

**MOMENTUM LOGISTICS LLC**  
**STANDARD TERMS AND CONDITIONS**

Notwithstanding anything to the contrary, these Standard Terms and Conditions (“**STCs**” or “**Conditions**”) shall apply to all Services provided by Momentum Logistics LLC (directly or through any of its agents or subcontractors) (the “**Company**”), a subsidiary of Gulftainer Company Ltd., Sharjah, UAE, including but not limited to Freight Forwarding, Warehousing, Distribution, Logistics, General Container Repair and Transportation. The Conditions hereof may be subject to revision, change, modification and/or alteration by the Company provided the same is in writing. If a Customer’s acceptance document, purchase order or any other documentation, received by the Company before or after notification of these Conditions, contains terms or conditions additional to, or at variance with or conflicting with the STCs, then it is agreed by the Parties that every such addition, variation or deviation shall be considered null and void, so far as it is contrary to or inconsistent with the STCs.

**1. Definitions**

In these Conditions:

**Additional Insurance** means insurance arranged by the Company in addition to the Liability Insurance, at the request of the Customer, concerned shipping line, their agents or the shipper on behalf of the Customer.

**Additional Insurance Provider** means any insurance provider, which provides the Additional Insurance.

**AED** means the lawful currency of the UAE.

**Authority** means applicable agencies and authorities having jurisdiction over the seaport, customs, immigration, municipalities and related activities for the Emirate of Sharjah, UAE, and any federal authorities within the UAE.

**Container** includes, unless otherwise indicated, any vehicle, container, reefer, pallet, trailer, transportable tank, and / or similar items used for the consolidation of goods.

**Customer** means any person, whether themselves or an agent or a principal, at whose request or on whose behalf the Company provides Service(s) or to whom it sells the Containers.

**Customs Duty** means the duty charged by the customs authority for the Goods including any additional charges, penalties, fines and demurrages.

**Dangerous Goods** means any goods that contain materials or items with hazardous properties which, if not properly controlled, present a potential hazard to human health and safety, infrastructure and/ or their means of transport and shall include Cargo of any kind classified by the International Maritime Organization as hazardous cargo and shall include "dangerous goods" as defined in the International Maritime Dangerous Goods Code.

**Destination** means the place of delivery of the Goods.

**Equipment** means any plant, machinery, Container, package, case, pallet, vehicle, trailer, truck or wagon of any description which is not owned or leased by the Company and which is not Goods.

**Facilities** mean all the depots, loading/unloading areas, warehouses, storage areas, roads, paths, buildings and any other facilities operated or managed by the Company.

**Force Majeure** shall have the meaning given to it in Clause 32.

**Freight Charges** means the charges stated in the invoice and any revisions applicable thereto and payable to the Company.

**Goods** include the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a Service.

**Goods of High Value** includes bullion, precious stones, bank notes or coins, bonds, negotiable instruments or securities of any kind, cigarettes, spirituous liquor, precious metal objects, precious jewelry, and valuable works of art, antiques, human remains, livestock, bloodstock, pets and plants.

**Instructions** mean a written statement of the Customer's specific requirements.

**Liability Insurance** means the insurance policy obtained by the Company towards covering any proven liability against the Company caused while providing its service hereunder or in connection therewith.

**Owner** includes the owner, shipper or consignee of the Goods and may include any other Person who has or may have a legal or equitable relationship to the Goods at a relevant point of time and anyone acting on their behalf.

**Party** means either the Customer or the Company and Parties shall be construed accordingly.

**Person** includes natural persons or anybody or bodies corporate.

**Policy Exclusions** means all the exceptions, exclusions, disclaimers and conditions thereto mentioned in the Liability Insurance.

**Policy Wordings** means the terms and conditions including the Policy Exclusions of the Liability Insurance.

**Reefer Goods** means refrigerated Goods.

**Services** means all the services and activities the Company (or its subcontractors) provides to the Customers, including but not limited to those listed on page 1, paragraph 1 above.

**Tariff** means the Company's schedule of charges for the Services which may be subject to change from time to time.

**Transporter of Choice** means the transporter of any mode, chosen and appointed by the Customer to transport the Goods at any leg of the shipment.

**UAE** means the United Arab Emirates.

**VAT** means Value Added Tax.

**Vehicle** means any vehicle owned, leased, hired or used by the Company including but not limited to any trailer or pick up and the trailers attached thereto.

Capitalised terms used but not defined in this STC shall be interpreted in accordance with industry norms.

## **2. General Conditions and Application of STCs**

- (a) All activities of the Company in course of business, whether gratuitous or not, are subject to:
  - i. the provisions of these Conditions, and;
  - ii. the provisions of the Tariff or any other applicable tariff, if any.
- (b) Use of the Facilities and Services shall constitute consent to the STCs and evidence an agreement with the Customer who shall abide by all the Conditions.
- (c) Notwithstanding anything to the contrary, the rights of any Customer to utilize the Facilities shall be subject to the prior approval of the Company.
- (d) The Company shall, at its discretion, arrange for the Services or any part thereof, to be carried out by one or more sub-contractors or agents.
- (e) These STCs shall govern the relationship between the Company and any third party entering into or using the Facilities whether or not the third party is a Customer. The Company shall be entitled to rely on the limits of and exclusions of liability within these STCs as against any Customer or other person entering into or using the Facilities. The Customer warrants that it will bring these STCs (including the limits and exclusions herein) to the attention of (and ensure its compliance by) any person who the Customer may instruct to enter or use the Facilities or otherwise deal with the Company including, but not limited to, any subcontractor, agent, employee or other party instructed by the Customer.
- (f) Any Customer or other party entering or using the Facilities shall ensure that it is familiar with and that it follows any applicable legal requirements and customs procedures including regulations, instructions or directions issued by the Company which relate to the use of the Facilities.
- (g) The following provision shall be paramount in so far as such provisions are inconsistent with the provisions of Clause 36 of these Conditions whereby the Company undertakes or arranges the carriage of Goods or Containers and Services connected therewith.  
In so far as these Conditions are inconsistent with the provisions of any applicable Tariff, these Conditions shall prevail.

## **3. Hours of Operation**

Except for UAE public holidays and subject to any Force Majeure events, the Company's head office operates Sunday through Thursday between 8am to 5pm and the Facilities are available and operational between 7am to 11pm Sunday through Thursday. On a case to case basis and depending on business requirements, the Facilities may remain open for additional hours.

## **4. Safety, Security and Environment**

Customers shall fully adhere to all applicable safety, security and environmental guidelines of the Company as well as all applicable laws and regulations relating to safety, security and environment.

## **5. Compliance**

- (a) Customers shall fully comply with all applicable laws and regulations.
- (b) In conformity with the Company's Corporate Governance, Anti-Corruption and Compliance Policy dated 17<sup>th</sup> January 2017 (as may be amended and updated on the Company's official website from time to time) and which is deemed incorporated into this STC by way of reference and forms an integral part hereof ("**Policy**"), the Customer: (a) represents and warrants that it is and shall remain, during the term of this STC, in compliance with all

applicable laws, regulations and codes in respect of this STC or any other transaction involving the Company; and (b) has not and will not, directly or indirectly, in connection with the performance of the Services or otherwise on behalf of the Company, engage in any prohibited conduct.

- (c) The Company and/or any of its designated representatives shall have the right to access, audit and review the books and records of the Customer, and to keep copies thereof, to the extent relevant to this STC provided such access is reasonable as to scope, place, date and time. The Customer shall fully and in a timely manner cooperate in any review or audit conducted by or on behalf of the Company, including responding accurately and completely to all inquiries and providing any requested documents.
- (d) In the event the Customer fails to comply with this clause, the Company may terminate the relationship immediately by giving written notice and shall have no further obligation or liability. The Customer shall indemnify and hold harmless the Company against any and all claims, losses or damages arising from or related to termination or breach of the Policy, in any manner whatsoever.

## **6. Obligations of the Customer**

- (a) The Customer warrants that it is either the Owner or the authorized agent of the Owner of the Goods and that it is authorized to accept and is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner of the Goods.
- (b) The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
- (c) The Customer shall give sufficient and executable Instructions to the Company.
- (d) The Customer warrants that the description and particulars of the Goods are complete and accurate.
- (e) The Customer warrants that the Goods are properly packed, marked, labelled and stowed in a manner appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods except where the Company has accepted Instructions in respect of such Services in deviation of the foregoing.

## **7. Freight Forwarding**

- (a) Surcharges are subject to validity i.e. valid at the time of shipment (VATOS) basis and will be applicable on the prevailing date of the shipment.
- (b) Rates are offered for general goods/in-gauge cargo only and may be higher for Dangerous Goods or odd-sized, over-sized, perishable goods.
- (c) All confirmed bookings will be subject to the availability of space at the time of shipment.
- (d) The agreed rates will be subject to General Rate Increase and Peak Season Surcharge (GRI & PSS) at the time of shipment.
- (e) Ocean freight rates and all surcharges including but not limited to Bunker Adjustment Factor (BAF), Currency Adjustment Factor (CAF), War Risk Surcharge (WRS) etc. are subject to change. Wooden pallets are subject for fumigation (if required) as per country of Destination regulations and will be billed to the Customer separately at cost.
- (f) The quote will also be subject to Terminal Handling Charges (THCs) & local charges at both ends.
- (g) Any other applicable charges for shipment/transportation within GCC countries will be additional.
- (h) All sea freight rates are:
  - i. Per consignment and
  - ii. Based on a weight/measurement ratio of 1 CBM (cubic meter) = 1,000 kg (kilograms)
  - iii. Freight tonne is in reference to weight/measure whichever is higher.
- (i) All air freight rates are:

- i. Per consignment and
  - ii. Based on a weight/measurement ratio of 1 CBM (cubic meter) = 167kg (kilograms) or 1 kg = 6000cc
- (j) All road freight rates are:
- i. Per consignment and
  - ii. Based on a weight/measurement ratio of 1 CBM (cubic meter) = 333kg (kilograms).
- (k) Rates from the U.S.A are based on "known shipper" basis only.
- (l) All rates do not include any labour charges for off-loading.
- (m) In case of short shipment, transportation charges will be charged on each point of delivery without handling and custom clearance cost.
- (n) Customs Duty should be paid in advance while submitting the original shipping documents.
- (o) Freight Charges should be settled prior to custom clearance.
- (p) In addition to any obligation towards third party shipping line, transport company, all transactions are subject to the these STCs and which is presumed to be read, understood and accepted regardless of execution thereof.
- (q) The following shall be excluded and charged separately:
- i. Any additional or special packing or fragile items
  - ii. Any extra handling due to difficult access
  - iii. Any transfer fees at Destination
  - iv. Insurance – shall be additionally arranged at Customer's cost.
  - v. Stripping of the container at the buyer's premises
  - vi. Any costs and expenses incurred for documentation

## **8. General Container Repair**

- (a) Subject to these STCs, the Services shall include manufacturing, refurbishment, maintenance and repair of Containers (whether full or empty) and shall be carried out using the Facilities, or as agreed between the Company and the Customer.
- (b) The specifications, rates and payment terms of the Services in Clause 8(a) above shall be agreed with the Customer on a case by case basis.
- (c) The Company shall not be held responsible for any damage or loss incurred by the Customer at the time of transporting the Containers serviced as per Clause 8(a) above unless such loss or damage is attributable to the Company.
- (d) These STCs shall also apply to any Containers sold by the Company or purchased by Customer (or anyone on its behalf), whether at the Facilities or at any other location outside of the Facilities which are not operated or managed by the Company (**Other Locations**) in the UAE, on such terms and conditions as may be agreed between the Parties, on a case by case basis.
- (e) With regards to the Containers sold at Other Locations, the Parties expressly agree and acknowledge that the Company does not provide any warranty (e.g. whether they are wind or water tight) or any after sales service for such Containers. Hence, such Containers are sold on a strictly 'as is where is' basis with no recourse or liability to the Company whatsoever post such sale. If any additional services are required in respect of such Containers, then these will be charged at the Company's normal rates prevailing at that time.

## **9. Transport**

- (a) In case of road transport (within the UAE), the free time for loading/unloading is three (3) hours and any time beyond that the 40' trailer detention charges are applicable at the rate of AED 100/- per hour or part thereof to a max of AED 1500/- per day and any other type of Vehicle it will be AED 200/- per hour with Max. of AED 1500/- per day. Detention charges in other areas in UAE other than Dubai and Sharjah will be billed at an additional trip rate. Detention of the Vehicle at the customs point or by any other authorities beyond two hours

for reasons not attributable to the Company shall be compensated at the rate of AED 1500/- per day up to seven (7) days, thereafter the Company may at its discretion cancel the Service and bill the Customer for the cost involved.

- (b) Transport rates quoted for transport services outside the UAE do not include border charges, documentation charges or any government fees, taxes etc. which will be for the account of the Customer.
- (c) Weight Restriction: Maximum 35 M/Tons per trailer load subject to UAE road regulations.

#### **10. Obligations and Undertakings of the Customer**

- (a) The Customer contracts and agrees with the Company on behalf of itself and as agent for all persons who have or may acquire any proprietary possessory or other rights in respect of Goods, Containers or Vehicles to be bound by the terms of this STC and by the terms of any applicable tariff and warrants that he has the authority of all such persons to contract and to agree as aforesaid.
- (b) The Customer shall give sufficient and executable Instructions to the Company.
- (c) The Customer warrants that the description and particulars of the Goods and Containers (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers, and value) are complete and accurate and that the Goods and Containers are labeled in compliance with all laws, regulations and requirements that may be applicable.
- (d) The Customer warrants that the Goods and non-empty Containers are:
  - i. properly and sufficiently prepared, packed, stowed, labeled and/or marked;
  - ii. packed in a manner adequate to withstand normal handling or storage, and
  - iii. in compliance with all laws, regulations and requirements that may be applicable.
- (e) In addition to the above, the Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
- (f) The Customer undertakes to supply the Company with any information concerning the nature of the Goods and their packaging as the Company may reasonably request.
- (g) To indemnify the Company in full for any or all loss, damage, injury, claim, fines and penalties of whatsoever nature, including legal costs if any that may arise or the Company may incur due to the Goods being classified as illegal, hazardous and/or otherwise.
- (h) To indemnify the Company and their insurer in full for all or any loss, damage, injury, claim, fines and penalties of whatsoever nature, including legal costs, if any, that may arise for/from any Goods wherein Goods are transported by Transporter of Choice, and shall waive the subrogation rights of the Transporter of Choice or their insurers against the Company.

#### **11. Special Instructions, Goods and Services**

- (a) Unless otherwise previously agreed in writing and without prejudice to Clause 15 below, the Customer undertakes that no Dangerous Goods shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Dangerous Goods.
- (b) If Dangerous Goods in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.
- (c) The Customer undertakes not to tender for transportation any Goods that require temperature control without previously giving written notice of their nature and particular temperature range to be maintained.
- (d) In the case of a temperature-controlled Container stuffed by or on behalf of the Customer by a third party, the Customer further undertakes that;
  - i. the Container has been properly pre-cooled or preheated as appropriate, and;
  - ii. the Goods have been properly stuffed in the container, and

- iii. its thermostatic controls have been properly set by the Customer or the third party.
- (e) If the above requirements are not complied with, the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

## **12. Breach**

If the Customer is in breach of Clauses 10 and/or 11 above, the Goods may without notice be refused receipt by the Company, be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

## **13. Insurance**

- (a) Unless provided otherwise, the Goods will not be insured by the Company. The Company shall not be held responsible for any loss, damage and or destruction of the Goods, howsoever caused provided the loss, damage or destruction is caused due to willful negligence of the Company, proven in a competent Court of law.
- (b) The Containers and Goods loaded on the Vehicles are covered by a cargo liability insurance policy for a sum of AED One Million Only (AED 1,000,000) per trip per 40' Trailer load. Value of Goods in excess of above amount per Vehicle load shall be transported solely at the risk of the Customer and in the event of any accident or damage to the Container or Goods in transit, the liability of the Company in respect of any such consignment shall in any case be limited to the above coverage.
- (c) Any insurance effected by the Company shall be subject to the usual exceptions, exclusions and conditions of the policies of the insurance provider or underwriters taking the risk.
- (d) Any Additional Insurance required could be arranged by the Company and at the Company's discretion, the charges of which shall be on account of the Customer or Owner, as the case may be.
- (e) Any claim made in connection with such Additional Insurance shall be made directly with the Additional Insurance Provider waiving all the subrogation rights against the Company.
- (f) The Company is only an agent of the Customer in respect of effecting Additional Insurance.
- (g) Unless otherwise agreed in writing, the Company shall not be under any obligation to effect Additional Insurance on each consignment but may declare it on any open or general policy.
- (h) Should the Additional Insurance Provider dispute their liability for any reason whatsoever, the Customer shall not have any recourse against the Company. The Company shall not have any responsibility or liability whatsoever in relation to the insurance notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Customers.
- (i) Without prejudice to the above (in paragraphs (a) to (h)), no insurance will be effected except for the proven liability of the Company, which is covered as per the Liability Insurance subject to the Policy Wordings and the Company's liability is capped at AED Five Hundred Thousand Only (AED 500,000).

## **14. Goods of High Value**

Unless otherwise previously agreed in writing, the Customer undertakes that no Goods of High Value shall be delivered to the Company and that the Company shall not be caused to deal with or handle such goods. If such goods are delivered without such previous agreement, the Goods may be refused receipt by the Company or stored elsewhere at the Customer's own risk and expense at the sole discretion of the Company.

## **15. Dangerous Goods**

- (a) Dangerous Goods handling will not be provided as part of any of the Services except under advance written arrangement with the Company. The Company reserves the right to refuse to handle any Goods or provide any Services which, in its judgment, is likely to harm human health, or damage other Goods or property. The handling of Dangerous Goods will be

governed by the International Maritime Dangerous Goods Code and any other regulations on the management of hazardous materials in the emirate of Sharjah and the UAE.

- (b) Dangerous Goods must be accompanied with full disclosure of the hazardous characteristics, risks and special handling requirements of such goods and in such case negotiated rates and charges shall be applied. It is the responsibility of the Customer tendering Dangerous Goods to:
  - i. to fully disclose in writing and in advance all of the Dangerous Goods' characteristics, risks and special requirements applicable to its safe loading, unloading, handling and storage in bulk;
  - ii. to obtain all necessary special permits or permissions required by the relevant authorities in connection with the loading, unloading, handling and/or storage at the Facilities; and
  - iii. to provide the Company with the details of the safety requirements to handle and store such Dangerous Goods.
- (c) The Customer shall comply and advise consignees and consignors of their obligation to comply with the terms of these STCs related to the Dangerous Goods.
- (d) The Company reserves the right to refuse to handle any Dangerous Goods or provide storage which, in its judgment, is likely to damage human health and any other Goods or property.

#### **16. Loading and/or Unloading**

The Company shall use its best endeavours to make available at the Facilities adequate container handling Equipment, comprising cranes and suitable container handling Vehicles.

#### **17. Handling of Damaged Containers**

The Company may refuse acceptance of damaged or distorted Containers or of any Container which in its opinion is in an unsatisfactory or unsafe condition, or of any non-standard Container. In the event the Company agrees to handle such Containers, a further charge may be levied in the Customer's account, in addition to the applicable Tariff, whether or not such damage or deterioration has been caused wholly or in part by the Company, its servants or agents and any damages caused due to handling of the Containers.

#### **18. Removal of Objectionable Goods**

The Company shall have the right to move any Goods or Container to another location and/or inspect any Goods or Container, for any reason whatsoever, at the risk and full expense of the Customer.

#### **19. Control of Refrigerated Goods**

The Company shall use its best endeavours to provide for the monitoring of Reefer Goods whilst at the Facilities. The checking of temperature recording Equipment when receiving and dispatching refrigerated or insulated Containers shall be in accordance with the Instructions and any faults or discrepancies shall be reported to the Customer. The Company shall not be responsible for any loss or damage to any Container or its contents or any Reefer Goods occasioned or resulting by or from any power failure or any other cause outside the control of the Company.

#### **20. Direct Delivery**

The Customer shall obtain prior approval, from any relevant third party, to take delivery of the Containers directly from the Facilities onto road transport or any other mode of transport arranged by the Customer. If, for any reason whatsoever, Goods for direct delivery are unloaded and stored at the warehouses or stacked in the open yard, full Tariff shall be applied.

## **21. Container Stripping and Stuffing**

In the event the Company is requested to handle Container stripping and stuffing, such Services shall be conducted within the Facilities as per the Tariff.

## **22. General Indemnity**

The Customer shall defend, indemnify and hold harmless the Company against all loss, damage, liability, costs and expense whatsoever arising from:

- (a) Any breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner;
  - i. any act or omission of the Customer or the Owner or any person acting on their behalf;
  - ii. the Company complying with the Instructions given by or on behalf of the Customer or Owner;
  - iii. the Company complying with the requirements of an Authority with regard to the Goods;
  - iv. the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
  - v. the nature of the Goods unless caused by the Company's gross negligence;
  - vi. if at any stage of the transit, the Customer uses any other transporter of their own choice;
  - vii. the defective condition of or overweight Containers or Vehicles.
- (b) Except to the extent caused by the Company's gross negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature in respect of the Goods, Dangerous Goods and/or Containers levied and for all liabilities, payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- (c) The Customer may, after having discharged its liability and/or obligations, bring a claim against the Company in respect of any duties, taxes, imposts, levies, deposits and outgoings arising solely out of the Company's gross negligence.
- (d) The Company shall not be liable for any loss, damage, delay, duty, tax or fine, indirect or consequential loss, non-performance of any obligations, mis-delivery, misdirection, costs, expense, death or injury of whatsoever nature and howsoever caused except as expressly specified in these STCs.
- (e) The Customer's bill of lading or other contracts of carriage, handling or storage shall include a provision prohibiting the making of any claim against the Company, its employees or agents, and a provision that the Company, its employees and agents shall have the benefit of any provisions, rights, defenses and liberties in such contract of carriage, handling or storage excluding or limiting the liability of the Customer in respect of the Goods, Containers or Vehicles as if such provisions were expressly for their benefit the Goods have been properly stuffed in the Container, and
- (f) The Customer undertakes that no claim shall be made against any employees or agents of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, Containers or Vehicles and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- (g) Without prejudice to the foregoing, every such employees or agent of the Company shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this STC, the Company, to the extent of those provisions, does so not only on its behalf but as agent and trustee for such employees and agents.
- (h) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands

arising from or in connection with the gross negligence of the Company, its employees and agents.

- (i) In this clause, "agent" includes direct and indirect sub-contractors and their respective employees and agents.
- (j) Advice and information in whatever form it may be given is provided by the Company for the Customer and/or Owner only and the Customer and/or Owner shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. The Customer shall not pass such advice or information to any third party without the Company's written agreement and the Customer and/or Owner shall indemnify the Company against any loss suffered because of a breach of this condition.

### **23. Delivery**

- (a) Goods, Containers or Vehicles are not received by the Company until the person delivering them has reported to the Company's office or area and in addition the Company has expressly agreed to receive the Goods, Containers or Vehicles. Such agreement may only be made by an agent of the Company who has actual authority to do so.
- (b) The Company may refuse to receive or unload any Goods, Containers or Vehicles at its discretion where it has reasonable cause to do so, including but not limited to, where the Company is not satisfied that arrangements have or will be made for the removal of such Goods, Containers or Vehicles.

### **24. Disposal of Abandoned/Unclaimed Goods**

- (a) If any Goods, Containers, or Vehicles are not removed from the Facilities within twenty-eight (28) calendar days of the Company having given notice in writing to the Customer, the Company shall be entitled to remove or dispose of such Goods, Containers or Vehicles at the sole discretion of the Company and at the risk and expense of the Customer.
- (b) If at any time any Goods in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.
- (c) The Goods, Containers or Vehicles for which the respective Tariff and Customs Duty have not been paid, may be auctioned and/or sold without any notice, by the Company. However, this will not release the obligation of the Customer to pay the outstanding balance payment to the Company. The Customer shall indemnify the Company from and against all losses, damages and claims which may arise subsequent to such auction.
- (d) If the Goods, as determined by the sole discretion of the Company, are unsuitable for auction, the Company may proceed with their destruction and all the charges accrued till the date of destruction along with the destruction charges and all other related charges shall be on the Customer's account. The Customer shall indemnify the Company from all losses, damages and claims which may arise subsequent to such destruction.
- (e) Containers and Goods destined for public auction or disposal shall only be released after the applicable Tariff and all the other charges have been received by the Company from the Customer.
- (f) Instructions contained in the Customer's bill of lading, waybill, delivery order, or other documents shall entitle the Company to deliver to the bearer thereof notwithstanding that such bill of lading, waybill, delivery order, or other document provides for delivery to a named party or to his order. The Company is entitled to assume that the person presenting such bill of lading, waybill, delivery order or other document is the person lawfully entitled to take delivery. The Company is not required to verify signatures appearing on such bill of lading, waybill, delivery order, or other document.

## **25. Description of Goods**

The Company will not be liable to the Customer if the quantity, quality, weight etc. of the Goods differs from the Customer's description unless the differences are significant and the Company had the necessary means and knowledge to identify the discrepancies.

## **26. Loss or Damage**

Subject to the exclusions of liability in these STCs, and subject to the terms and exclusions of the Liability Insurance, to the extent that it is proved beyond doubt that the claim arises from gross negligence of the Company, its employees, agents or sub-contractors, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated.

- (a) Physical loss of or damage to Goods, but not exceeding the least of:
  - i. the value of the Goods lost or damaged; or
  - ii. a sum at the rate of AED Thirty (AED 30/-) per kilo of the gross weight of any Goods lost or damaged, subject to a limit of AED Twenty Thousand (AED 20,000/-) per package or unit, whichever shall be the least.
- (b) In case of all other claims:
  - iii. the value of the Goods that are the subject of the relevant transaction between the Company and Customer; or
  - i. a sum at the rate of AED Thirty (AED 30/-) per kilo of the gross weight of the Goods that are the subject of the relevant transaction, subject to a limit of AED Twenty Thousand (AED 20,000/-) per package or unit, whichever shall be the least.
- (c) For the purpose of this Clause 26:
  - i. the value of Goods is the invoice value alone and shall not include freight and insurance or any Customs Duty, import duty, VAT or tax incurred on the Goods in respect of their carriage;
  - ii. the value of the Customer's Container or Vehicle is its lease value if leased by the Customer and if owned by the Customer it is the market value at the place where the loss or damage occurred.

## **27. General Liability**

The Company shall not have any liability whatsoever for claims arising from:

- (a) an act or omission of the Customer or Owner or any person acting on their behalf;
- (b) the Company complying with the Instructions given by or on behalf of the Customer or Owner;
- (c) an act or order of any Authority;
- (d) the insufficiency of the packing or labeling of the Goods or Containers except where such Service has been provided by the Company;
- (e) the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any Person acting on their behalf;
- (f) the nature of the Goods;
- (g) the defective condition of or overweight Containers or Vehicles;
- (h) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour;
- (i) explosion, fire, flood or storm;
- (i) the breakdown of or failure of any handling Equipment of the Company, providing the Company has complied with reasonable testing and maintenance standards for the Equipment as are customary in the Company's business and jurisdiction;
- (k) the breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to the Company, it being agreed that the Company is under no obligation to have available any auxiliary power supply; or
- (l) any cause, which the Company could not avoid, and the consequences whereof it could not prevent by the exercise of reasonable diligence.

## **28. Limitation of Liability**

If, despite the exclusions of liability in these STCs, the Company is held to be liable in respect of any claim and such liability is not limited by the provisions of clause 26, the Company's liability shall be limited to twice its charges to the Customer in respect of its Services to which the claim is most closely connected.

## **29. Charges**

- (a) The Customer shall pay to the Company in cash or as agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- (b) When the Company is instructed to collect freight, duties, charges or other expenses including the Customs Duty from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other Person when due.
- (c) On all amounts overdue to the Company, including the Customs Duty the Company shall be entitled to interest, calculated at 12% per annum during the period that such amounts are overdue until the date of actual payment in full.
- (d) Any and all payments due from the Customer to the Company are exclusive of any applicable VAT, levies, duties or of similar nature imposed by the UAE Federal Tax Authority and will be charged separately and payable by the Customer.

## **30. Lien**

- (a) The Company shall have a particular and general lien on all Goods, Containers and/or Vehicles and/or documents relating thereto in its possession for all sums of whatsoever kind and nature due at any time from the Customer or Owner including for payment of Customs Duty and on giving twenty eight (28) calendar days' notice in writing to the Customer, shall be entitled without obligation to sell or dispose of such Goods, Containers and/or Vehicles and/or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal, the Company shall be discharged of any liability whatsoever in respect of the Goods, Containers and/or Vehicles and/or documents. If on the sale of the Goods, Containers and/or Vehicles and/or documents the proceeds fail to realise the amount due, the Company shall be entitled to recover the difference from any of the parties included in the terms of the Customer or Owner.
- (b) In any event any lien shall:
  - i. survive the delivery of the Goods; and
  - ii. extend to cover the cost of recovering any sums due and for that purpose the Company shall have the right to sell the Goods, Containers and/or Vehicles and/or documents by public auction or private treaty, without notice to the Customer and/or Owner and at the Customer and/or Owner's expense and without any liability towards the Customer and/or Owner.

## **31. Claims, Notice of Claim and Time Bar**

- (a) The Company shall be discharged of all liability under these STC unless:
  - i. notice of any claim is received in writing by the Company or its agent within seven (7) calendar days after the date specified in (b) below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible to do so, and
  - ii. a claim is raised by the Customer by means of a written notice and received by the Company within nine (9) months after the date specified in (b) below.
- (b) The applicable period for delivering a notice of claim shall start from:

- i. in the case of loss or damage to Goods, the date of delivery of the Goods;
- ii. in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
- iii. in any other case, the event giving rise to the claim, otherwise any claim shall be deemed to be waived and absolutely barred.

### **32. Force Majeure**

- (a) Neither Party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than non-payment of money) if any such delay or failure is due to Force Majeure. "**Force Majeure**" is defined as: an act of God or the public enemy, acts or refusals to act of any government or governmental agency in either its sovereign or contractual capacity, governmental restrictions or control on imports, exports or foreign exchange, freight embargoes, non-availability or mechanical breakdown or destruction of Equipment vital to the performance of a Party's obligations under this STC or in connection therewith, fire, floods, tidal waves, earthquake, storm, slides, epidemics, quarantine restrictions, war declared or undeclared, revolution, riots, insurrections, hostilities, civil disturbances, power shortage, or stoppages, strikes, walk-outs, work stoppages, lockouts, railroad obstructions or obstruction of ocean navigation, stoppages of labour, deliberate work slowdowns, other labour difficulties, the taking of the Facilities by expropriation, other ouster of the Company from the Facilities or other denial of rights of the Company in the Facilities or any other cause beyond the reasonable control of a Party.
- (b) If either Party becomes aware of an event of Force Majeure it shall promptly notify the other Party the following, in writing, within 5 business days of the occurrence of the event of Force Majeure:
  - i. description of the event of Force Majeure in reasonable detail and stating, to the extent reasonably practicable at such time, an estimate of the duration of such event;
  - ii. setting out in reasonable detail the obligations under this STC which cannot be performed as a result of the occurrence of the event of Force Majeure;
- (c) The Party which is prevented from performing its obligations by an event of Force Majeure shall:
  - i. use all reasonable commercial efforts to curtail, contain or remove the Force Majeure condition and to resume, with the least possible delay, compliance with its obligations under these Conditions;
  - ii. keep the other Party informed in a timely manner of any progress made in curtailing, containing or removing the Force Majeure condition.

### **33. Governing Law and Jurisdiction**

- (a) All claims under these Conditions shall be determined according to the laws of the United Arab Emirates by the Sharjah Courts, to the exclusion of the jurisdiction of the Courts of any other country. Use of the Facilities or the Services by any Customer shall constitute that Customer's consent to the jurisdiction and venue in such Courts and a waiver of any objections thereto.
- (b) Where these Conditions are silent on the rights and liabilities of the Company and/or the Customer hereunder, these shall be determined according to the laws of United Arab Emirates.

### **34. Miscellaneous**

- (a) Heading of clauses or groups of clauses in these Conditions are for indicative purposes only.
- (b) Any notice served by post shall be deemed to have to be given on the third business day following the day on which it was posted to the address of the recipient of such notice last known to the Company.

- (c) The defenses and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort including claims made in bailment.
- (d) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.
- (e) No employee or agent of the Company shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by an authorized representative of the Company who has the actual authority of the Company so to waive or vary.

### **35. General**

- (a) The Tariff represents the rates for Services requested by the Customer and excludes charges for any additional ancillary services. Charges for additional services can be quoted on a case to case basis at the request of the Customer.
- (b) The Tariff is subject to airline, shipping line, land transporters, Authority, governmental or quasi-governmental (authorities or bodies) revisions and surcharges, which may arise without appropriate advance notice and automatically become part of the Tariff and payable by the Customer, from the date of their formal implementation (current or retrospective).

### **36. Carriage Undertaken or Arranged by the Company**

All the indemnities and other terms above apply also to the provisions hereunder:

- a. If the Company undertakes or arranges for the carriage of Goods or Containers and any handling or storage connected therewith, it does so solely as an agent for the Customer and shall not be liable for the acts or omissions of those engaged to perform the carriage, handling or storage.
- b. Except to the extent caused by the Company's gross negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with this Clause 36.
- c. Notwithstanding anything to the contrary, to the extent these STCs impose any obligation on the Company the obligation shall not be deemed to exist whether or not the corresponding liability has been undertaken by such carriage or storage Service providers and it shall not form part of an obligation of the Company to ensure due fulfillment of any such obligations, if applicable. The Customer undertakes not to enforce any of its rights against such third party upon the Company for whatsoever reason.

### **37. Amendments**

The Company reserves the right to amend all or any of these Conditions from time to time as it deems fit. These Conditions form an integral part of the agreement between the Company and its Customers. The Customer's acceptance of the agreement (quotation or by whatever name called) or the acceptance of the Services or consummation of the purchase of Containers indicate their understanding, agreement to and acceptance to the Conditions contained herein.

\*\*\*END OF DOCUMENT\*\*\*