provision of any Federation Port Rules 1953 and any matters related in accordance with the Malaysian Merchant Shipping Ordinance 1952;
- (e) the provision of the Rules and Regulations as stated in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
- (f) Provision relating to the carriage of goods by road, rail or sea, contained in any Statutory Instrument or Order made pursuant to the above Acts, Rules and Regulations and in any International Conventions or Agreements or otherwise regulations and recommendations made by the Government or other Relevant Authorities and Local By-Laws which may include the following Acts, Rules and Regulations :
 - (i) Occupational Safety and Health Act 1994.
 - (ii) Occupational Safety and Health Act 1994 (Control of Industrial Major Accident Hazard Regulations 1996).
 - (iii) Atomic Energy Licensing Act 1984 Radiation Protection (Transport Regulations 1989) and amendments made therein after.
 - (iv) Environmental Quality Act 1974.
 - (v) Environmental Quality (Schedule Wastes) Regulations 1989.
 - (vi) Other relevant Acts, Rules and Regulations pertaining to Malaysia.

14.3 Dangerous Goods shall not be presented to the Port unless permission has first been obtained. For this purpose, applications for permission shall be made by the User not less than forty eight (48) hours before the estimated time of arrival of the cargo by submitting to the Head of Dangerous Goods Unit, copies of the prescribed statutory forms stating clearly the nature of the goods, IMO Code, Class No., UN No., if application, the flashpoint, if any, the method of packing, Material Safety Data Sheet and any other material details which may be required by the Port or by any lawful authority pertaining to the carriage of Dangerous Goods.

14.4 The User shall be liable and accountable for any loss or damage caused to cargo or property or personal injury or death to persons, due to the User's omission to disclose to the Port or false declaration or misstatements made by the User to the Port of any Dangerous Goods delivered to the Port or discharge at the wharf. The User shall fully indemnify the Port for loss, damage, injury or death suffered by the Port or for any claims made against the Port by any party affected by such an act of omission or false declaration or misstatement.

14.5 The Port reserves the right to reject any Dangerous Goods if in the opinion of the Port, there are no suitable facility or expertise available to render a safe and proper handling, storage or transportation of such goods, and the User shall have no claim or any right of recourse against the Port for its refusal to accept such goods.

15. OBNOXIOUS CARGO

15.1 For the purpose of these Terms and Conditions "Obnoxious Cargo" means any of the following kinds of cargo, which are not included in the category of Dangerous Cargo:

- (a) substances, which can cause discomfort to or adversely, affect personnel handling them;
- (b) substances which will taint or contaminate other cargo or containers in close proximity;
- (c) substances which will damage other cargo by contact or by shifting e.g. carbon, graphite, white pigments, greases and other 'dirty cargo';
- (d) hygroscopic or deliquescent goods or goods in a moist or wet condition such as hides;
- (e) cargo liable to infestation by insects, mites, weevils or grubs or any other cause which might require fumigation;

- (f) cargo of liquid or semi-solid nature and goods liable to qualify with a rise in temperature such as reasonably could be foreseen; or
 - (g) any other cargo which are likely to adversely affect other cargo or containers or to present any special difficulties in handling.
- 15.2 Obnoxious goods shall not be presented to the Port unless permission has first been obtained. For this purpose, application for permission shall be made by the User not less than forty eight (48) hours before the estimated time of arrival by submitting to the Head of Cargo Division all relevant details which may be required by the Port or any lawful authority pertaining to the carriage or obnoxious goods.

PART V
TARIFF AND OTHER CHARGES

16. **TARIFF**

- 16.1 The User shall be responsible and liable to pay in Malaysian currency within fourteen (14) days of receipt of invoice from the Port for: -
- (a) all dues and charges payable by the User to the Port as specified in the Tariff of Charges as set out in Appendix I hereto for all services rendered by the Port;
 - (b) any costs and expenses which may be incurred by the Port in complying with any Government or the Authority's regulations requiring the movement, treatment, removal or destruction of dangerous or obnoxious goods, infested, contaminated or condemned goods or the treatment of the Port's premises as a result of any infestation or contaminated arising from such goods; and
 - (c) all costs and expenses incurred by the Port arising out of or incidental to the failure by the User to observe these Terms and Conditions.
- 16.2 In the event the invoices are not paid by the User within the said thirty (30) days after the date of invoicing, the Port shall have the right to take the following actions: -
- (a) The Port may notify the User to pay relevant invoices within one (1) week from the date of such notice, failing which the User will incur a penalty at the rate of one point five percent (1.5%) per month or part thereof, calculated on the amount outstanding from the date of expiration of the said one (1) week.
 - (b) As long as the invoices mentioned under Clause 16.2 above are not being paid or the amount mentioned under Clause 16.2(a) above has not been received, the Port will have the right to demand payment in advance for each vessel of the User calling at the Port from the respective dates of notification.

PART VI

LIMITATION OF LIABILITY

17. LIMITATION OF LIABILITY

17.1 Unless otherwise stated herein, the Port as a bailee, shall not be liable for:

- (a) any loss (whether direct or consequential);
- (b) any damage (whether direct or consequential) and
- (c) costs, expenses, injury or death of whatsoever nature or kind and howsoever sustained or occasioned and whether to property or persons unless it can be proved that such loss, damage, costs, expenses, injury or death of the type specified in Clause 17.2 to 17.7 was caused by the fault or privity of the Port or its employees or agents and in the event the liability of the Port shall in no case exceed the financial limits set out hereunder :-

17.2 Physical Loss Or Damage to Container

In respect of physical loss or damage to container, the Port shall pay the depreciated value of the container or the reasonable costs of repair, whichever is the lesser, PROVIDED ALWAYS that the liability of the Port under this paragraph shall not exceed: -

- (a) RM2,500.00 for a 6.1 metres (twenty-foot equivalent) dry container;
- (b) RM5,000 for any other dry container exceeding 6.1 metres;
- (c) RM10,000.00 for an insulated, refrigerated or any tank container in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.

17.3 Physical Loss or Damage to Cargo in Containers

In respect of direct physical loss or damage to cargo in containers, the Port's liability under this paragraph shall not exceed; Two Thousand Five Hundred (RM2,500.00) in the case of a container of up to 6.1m (twenty-foot equivalent) and Five Thousand Ringgit (RM5,000.00) for a container exceeding 6.1m in length in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.

17.4 Physical Loss or Damage to Cargo Shipped in Bulk or Breakbulk

In respect of direct physical loss or damage to cargo shipped in Bulk or Breakbulk, the Port's liability shall not exceed ten times (10x) of the port charges for each ton of the cargo imported or exported in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.

17.5 Physical Loss or Damage to Vessel and Its Equipment

In respect of direct physical loss or damage to vessel or its equipment, the Port shall pay the depreciated value of such vessel or the reasonable costs of repair, whichever is the lesser, PROVIDED ALWAYS that the liability of the Port under this paragraph:

- (a) shall not exceed RM250,000 in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event ; and
- (b) that the sum of RM250,000 shall be inclusive of any liability or the port pursuant to the preceding Clauses 17.2 to 17.4 arising out of any one incident or series of related incidents occurring in connection with or consequent upon one event.

17.6 Physical Loss or Damage To Property

In respect of physical loss or damage to any property not otherwise referred to in clauses 17.2 to 17.5, the Port shall pay the depreciated value of such property or the reasonable costs of repair, whichever is lesser, PROVIDED ALWAYS that the liability of the Port shall not exceed the aggregate of RM2,500 in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.

17.7 Death of Injury

In respect of death or injury, the Port shall pay an aggregate sum, which shall not exceed RM25,000 in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.

17.8 Indemnity

- (a) The User undertakes that no claim be made against any employee or agent of the Port which imposes or attempts to impose upon any of them any liability whatsoever in connection with the cargo, containers or vehicles and if any such claim should nevertheless be made, to indemnify the Port against all consequences thereof.

- (b) The user shall defend, indemnify and hold harmless, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Port under the Terms and Conditions herein, and without prejudice to the generality of this paragraph, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Port, its employees and agents.

17.9 Liability in Possession of Cargo / Containers

The Port shall have no liability whatsoever for any loss or damage to the cargo or containers or vessel equipment at the following points of event, however caused:

- (a) After the cargo, containers or vessel equipment have passed over the vessel rail, or if applicable on the vessel's ramp during loading;
- (b) Before the cargo, containers or vessel equipment have been landed, or if applicable, landed on the vessel's ramp during discharging;
- (c) After the cargo or containers have been delivered to the User or its agent. Delivery meant the cargo or containers have been mounted on the User's or it's agent transport vehicles in the Port;
- (d) Before the cargo or containers have been received by the Port. Received meant the cargo or containers have been off-loaded from the User's or it's agent transport vehicles in the Port;
- (e) In respect of cargo stuffed into container(s) by the Port at its Container Freight Stations, when the cargo has been stuffed into the container (s), and "clean" container packing lists are issued by the User;
- (f) In respect of cargo unstuffed from container (s) by the Port at its Container Freight Stations, before the container (s) is unstuffed and received into the Container Freight Stations;
- (g) In case of refrigerated containers packed by or on behalf of the User, the User undertakes that the cargoes have been properly stowed in the container and that the thermostatic controls have been adequately set by him before receipt of the container by the Port. The User's attention is drawn to the fact that refrigerated containers are not designed to freeze down cargo which has not been presented for stuffing or below its designated carrying temperature, and the Port shall not be responsible for the consequences of cargo presented at a higher temperature than that required for the storage in the Port and transported through the Port.

If the above requirements are not complied with, the Port shall not be liable for any loss of or damage or deterioration to the cargo, howsoever arising.

17.10 Liability On Receipt and Delivery of Cargo or Containers

- (a) Receipts either by endorsement on, or issuance by the Port, of documents accompanying the transfer of cargo or container from the User to the Port, shall relate only to the outward appearance of the packages / containers, and shall not be construed as relating to the contents or state of the contents / container.
- (b) The Port shall not be liable to the inherent loss and damage of the contents of the cargo or containers, subsequent loss, damage and deterioration of the contents or cargo while in the custody of the Port.

17.11 When Liability Attaches to More Than One Party

Where liability attaches to more than one party which can be defined as the "User", such liability shall be joint and several and may be enforced against any one or more parties.

17.12 The Port's Employees and Agents Shall Have Benefit of Provision

Without prejudice to the foregoing, every such employee or agent of the Port shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract, the Port, to the extent of those provisions, does so not only on its behalf, but also as agent and trustee for employees and agents.

17.13 Notification of Loss and Damages and Intention to Claim

- (a) The User shall notify and obtain acknowledgement of the Port of any disputes and discrepancies on the conditions, markings and quantities of cargo or containers, at the points of delivery as described in clause 17.9 to the User either by land by sea.
- (b) Claims of loss and damage to cargo or containers shall be considered null and void in absence of the notifications mentioned in this paragraph.
- (c) All notifications of claims in respect of any loss, damage, costs, expenses, death or injury must be made to the Port by the User within seventy-two (72) hours from the time of occurrence causing such loss, damage, costs, expenses, death or injury.

17.14 Joint-Survey

- (a) Upon notification of the claims for damages and loss referred to in these Terms and Conditions, the User must give reasonable time for all parties related to the claims to conduct joint-surveys where applicable to ascertain the cause and extent of loss and damage.

- (b) Cargo and containers and other property related to the claims shall not be removed or its state and conditions altered by the User before the joint-survey is conducted.
- (c) While consensus on the extent of loss and damage may be reached by all parties related to the claim during the joint-survey, the observation on the cause of damages may remain confidential with each individual party related to the claim.

17.15 Defenses and Limits For The Port

The defenses and limits of liability provided for in these Terms and Conditions shall apply in any action against the Port for any loss, damage, costs, expenses, death and injury whether the action be founded in contract or in tort.

17.16 Cost For Suit or Action

If any damages have been ascertained by agreement between the party claiming them and the Port, and other person interested, may require by notice at any time within the period referred to in clause 17.13 that such damages shall be ascertained by suit or action, and shall in suit or action be joined as a party thereto and shall be solely liable for any costs which, but for this provision, might have been awarded against the Port.

PART VII

EXCLUSION OF LIABILITY FOR THE PORT

18. EXCLUSION OF LIABILITY FOR THE PORT

18.1 Notwithstanding anything to the contrary, contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any death or injury or illness to person or loss of or damage to any vessel, property, plant, equipment, container or cargo or any consequential loss therefrom arising (hereinafter referred to as "the circumstances described in Clause 18.1"), arising as a result of:

- (a) storms, typhoons, tornadoes, tidal waves, tempest, flood, act of God, act of war, civil war, hostilities, acts of terrorists; or
- (b) fire, lightning or explosion; including any water or chemicals or measures used in extinguishing any fire; or
- (c) any criminal or tortuous acts by persons known or unknown other than the Port or its employees and / or servants; or
- (d) inherent liability due to wastage in bulk weight, latent defects, contamination or inherent defects, vice or natural deterioration of cargo; or
- (e) spillage, leakage from any tanks or pipelines; or
- (f) any failure or malfunction of insulated (reefer) containers, refrigeration equipment and gaseous refrigerants; or
- (g) loss of a particular market; or
- (h) the act or omission of the User or the owner of the containers or cargo or their respective employees, servants, agents or sub-contractors; or
- (i) any defective or malfunctioning twist locks; or
- (j) work carried out in loading and / or discharging of containers onto or from a non-purpose built cellular vessel; or
- (k) any acts or omissions of Klang Port Authority or any government or semi-government port, body or any other Authorities; or
- (l) any rust, damage or deterioration caused by rain, exposure or other of climatic conditions, or by any other gradually operating cause; or

- (m) vermin, white ants or other rodents, pests and insects; or
 - (n) any failure or any consequential loss resulting from failure to forward, misforwarding and delaying in forwarding or misdelivery, non-delivery or delay in delivery of cargo and containers; or
 - (o) any saving or attempting to save life or property at sea or on land; or
 - (p) any latent defects not discoverable by due diligence; or
 - (q) any rust, damage, or deterioration caused by rain exposure or other action of climatic condition or by any other gradually operating cause.
- 18.2 Notwithstanding anything to the contrary contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any damage to containers of the following nature which shall be deemed not to have been caused by the negligence of the Port, its employees, servants or agents, being damage to:
- (a) roof rails: damage thereto within 60cm (sixty centimeters) of the corner castings in any direction; or
 - (b) roof puncture: within 60cm (sixty centimeters) of the corner castings; or
 - (c) door mouldings: cracked or split door mouldings without evidence of physical damage; or
 - (d) container walls, door, floor or roof: bulging or warping caused by incorrectly loaded or inadequately secured cargo or by uneven distribution of cargo.
- 18.3 Notwithstanding anything to the contrary, contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any loss or damage to containers or cargo or delay in connection with the vessel, containers or cargo or their delivery or any detention of the vessel, containers or cargo arising as a consequence of any industrial action or any action taken pursuant to such industrial action, including (without prejudice to the generality of the foregoing) strikes, lockouts stoppage and restraint of labor, combination of scarcity of labor, labor bans, overtime and work bans and limitations, demarcation disputes, go-slow and work-to-rule.

- 18.4 Notwithstanding anything to the contrary, contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any loss or damage to any property or death or injury to persons in premises occupied and facilities controlled by the Users within the Port's premises where such loss, damage, death or injury is not caused by the port, its employees, servants, agents or sub-contractors and the occupiers of such premises and facilities hereby indemnify and shall keep indemnified the Port, its employees, servants, agents and sub-contractors against any claims for such loss, death or injury.
- 18.5 Notwithstanding anything to the contrary, contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any injury or death of any person or loss or damage to any property otherwise than in the circumstances and to the amount not exceeding the limits respectively set out in Clause 17.7 herein and, without prejudice to the generality of the foregoing, any injury to or death of any person caused or contributed to by a container or cargo or any inherent vice thereof or caused or contributed to by the storage, carriage, handling or other dealings with a container or cargo by persons other than the Port or its servants or agents, or sub-contractors and the User hereby indemnifies and shall keep indemnified the Port, its servants, agents and sub-contractors and any employee thereof against all actions, proceedings and claims whatsoever made against them in connection with or arising out of or in any way incidental to such injury, death, loss or damage in the above circumstances.
- 18.6 Notwithstanding anything to the contrary contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any loss of profits or otherwise whatsoever caused including but not without limitation, any delays in discharging or loading containers or other cargo caused by inclement weather, mechanical failure in any cranes or other equipment.
- 18.7 Notwithstanding anything to the contrary contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any breakage, loss of content, damage or complete destruction of unprotected cargo or containers.
- 18.8 Notwithstanding anything to the contrary contained in these Terms and Conditions, the Port shall not in any event be liable to the User for any of the circumstances described in Clause 18.1, arising as a result of:
- (a) any cause arising without the actual fault or privity of the Port or without any fault or neglect of its employee, agent or servant; or
 - (b) any other acts or circumstances beyond the reasonable control of the Port.

PART VIII

GENERAL CONDITIONS, COVENANTS & RULES

19. COVENANTS BY THE PORT

- 19.1 In providing its services the Port shall as far as possible carry out its operations in an efficient manner and provide appropriate and adequate operational labour, and related facilities.
- 19.2 The Port shall endeavour to provide proper care for and control of the User's cargo, containers and equipment within the Port.
- 19.3 The Port shall endeavour to provide sufficient handling area for the volume of containers and cargo as indicated by the User to be loaded or discharged.
- 19.4 The Port will allow reasonable access to the User and their servants and agents for the purpose of performing and carrying out the business and agency requirements of the User relating to the services supplied by the Port to the User PROVIDED ALWAYS THAT such User or persons shall observe all safety regulations and standing instructions made by the Port which may be operative at that time.
- 19.5 Except under special arrangement previously made by the User with the Port in writing, the Port shall not be bound to accept any cargo and or container containing cargo or break-bulk cargo in either case is of high value or requires special care including but without limitation to the excepted articles as set out in Appendix II hereto. The User shall give to the Port at least twenty four (24) hours prior notice of its intended delivery whether by containership or container-transporter to the Port of such cargo, to enable the Port to decide whether or not it will accept such. The Port shall be entitled to impose such further terms and conditions (including but not limited to the effecting of appropriate insurance and the provision of appropriate security services) as the Port in its sole discretion may think fit. Under no circumstances shall the User deliver to the Port any such cargo or container containing any such cargo without the prior written approval of the Port. If such cargo or any container containing such cargo is delivered to the Port without its prior written approval, such cargo will at all times be at the sole risk of the User and the Port shall not be liable for any loss or damage howsoever caused to such cargo.

20. CONDITIONS OF SERVICES

- 20.1 The Port shall not be responsible for the wrong or non-delivery of cargoes, which are not marked or erroneously or deficiently marked or which have numerous old or imperfectly erased marks thereon nor in cases where more than one

consignment of cargo or apparently similar character or appearance in the same vessel bear the same or similar marks.

- 20.2 Damaged cargo / container shall be handled subject to the following conditions:
- (a) Damaged cargo and containers shall be surveyed jointly by the User's representative and the Port and received by the Port.
 - (b) Damaged packages or cargo are repaired, restrapped or otherwise re-conditioned by the User to the satisfaction of the Port.
 - (c) Receipt of such cargoes shall be endorsed "damaged cargo" to be surveyed by vessels agent and the Port.
 - (d) Damaged containers shall be received only if they can be handled by the port's equipment.
 - (e) A survey report in the form of Equipment Interchange Receipt shall be issued for damaged containers received by the Port and shall be accountable for contents or value and subject to all the clauses governing the relative Bill of Lading.
 - (f) Where damaged packages or containers have been surveyed in the Port, the consignee or agent of the vessel shall take delivery at the first opportunity.
- 20.3 Cargo and containers which are subjected to Customs Examination requirement, shall be advised to the Port in the prescribed form. Any content taken for samples shall be declared to the Port and shall be taken out from the Port. Clear notification shall be endorsed on the packages with the number of samples taken. In the case of containers, the door of container must be closed and padlocked after completion of Customs Examination. The Port shall not be responsible for shortages of contents for packages where samples were taken without their declaration make known to the Port.
- 20.4 Where the Port provide adequate storage area in the Container Freight Station, it shall be the responsibility of the User to provide tally clerks for the tallying of cargo during the stuffing / unstuffing into / from containers.
- 20.5 The Users are not allowed to park their vehicles, trailers, prime movers, etc. at any area in the port other than at designated parking areas.
- 20.6 Users entering the port must be in possession of a valid pass issued by a competent officer of the Authority or the Port and shall at all times abide by the rules and regulations promulgated or enforced from time to time by the Port regarding the conduct of persons within the port and shall indemnify and keep indemnified the Port at all times from and against all actions, proceedings and claims whatsoever brought against the Port and / or costs and expenses incurred

by the Port which arise directly or indirectly from the actions or omissions of any User's visitor causing or relating to any of the following matters :

- (a) loss of life or personal injury to any User's visitor.
- (b) loss of or damage to the property of any User's visitor.
- (c) loss of life or personal injury to any person which may be directly or indirectly attributable to the negligence of any User's visitor.
- (d) loss of or damage to the property of any person which may be directly or indirectly attributable to the negligence of any User's visitor.
- (e) consequential loss arising from any of the above sub-clauses.

20.7 The Port shall be entitled to:

- (a) retain possession of any cargo passing through or stored in the Port.
- (b) retain possession of cargo or prohibit any vessel from leaving the Port until payments of all charges in respect of such cargo or vessel are made.

20.8 The Port shall be entitled to inspect all Bills of Lading, consignment notes, freight lists, manifests of cargo and any other documents whatsoever relating to any vessel, vehicle or cargo which have used, are using or will be using or have been, are, or will be present in the Port. The Manager, Shipping Control / Terminal Manager may board any vessel or enter any vehicle using the Port in order to inspect such documents.

20.9 The Master of any vessel using the Port shall at all times obey the direction of the Manager, Shipping Control / Terminal Manager and shall shift or remove such vessel upon request without compensation.

20.10 If in the Port's opinion there are any circumstances which may prevent or hinder the safe handling, storage, or transport of container or cargo, the Port may refuse to handle, store or transport the same and shall give notice of such refusal to the User and upon receiving such notice the User shall remove container or cargo from the Port at its own risk and expense.

20.11 If any services are ordered from the Port and are cancelled for any reasons other than because of default of the Port, all fees for the same shall remain payable to the Port and any refunds or credits shall be at the Port's discretion.

20.12 User intending to bring into the Port vehicles, equipment or machinery of a weight or size, which might exceed the limit set by the Port, shall obtain permission in writing from the Port. Failure to obtain such permission shall make the User liable for any damage done to the Port.

20.13 All cargo, containers and all documents relating to cargo and containers shall be subject to a particular and general lien respectively for charges due to the Port in respect of such cargo and / or containers from the User.

20.14 The User shall procure that its employees, contractors, agents and customers, with whom it has entered into any arrangement shall observe, comply with and be bound by these Terms and Conditions, the special conditions in the Tariff, and all rules and regulations applicable directly or indirectly in relation to any cargo and / or container handled by the Port for or on its behalf or at its request or which the User is instrumental in delivering to the Port for handling.

21. CONVENANTS BY USER

21.1 The User shall ensure that:

- (a) all export cargo and container presented for shipment by the User shall be accompanied by documents containing all relevant details as required by the Port.
- (b) all cargo shipped by the User is in every manner safe and secure in accordance with all lawful requirements for handling by the Port.
- (c) all containers shipped by the User are in every manner safe and comply with all lawful requirements for handling by the Port and shall not exceed their rated gross weight.
- (d) the container or cargo packing and stowage comply with the International Safety Rules, Regulations and best trade.
- (e) any information given as required shall be accurate. The User shall not hold the Port liable and shall indemnify the Port for any wrong doings as a result of any inaccuracies contained in the information supplied.
- (f) the User shall respect and maintain the confidentiality of information acquired as a consequence of the electronic link to the Port's computer system and shall not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose.
- (g) the User shall not divulge his ID and password to unauthorized person or persons.
- (h) the User shall comply with the software standards that the Port may impose from time to time and shall at its own cost provide the hardware and software necessary for the transmission and receipt of information.

APPENDIX I

(Which shall be taken, read and construed as an integral part of these Terms and Conditions of Business)

TARIFF OF CHARGES

APPENDIX II

(which shall be taken, read and construed as an integral part of these Terms and Condition of Business)

EXCEPTED ARTICLES

1. Gold
2. Silver
3. Bullion, coins and currency notes
4. Precious stones
5. Precious metals
6. Securities for cash and stamps
7. Documents and title deeds
8. Opium, essential oils and similar valuable drugs
9. Lace, furs and feathers
10. Works of Art and paintings
11. Scientific instruments of all kinds
12. Revenue of postal stamps
13. Gold, silver and platinum watches
14. Precious metal jewellery works
15. Antiques
16. All other previous or specially valuable articles.