

# TERMS OF BUSINESS

## MICT Terminal

**Address:**

**New Mundra Port, Navinal, Mundra, Kutch, 370-421, Gujarat, India.**

## GENERAL TERMS OF BUSINESS

The following general terms and conditions ("**Terms Of Business**" or "**TOB**") shall apply to all work and services performed by Mundra International Container Terminal Private Limited (hereinafter referred to as "**MICT**", which expression shall, unless repugnant to the context or meaning hereof, be deemed to mean and include its employees, agents, contractors and Subcontractors). Any user of Container Terminal Services (hereinafter referred to as "**Customer**", which expression shall, unless repugnant to the context or meaning hereof, be deemed to mean and include its employees, agents, contractors, sub-contractors and permitted assigns) is deemed to have acknowledged, read, understood, agreed to, and accepted these Terms of Business upon the entry of their Container, Cargo or vessel into the Container Terminal. These Terms of Business are in addition to the Rules and Regulations of MICT as updated from time to time.

### 1. DEFINITIONS & INTERPRETATION:

1.1 In these Terms of Business, the following words and expressions shall, unless the context shall otherwise require, have the following meanings:

"**Authority**" means Gujarat Maritime Board (GMB) and/or Adani Port & Special Economic Zone Limited (APSEZ) Mundra including its employees and agents;

"**Cargo**" means

- (a) any goods or articles of any kind whatsoever including Hazardous Cargo, transported in a Container, Non-standard Container or Out of Gauge Container, excluding Non-containerised Cargo and
- (b) empty Containers;

"**Container**" means

- (c) any container 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other container developed for use in liner shipping at any time, including, but not limited to, flat-racks, platforms, Reefer Containers and tanks, with ISO recommended lifting arrangements and consistent with the

safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a standard 20', 40' and 45' spreader;

(d) a non-standard Container; and/or

(e) an Out of Gauge Container.

**"Container Ship"** means a ship fitted for the carriage of Containers;

**"Container Terminal"** means the container terminal comprising container berths, the Container Yard and all other equipment and buildings which MICT currently manages and operates at the Mundra Port namely "Mundra International Container Terminal Private Limited".

**"Container-transporter"** means any rail or road vehicle (including articulated vehicles) used for the carriage of Containers, Non-standard Containers and Out of Gauge Containers or any vessel other than a Container Ship;

**"Container Yard"** means the land and premises used by MICT at the Container Terminal where Containers are, amongst other things, stored, received and delivered;

**"Contract of Carriage"** means any contract or other document including, but not limited to bills of lading and contracts of affreightment, seen and accepted by MICT, which evidence a contract between two parties to ship Containers and/or Cargo onboard a Containership for reward;

**"Container Terminal Services"** means the services to be provided to the Customer by MICT under these TOB;

**"Dutiable Cargo"** means dutiable goods as defined by the relevant customs and excise authorities;

**"EDI System"** means an electronic data interchange system whereby any Message is transmitted from one party to another party by electronic means;

**"Hazardous Cargo"** means Cargo of any kind classified by the International Maritime Organisation as hazardous cargo and shall include "dangerous goods" as defined in the International Maritime Dangerous Goods Code;

**"Indemnify"** means indemnify and keep indemnified and hold harmless on demand regardless of the negligence or gross negligence of the indemnified party;

**"Intermediary Service"** means, in relation to the use of the EDI Service, services or facilities provided by an intermediary as mutually agreed by the parties to facilitate the interchange of data by electronic means;

**"Message"** means data structured in accordance with the User Manual and adopting the EDIFACT standards which is transmitted between MICT and the Customer using an EDI System through the medium of the Intermediary Service;

**"Message Date Log"** means a complete record maintained by the parties of Messages, Message Transmissions and Message Retrievals transmitted to and received from the Intermediary Service database;

**"Message Retrieval"** means the access by any of the parties to the Intermediary Service data base and the retrieval by such party of any Message stored in the data base;

"**Message Transmission**" means the deposit of a Message by any of the parties in the Intermediary Service database;

"**Non-containerised Cargo**" means any cargo, which cannot be handled by means of normal use of a container spreader, even with attachments;

"**Non-standard Container**" means a Container accepted for transport/carriage on a Container Ship which cannot be handled by means of a normal use of a container spreader, even with attachments;

"**Out of Gauge/Over dimensional Container**" (OOG/ODC) means any Container whose contents exceed the dimensions of the standard Container of 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height and needing special devices like slings, shackles, lifting beam, etc. Damaged Containers and Containers requiring special devices for lifting are also classified as Over Dimensional Container;

"**Pilot**" means any person not belonging to a Container Ship who has conduct thereof;

"**Reefer Container**" means a Container used for the transportation of refrigerated Cargo;

"**Sub-contractor**" means any sub-contractor appointed by MICT for the performance of the Container Terminal Services or any part thereof;

"**User Manuals**" means the documents or instructions which are produced from time to time by MICT by way of guidelines to govern the methods and operation of the structure, transmission and receipt of Messages each of which such documents may cover one or more Messages;

"**Wharf**" includes a berth, quay, pier, jetty, docks, ramp, landing place and any wall and building adjoining the foreshore, sea-bed or river bed;

"**Working Day**" means any day (including any public holidays and Sundays), upon which the Container Terminal is open for business.

1.2 The headings in these TOB are for information only and shall not be construed as forming part of these TOB.

1.3 Unless the context otherwise requires:

- a. words importing the singular include the plural and vice versa;
- b. words importing any gender include all genders; and
- c. a reference to a person includes a reference to a body corporate and to an unincorporated body of persons.

## **2. SAILING SCHEDULE AND BERTHING REQUIREMENT**

2.1 The Customer shall provide MICT with a sailing schedule and berthing requirements, no later than three (3) weeks before each Container Ship's expected date of arrival at the Container Terminal. The berthing

requirements shall include details of the projected number of any Containers to be discharged from, or loaded onto, that Container Ship at the Container Terminal.

- 2.2 Not less than seventy two (72) hours before the estimated time of arrival of a Container Ship at the Container Terminal, the Customer shall supply to MICT such particulars in writing as MICT may require or as otherwise required from time to time of the Containers (including the contents & value thereof) onboard to be discharged from, or loaded onto, that Container Ship at the Container Terminal. The particulars shall include, but shall not be limited to information relating to Hazardous Cargo, OOG cargo, Reefer cargo and Dutiable Cargo contained in or intended to be contained in a Container. Any changes to the berthing requirements provided to MICT in accordance with [Clause 2.1] above must be promptly notified to MICT, but in any event not later than forty eight (48) hours before the estimated time of arrival of the Container Ship at the Container Terminal.
- 2.3 The final time for arrival of a Container Ship shall be confirmed in writing at least twenty four (24) hours before the Container Ship's anticipated time of arrival.
- 2.4 The customer shall provide the ship bay plan, discharge, load and transshipment instructions not less than twelve (12) hours before Arrival. The customer shall provide information about late gate arrivals and special stow requirements not less than twelve (12) hours before the estimated time of Arrival.
- 2.5 The customer shall arrange for the delivery of Containers or Cargo to the Terminal in accordance with the Cut-off procedures and supply not later than six (6) hours before the Vessel arrival.
- 2.6 Arrival of a Container Ship at the Container Terminal
  - (a) Acceptance to receive the vessel at the Container Terminal will be given to the vessel agent for each call as may be appropriate having regard to the current circumstances at that time and prior/existing commitments of the Container Terminal. The Customer shall ensure that each of its masters shall not berth or attempt to berth his Container Ship at a Wharf alongside the Container Terminal until such acceptance has been given by MICT to the Vessel Agent that the Container Terminal is ready to receive the Container Ship. All marine movements in the channel shall be done under Pilot's escort and in compliance with regulations prevalent at the time.
  - (b) The Customer shall supply gangways from the Container Ship to the Container Terminal. The safety and sufficient illumination of gangways shall be the responsibility of the Customer alone. However, MICT, on case to case basis, can provide gangway extension to vessel on their request on chargeable basis.
  - (c) Container ships calling MICT should obtain the "Terminal Safety Guidelines" for the Vessels Berthing at MICT from the terminal and abide by the requirements. The vessel safety requirements as required by terminal, for safe operation should be met. The Terminal Safety Booklet is available at <http://dpworldmundra.com> at the hyperlink [http://dpworldmundra.com/uploads/topmenu/Terminal%20Safety%20Guideline\\_August%202017\\_20170823061509.pdf](http://dpworldmundra.com/uploads/topmenu/Terminal%20Safety%20Guideline_August%202017_20170823061509.pdf)

## 2.7 Container Ships at the Container Terminal

- (a) MICT shall provide the Customer with an efficient terminal control system controlling the movement of Containers at the Container Terminal and shall report activities relating to Containers.
- (b) The Customer shall ensure that all equipment on Container Ships for discharging and loading Containers is technically compatible with MICT's equipment at the Container Terminal.

- (c) MICT shall permit the Customer to bring trucks alongside Container Ships and to load and discharge Container Ships' stores at such times as may be agreed and shall allow access to the Container Terminal personnel to proceed on board a Container Ship for the purpose of carrying out repairs. MICT and the Customer agree that access as referred to in this Clause is permitted by MICT on condition that the same is carried out in accordance with the rules and regulations of MICT and the Customs Authorities. MICT will not be responsible or liable in any way for any loss, damage, cost, expense or injury arising in any way howsoever to any person or thing granted access in accordance with this Clause. The Customer will indemnify MICT for any loss, damage, expense, cost or injury in any way howsoever caused by reason of MICT permitting access under this Clause.

### **3. OPERATOR CONTAINER TERMINAL SERVICES**

3.1 Subject to what is stated in Clause 2 above, MICT will provide the following Container Terminal Services to the Customer at Container Terminal:

- (a) receiving Containers from or for loading aboard Container Ships berthed at Wharves at the Container Terminal;
- (b) transferring Containers to or from the Container Yard;
- (c) receiving and delivering Containers from and to Container-transporters;
- (d) movement to rail terminal, loading & unloading from railway flats;
- (e) reefer electricity supply, monitoring, PTI & minor repairs;
- (f) Custom examination of self sealed containers as selected by customs for up to 15% of cargo examination.
- (g) together with any other services which may be agreed in writing.

### **3.2 Acceptance of Containers**

- (a) Containers delivered from or to the Customer or a Consignor or a Consignee shall be brought for acceptance to, or received from, such area within the Container Terminal or other place adjacent to the Container Terminal as may be designated from time to time by MICT.
- (b) MICT is not obliged to receive or deliver Containers unless full covering documentation has been provided to MICT. MICT's responsibility to the Customer for Containers shall commence only when the Containers have been delivered to the area designated as referred to in Clause 3.2 (a) above and notice of acceptance has been duly given by MICT.
- (c) Prior to the presentation for acceptance to MICT of any Containers, the Customer shall supply to MICT such particulars in writing thereof and where appropriate of the contents of a Container including weight(VGM) and other measurements or as may be requested by MICT. MICT is entitled to rely upon such particulars of the Container, the contents of a Container, as are furnished by the Customer or Consignor. Any damage or loss resulting from the inaccuracy of, or omission from, such particulars given by the Customer or the Consignor shall be the Customer's responsibility and the Customer shall Indemnify MICT against any loss, penalties,

finances, damages, claims, costs and expenses which MICT may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.

- (d) MICT will accept no Containers for handling until MICT is satisfied that adequate space reservation arrangements have been made for the onward carriage of the same by [the Customer] within a period of time acceptable to MICT.
- (e) MICT will not be bound to accept any Container/Cargo if the same is being transported in an unsafe manner or without adequate securing arrangement. This includes but is not limited to ODC's/OOG's which require transportation on 'Low-Bed' trailers. OOG's/ODC's Cargoes, which by virtue of their dimensions and stuffing disposition, require to be handled with additional resources and shall be levied with the appropriate charges to cover all additional resources deployed to handle them. Any request to handle such Cargo should be made well in advanced to ensure acceptability by both parties.

### 3.3 The Condition of Containers

- (a) The Customer undertakes that, each Container which it delivers or causes to be delivered to MICT is upon delivery secure, in a good state of repair and suitable for its purpose. MICT reserves the right to refuse to load or handle any Container which is not in the condition required by this Clause.
- (b) MICT shall inform the Customer of any damage to any Container, its contents or its packaging coming to the attention of MICT. MICT will not however carry out any visual check of top and bottom sides of the containers at Terminal Entry/ Exit points. In the notice, MICT will convey its decision of whether it will load or handle the Container or if it is refusing to load or handle such Container.
- (c) In the scenario where MICT agrees to load or handle, MICT shall not, in such case, be responsible for any damage to Container or its contents thereof.
- (d) Where MICT gives notice to the Customer of damage to a Container, its contents or its packaging, the Customer shall be entitled, within seven (7) days of such notice being dispatched, to inform MICT in writing that an inspection of the relevant items is required. MICT will thereafter permit the Customer or its duly appointed agents upon reasonable notice to inspect the Container, contents or packaging.

### 3.4 Reefer Containers

Subject to instructions being given in writing to MICT at least two (2) working days in advance of receipt of a specific Reefer Container and such instructions are accepted in writing by MICT, MICT will check and report upon the temperature of Reefer Containers stored at the Container Terminal. MICT may check and report upon the temperatures of Containers as mutually agreed.

- (a) All the export reefer containers need to be delivered at MICT gate in "POWER ON" condition. MICT will confirm received temperature / status and accept the reefer ensuring that the stated temperature is maintained.. If there is a variance, the terminal shall inform the same to the customer and a fixed charge shall be levied until the temperature is brought in line to the set temperature.

- (b) MICT shall not be responsible or liable in any way for any Reefer Container or the refrigeration of refrigerated Cargo if the Customer fails to give written instructions, or provides wrong or inadequate instructions concerning the handling thereof.
- (c) If MICT is instructed in writing in accordance with Clause 3.4 (a) MICT will, within a reasonable time of receipt, connect the Reefer Container to a main power supply. MICT shall not be obliged to maintain an auxiliary power supply and MICT shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the mains power supply howsoever arising or any consequent damage to the contents of the Reefer Container.
- (d) Considering perishable and high value of reefer cargo, MICT reserves the right to reject acceptance of any Reefer Container at MICT CY with maximum variance of 05 degrees from set temperature. Should this not be adhered to, and should the Reefer Container arrive at the Container Terminal with a variation greater than 05 degrees, MICT may, at the request of the Customer, accept the Container and perform the necessary service at a fee in order to attain the set temperature due to high consumption of electricity against a Reefer Container received with nil variation. In case of variance of 05 degrees , MICT has the right to refuse to accept the container however in case of special request of the customer these containers can be off loaded in a special reefer yard till the temperature of the container reaches to the declared temperature. This additional function will be carried out only on the special request of the customer.

### 3.5 Stripping of Containers

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

## 4. CONDITIONS RELATING TO THE PROVISION OF CONTAINER TERMINAL SERVICES

### 4.1 Circumstances preventing safe handling

When, in MICT's sole opinion, there are any circumstances which will or may prevent or hinder the safe handling, storage, loading, unloading or transport of any Containers, MICT may, in its sole discretion, refuse to handle the same and shall give notice of such refusal to the Customer or Consignor, as the



case may be. The recipient of such notice will remove or procure the removal of Containers and/or its contents from the Container Terminal forthwith at its own risk and expense.

#### 4.2 Warranties and Indemnities given by the Customer

- (a) So as to enable MICT to perform the Container Terminal Services efficiently, the Customer warrants and undertakes that:
- (i) it is duly incorporated, validly existing and in good standing under the laws of the place of their incorporation, having full power to carry on their businesses and to enter into and perform their obligations;
  - (ii) all particulars relating to Containers (including, but not limited to Reefer Containers) furnished by the Customer in accordance with these Terms of Business are accurate;
  - (iii) all Containers are properly packed and labelled and the contents are properly stowed and secured therein;
  - (iv) all Containers are fit for their intended purposes and in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed at the Container Terminal;
  - (v) all Containers and Cargo comply with applicable laws, orders, regulations, or other requirements of Government, customs, municipal or other authorities whatsoever;
  - (vi) all Reefer Containers have been properly pre-cooled or pre-heated as appropriate and their controls have been properly set;
  - (vii) all Containers delivered to MICT are weatherproof;
  - (viii) upon the delivery of any Container to MICT, all values and other particulars in respect thereof supplied to MICT for customs or other purposes and all necessary customs removal permits will be complete and accurate and, where appropriate, will be valid and in full force and effect; and
  - (ix) the Customer shall Indemnify MICT in respect of the consequence of the breach of any of these warranties and against all loss, damages, claims, costs, expenses, fines and penalties that MICT may incur or suffer directly or indirectly as a result of any breach of any of these warranties.
- (b) MICT shall not be responsible for or liable in any way, and the Customer shall Indemnify MICT against all damages, claims, costs and expenses suffered or incurred by MICT resulting directly or indirectly from any defects in a Container and/or its contents.
- (c) The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container Ship and the Cargo and all matters whatsoever relating to the Container Ship and the Cargo.
- (d) The Customer shall be responsible for any damage to MICT's Wharves, premises, equipment, gendering, mooring bollards, all other property, other Container Ships, vessels and property belonging to the third parties, caused during or arising from berthing or un-berthing and shall indemnify MICT against all claims, demands, losses, costs and expenses arising from any such damage.
- (e) The Customer shall Indemnify MICT, against all claims arising by reason of:

- (i) any defects in any Container or the contents thereof;
  - (ii) any mixture or confusion of Cargo; and/or
  - (iii) shifting or movement of the Cargo.
- (f) Overweight Containers - In case the weight of cargo or container is understated in the declaration submitted by the Customer, the handling of such Cargo or Container is at the sole risk and responsibility of the Customer, and Customer hereby Indemnifies the Container Terminal against all injury, loss and damage resulting from the handling of such Cargo or Container.

#### 4.3 **Delivery Orders etc.**

- (a) The Customer will appoint an agent in the Container Terminal ("the Container Terminal Agent") for the purposes of enabling the Container Terminal Services at the Container Terminal, and shall make the same known to MICT by notice in writing. MICT shall not be required to deliver or otherwise deal with any Container or Cargo except with the authority of a delivery order signed by the Container Terminal Agent.
- (b) The Customer shall ensure that the Container Terminal Agent registers with MICT, specimen signature(s) of the person(s) authorised to sign on its behalf. MICT shall be entitled to deliver or otherwise deal with any Container or Cargo in accordance with a delivery order which appears to it after comparison with the specimen signature(s) registered with it under this Clause 4.3 (b) to have been properly signed by the Container Terminal Agent, and shall not be liable to the Customer or any other person in consequence.

#### 4.4 **Hazardous Cargo and Dutiable Cargo**

- (a) The Customer shall ensure that all goods tendered to MICT for loading and/or unloading, comply with all applicable regulations for Hazardous Cargo and/or Dutiable Cargo and shall Indemnify MICT against any breach of this Clause 4.4 of these Terms of Business.
- (b) The Customer warrants that full details of any hazardous cargo will be correctly declared in writing to MICT.
- (c) MICT has the right to refuse to handle Cargo which, upon inspection, is found not to comply with the applicable rules or regulations or ordinances or laws of India and to reject and/or return such Cargo at the sole expense and risk of the Customer.
- (d) MICT stands Indemnified by the customer from all costs, consequences and liabilities arising out of handling Hazardous cargoes in containers

#### 4.5 **Lien**

All Containers, Cargo and all documents relating to Containers and Cargo shall be subject to a particular and general lien respectively for charges due to MICT in respect of such Containers or Cargo from the Customer. If any charges are not paid, the Containers or Cargo, subject to such lien, may be sold and

the proceeds applied in accordance with the provisions of the Customs Act, 1968. MICT shall not be liable for any loss and/or damage to any person whatsoever as a result thereof

#### 4.6 **Costs and expenses to be paid by the Customer**

The Customer shall pay:

- (a) any costs and expenses which may be incurred by MICT in complying with any Government regulations requiring the movement, treatment, removal or destruction of Hazardous Cargo or infested, contaminated or condemned goods or the treatment of MICT's premises as a result of any infestation or contamination arising from such Hazardous Cargo; and
- (b) all costs and expenses incurred by MICT arising out of or incidental to the failure by the Customer to observe these Terms of Business including, but not limited to, the rules for Hazardous Cargo or any one of them.

### **5. LIABILITIES AND CLAIMS**

#### **5.1 Liability of Operator MICT**

##### 5.1.1 Liability

Subject to clause 5.3.5, MICT shall indemnify and keep indemnified the Customer (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of TOB by MICT constituting negligence or wilful misconduct or any act or omission of MICT (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such death, personal injury, loss or damage is caused by a breach of this Agreement or an act or omission of the Customer (or any of its employees, officers or agents).

##### 5.1.2 Liability Cap

Subject to the provisions of clause 5.3.4, the liability of MICT as per this TOB arising out of any single incident or series of incidents arising from a common cause shall not exceed USD Two Hundred & Fifty Thousand (\$250,000) (the Liability Ceiling Amount).

The liability of MICT under this TOB shall not exceed the financial limits set out below for the specified category of loss or damage provided that the maximum liability of MICT arising out of any single incident or series of related incidents or series of incidents arising from a common cause shall not in any case exceed the Liability Ceiling Amount:

- a) In the case of damage to a Vessel, a maximum of US \$50,000 arising out of any single incident or series of related incidents;
- b) In the case of physical loss or damage to a Container, or a Container and its ancillary equipment, the depreciated value or the reasonable cost of repairs whichever is less;
- c) In the case of physical loss or damage to Cargo, the Customer's liability to its customer under its Bill of Lading or other contract of carriage to a maximum of:
  - (i) in the case of containerised Cargo: \$25,000 per Container

### 5.1.3 Liability Floor

The Customer shall make no claim against MICT for an amount less than USD One Thousand (\$1000) (the Liability Floor Amount).

### 5.1.4 No Liability

Notwithstanding the generality of clause 5.1.1, MICT shall not be liable for any loss or damage to a Container or Cargo, death or personal injury to the extent that such loss, damage, death or injury is caused by or contributed to by defective protection or packing, latent or natural wastage or contamination of Cargo, misdeclared Cargo information, failure or malfunction of refrigerated container equipment or refrigerants or defective or malfunctioning twistlocks of the Customer.

### 5.1.5 Transfer of Risk

The custody of the Containers and Cargo will be transferred to MICT as follows:

- a) For export Containers / Cargo: Upon passing in the Container Terminal's gate according to the relevant equipment interchange receipt to be issued by MICT, until stowing of the Container / Cargo on the vessel (locking twist locks on board).
- b) For import Containers / Cargo: Upon unstowing of the Container / Cargo from the vessel (from unlocking twist locks on board) until the earlier of:
  - (i) passing out of the Container Terminal's gate into the custody of the person duly authorised to receive the Container/Cargo according to the relevant equipment interchange receipt to be issued by MICT; or
  - (ii) received by the person duly authorised to take delivery of the Container/ Cargo according to the relevant equipment interchange receipt to be issued by MICT
- c) For transshipment and restows of Cargo/Containers: As from unstowing of the Container/Cargo from the vessel (as from unlocking twist locks on board) until restowing of such Container/Cargo on the vessel (as from locking twist locks on board).

## 5.2 Liability of Customer

### 5.2.1 Liability

Subject to clause 5.3.5, The Customer shall indemnify and keep indemnified MICT (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the TOB by the Customer constituting negligence or wilful misconduct or any act or omission of the Customer (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such death, personal injury, loss or damage is caused by a breach of this TOB or an act or omission of MICT (or any of its employees, officers or agents).

### 5.2.2 Himalaya Clause

The Customer:

- a) must include in all its contracts of carriage for Containers or Cargo loaded or discharged at the Terminal, provisions whereby every sub-contractor of the Customer (including MICT and each of MICT's sub-contractors):
  - (i) shall have the benefit of any provision in such contract which limits the Customer's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and MICT hereby appoints the Customer as its agent only for such limited purpose; and
  - (ii) shall not be liable to any party other than the Customer in relation to Cargo and, without prejudice to the liability of MICT to the Customer and the Customer's rights of indemnity under this TOB, the Customer indemnifies MICT and each of MICT's sub-contractors and shall hold them harmless against any claim by a third party relating to Cargo.
  
- b) acknowledges that MICT has agreed with its sub-contractors that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer pursuant to this TOB and accordingly agrees that:
  - (i) the exclusions and limitations of MICT's liability in clauses 5.1, and 5.3 of this TOB shall benefit MICT's sub-contractors, all employees and agents of MICT or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and
  - (ii) for the purposes of this sub-clause (b) only, MICT agrees to these terms of this TOB as agent for all such persons who shall be treated as if they were parties to this TOB.

### 5.2.3 Liability Cap

Subject to the provisions of clause 5.3.4, the liability of the Customer under this TOB arising out of any single incident or series of incidents arising from a common cause shall not exceed the Liability Ceiling Amount.

### 5.2.4 Liability Floor

MICT shall make no claim against the Customer for an amount less than the Liability Floor Amount.

## 5.3 General Liability Provisions

### 5.3.1 No Other Liability

In addition to any applicable legislation and subject to clause 5.3.4, this TOB states:

- a) the entire liability of MICT and its Customer's to each other; and
- b) the extent of MICT and its Customer's liability for any claim.

For the avoidance of doubt, the limitations of liability stated in this TOB shall not prejudice the rights of MICT and its Customer to pursue any remedy available at law including, without limitation, application for an order for specific performance or injunctive relief to enforce the terms of this TOB.

### 5.3.2 Mitigation

Notwithstanding any other provision herein, both MICT and the Customer shall, at all times, take all reasonable steps to minimise and mitigate any loss, damage and/or costs and expenses for which the relevant Party is entitled to bring a claim against the other pursuant to this TOB.

### 5.3.3 Claim notification periods

No claim may be pursued by either MICT or the Customer (the Claimant for the purpose of this clause) against the other (the Recipient for purposes of this clause) unless:

- (a) in the case of an event which customarily requires a survey of damage, the Claimant must immediately notify the Recipient. Failure to do so may release the Recipient from liability with regards to any claim;
- (b) the Recipient has been advised in writing of the event or events giving rise to the claim within sixty (60) days of their occurrence; and
- (c) formal notification of such claim, in the form of written demand or commencement of proceedings, setting out all relevant details of the claim is received by the Recipient within one (1) year of the occurrence of such event or events.

#### 5.3.4 Non-Excludable Condition

MICT and its Customer do not exclude or limit the application of any provision of any Applicable Law (such as an implied condition or warranty) to the extent that such exclusion would contravene that Applicable Law or cause any part of this TOB to be void.

#### 5.3.5 Exclusions from Liability

Subject to clause 5.3.4, MICT and its Customer exclude all liability to each other for any loss or damage which is either:

- (a) caused by and to the extent of a Force Majeure Event; or
- (b) consequential or indirect loss or damage whether arising in contract, tort, statute or otherwise even if:
  - (i) MICT and its Customer knew they were possible; or
  - (ii) they were otherwise foreseeable,

including, without limitation, loss of revenue, income, profits, market, interest or hire, fiscal loss or loss on currency exchange.

#### 5.3.6 Material Breach

The provisions of this clause 5 apply even in circumstances arising from a material breach of contract or breach of a material term.

### 5.4 **Weather Damage**

MICT will not be responsible for damage to Containers or contents caused by the weather when such Containers are being stored in the Container Terminal's Container Yard or during transit between Container Yard and Wharf, Wharf and vessel or Container Yard and gate.

### 5.5 **Customer's Risk**

Cargo which, because of its inherent nature is subject to deterioration, shrinkage, oxidization, wastage, decay and glass, liquids, and fragile articles will be accepted only at the Customer's sole risk for any loss or damage that may occur despite accepted practices for the care of cargo.

### 5.6 **Compulsory Removal of Goods**

- a) MICT may, by written notice to the Customer, at the Customer's sole cost and expense, require the removal of those goods that are at the Container Terminal at MICT after the expiration of the free period stipulated in the MICT "Scale of Rates" contained in the Notification (as defined below); and the Customer, upon receipt of such notice, shall remove the goods forthwith from MICT.
- b) MICT may at the risk and expense of the Customer, remove, store or relocate:

- (i) any goods that are left at the Container Terminal beyond the free period stipulated in the MICT "Scale of Rates" contained in the Notification.
  - (ii) any goods that, in the opinion of MICT, are likely to contaminate or endanger other goods;
  - (iii) any goods which, in the opinion of MICT, are not packed in such a manner that they will withstand handling while in transit;
- c) Further, MICT may, without responsibility for demurrage, loss or damage:
- (i) refuse to permit the goods to be shipped; or
  - (ii) have the goods repacked at the expense of the Customer.

### 5.7 Insurance

- a) MICT is under no obligation to maintain insurance of Containers, Cargo or contents of Containers of the Customer.
- b) The Customer shall:
  - (i) take out and maintain adequate hull and machinery and P&I Insurance in respect of its Container Ships, the later from a Club being a member of the International Group of P& I Clubs, together with insurances adequate to cover its liabilities under these TOB.
  - (ii) If so requested, provide MICT with a copy of certificate of insurance confirming that these requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the Customer's obligations to arrange insurance required by law or under these TOB.
  - (iii) MICT reserves the right to not allow berthing those vessels to berth, which do not have adequate hull and machinery and P&I Insurance in respect of its Container Ships, the later from a Club being a member of the International Group of P& I Clubs, together with insurances adequate to cover its liabilities under these TOB.

### 5.8 General

- a) It is mandatory for the Customer shall follow all common guidelines concerning operational, security and safety matters that MICT may issue from time to time in the interest of the business.
- b) The Customer shall manage and control the movement of its vessels and/or related vessel equipment within the Container Terminal with all due care and skill such that the vessels do not cause any damage to the Container Terminal or persons or property on or in the vicinity of the Container Terminal;
- c) The Customer shall provide ship bay plan, discharge, loading and transshipment instructions twelve (12) hours before arrival.



- d) The Customer shall provide information about late gate arrivals and special stow requirements twelve (12) hours before the estimated time of arrival.
- e) The Customer shall provide arrange for the delivery of the Containers or Cargo to the Container Terminal in accordance with the cut-off procedures of the Container Terminal.

#### 5.9 **Unauthorised Access to Container Ships**

- a) MICT will use reasonable endeavours to enforce strict controls to prevent unauthorised access to the Container Terminal.
- b) The Customer shall enforce controls on its Container Ships whilst berthed at the Container Terminal in order to prevent unauthorised access to the Container Terminal.

#### 5.10 **Force Majeure Event**

- a) A party shall not be liable for any failure to perform its obligations under these TOB caused by Force Majeure Event provided it gives prompt notification to the other party of (i) the event of Force Majeure Event and its likely duration (ii) the obligation(s) which are affected, and how affected, and provided that it takes all reasonable steps to mitigate the effects of Force Majeure Event.
- b) During the occurrence of a Force Majeure Event, if MICT continues to perform services, the Customer shall be liable to pay for the services at the agreed rates, as if no Force Majeure Event had occurred.
- c) For the purpose of these Business Terms, "**Force Majeure Event**" means any event or circumstance or combination of events whenever occurring which is directly caused by or results from an event described below for so long as such event or the inability to perform continues, and:
  - (i) is outside the control of the party affected by the Force Majeure Event;
  - (ii) could not be avoided, prevented or overcome with reasonable foresight, prudence and diligence or otherwise by taking action according to good industry practices; and
  - (iii) materially prevents, hinders or delays performance of all or a material part of the obligations of the party affected by the Force Majeure Event;
  - (iv) Without limiting the generality of the above and subject to the obligation of the party affected to make all reasonable efforts to prevent, minimise and thereafter mitigate any delays or costs occasioned by any Force Majeure Event, a Force Majeure Event shall include, but not be limited to, any act of God, act of public enemies, war, warlike acts, terrorism, restraint of governments, princes or peoples of any nation, riots, strikes, lockouts, go slow, or other industrial action, insurrections, civil commotion, civil disobedience, fire, restrictions due to quarantines, epidemics, storms or any other causes beyond the reasonable control of the party claiming an event of Force Majeure.



## 6. INVOICING AND PAYMENT

- 6.1 Before arrival of any vessel or Containers at MICT, and commencement of any Container Terminal Services by MICT, the Customer shall deposit an interest-free advance deposit equivalent to 3 weeks of estimated billing to cover all the charges that are chargeable by MICT.
- 6.2 The Customer shall pay tariff as per the scale of rates ("**Standard Published Tariff**") prevailing effective April 04, 2015, and amended from time to time and available at [http://dpworldmundra.com/uploads/tariff/DP%20World%20Mundra\\_TARIFF\\_15\\_04\\_2015\\_201606090\\_32951.pdf](http://dpworldmundra.com/uploads/tariff/DP%20World%20Mundra_TARIFF_15_04_2015_201606090_32951.pdf) "**Notification**" and as applicable as on the date that the Customer avails services at MICT. The Notification forms an integral and operative part of these Business Terms.
- 6.3 All sums payable by the Customer as set out in the invoices raised by MICT shall be recovered immediately from the advance deposit amount mentioned in Clause 5.1 above. In the event of any invoice is unpaid for whatsoever reasons, without prejudice to any other rights which MICT shall have under these Terms of Business or at law, the Customer shall pay MICT interest whether before or after judgment, at a rate equal to SBI PLR rate plus 2% per annum in the currency of the invoice, on the unpaid amount, from the date of invoice until the date of actual payment received by MICT.

### Dispute Resolution

Any dispute or difference arising between the Parties out of or in connection with this TOB shall promptly and in good faith be negotiated with a view to its amicable resolution and settlement.

### Law and Jurisdiction

This TOB shall be governed by and construed in accordance with the laws of India. Any dispute arising out of or connection with this TOB, not resolved between the parties as per clause above, shall be referred to arbitration in Mumbai, India in accordance with the provisions of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof.

The reference shall be to one arbitrator mutually agreed upon between the parties. In the event that parties cannot agree upon the sole arbitrator within a period of 30 days from the date when one of the parties gives notice to the other party of its intention to refer the dispute to arbitration, the sole arbitrator shall be appointed in the manner set out in the Arbitration and Conciliation Act, 1996.

Judgment upon the award rendered may be entered in the Mumbai Court.

The parties shall use every reasonable endeavour to resolve disputes between them in the shortest possible time consistent with the proper presentation to the expert or arbitration tribunal of their submissions and evidence. The parties will in particular seek, in the absence of any reasonable excuse, to make such submissions and present such evidence within a period of thirty days from the commencement of the proceedings. In the event of unreasonable delay by either party, the expert or the arbitration tribunal shall be entitled to make an award even if that party has failed to make or complete its submissions.

- 6.4 Any disputed invoice shall be dealt with separately independent of the advance deposit. All such deposit payments shall be subject to statutory deductions on account of income tax, provided however that

income tax shall not be deducted by the Customer where MICT furnishes adequate proof of exemption from income tax as per rules applicable.

- 6.5 If any tax and/or public tariff adjustment (including but not limited to consumption tax, value-added tax and/or goods and services tax) during the Term becomes applicable to or is imposed on the provision of the Container Terminal Services, the Customer shall, in addition to the rates and tariffs, also pay to MICT for an amount equal to such tax or adjustment. The term can be computed basis the contract period of the respective carrier or the terminal shall follow the Terms of Business instantly
- 6.6 MICT may, at its sole discretion, agree to collect some or all of amounts due from the Customer from other persons on behalf of the Customer, provided always that by such agreement MICT shall not in any way affect the liability of the Customer for such amounts

## **7. EDI SYSTEM**

- 7.1 This Clause 7 shall apply (without prejudice to the other Clauses in these Terms of Business) only where MICT has agreed in writing with the Customer for the partial or exclusive transmission and interchange of Messages between the parties by means of an EDI System.
- 7.2 Upon such agreement, the Customer and MICT shall become subscribers to the Intermediary Service and shall exchange all identification details and similar information to enable each party to effectively utilise the Intermediary Service.

### **7.3 Application**

- (a) Until such time as the parties mutually agree that the EDI System may be used exclusively, it is agreed that the EDI System shall be operated in parallel with an accepted manual system. In case of inconsistencies, any Message transmitted through the EDI System shall prevail.
- (b) MICT shall determine and monitor the progress of the development, implementation and priority of the EDI System.
- (c) All Message Transmissions must properly identify the sender and recipient and comply in all respects with the User Manuals and such of the Intermediary Service standard conditions as may be applicable from time to time.
- (d) If the sender issuing a Message Transmission requires a confirmatory receipt and does not receive the same, the original Message should be re-transmitted until a receipt is received.
- (e) The Intermediary Service mailbox receiving date and time of the Message (or of the first or original Message in case of repeated transmission of the same Message) shall be treated as the receiving date and time of the Message by the recipient.

### **7.4 Message Data Log**

- (a) The parties shall maintain (without modification) a Message Data Log including details of times of transmission and examination of the Intermediary Service mailbox. Data contained

in the message Data Log shall be retained by way of record for a period of not less than twelve (12) months.

- (b) The Message Data Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the data must be capable of being readily retrieved and presented in human readable form.
- (c) Each of the parties shall be responsible for making such arrangements as may be necessary for the data contained in its Message Data Log to be prepared and maintained as a correct record of each Message Transmission and Message Retrieval.
- (d) The parties acknowledge that in the event of any complete or partial breakdown or failure of the EDI System and/or the Intermediary Service, they will take all necessary steps to ensure the continued transmission and receipt of relevant messages, notices and information by alternative and/or additional means such that the operation of these Terms of Business is not adversely affected.
- (e) MICT reserves the right to amend the User Manuals from time to time, such amendment to be notified to the Customer at which time the amendment shall become immediately operative.

## 7.5 Security of Messages

Each of the parties shall:

- (a) take reasonable care in so far as it is within its power to do so to ensure that Messages are secure and that unauthorised access to its EDI System, Message Data Log and the Intermediary Service system is prevented;
- (b) ensure that Messages containing confidential information as designated by the sender of the Message are maintained by the recipient in confidence and are not disclosed to any person not otherwise authorised or used by the recipient outside the terms imposed by the sender. Any authorised disclosure to a third party shall be made only after getting a prior written approval of MICT;
- (c) apply special protection, where permissible, by encryption or by other agreed means, to those Messages which the parties agree should be so protected. Unless the parties otherwise agree, the recipient of a Message so protected shall use at least the same level of protection for any further transmission of such Message.

## 7.6 Integrity of Messages

- (a) The parties accept the integrity of all Messages and agree to accord these the same status as would be applicable to notices or information sent other than by electronic means, unless

such Messages can be shown to have been corrupted as a result of technical failure on the part of any machine, system or transmission by the Customer.

- (b) Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified by the sender as incorrect, it shall be retransmitted as soon as practicable with a clear indication that it is a corrected Message.
- (c) The sender is responsible and shall use its best endeavours to ensure that Messages are complete and correct. Notwithstanding the foregoing, the recipient must immediately inform the sender if it is, or should in all the circumstances, be reasonably obvious to the recipient that the transmission of such Message is incomplete, incorrect or otherwise deficient and in no event shall any of the parties be liable under this Clause 7.6(c) for the consequences of any such deficiency
- (d) If the recipient has reason to believe that a Message is not intended for it, it should take reasonable action to inform the sender and should delete the information contained in such a Message from its system apart from the Message Data Log.

### **7.7 Limitation on Liability**

Without prejudice to the provisions of Clause 5 of these Terms of Business, none of the parties shall be responsible for any direct, indirect or consequential loss or damage suffered by the other party or any third party howsoever arising solely as a consequence of the use of the EDI System, whether caused by the parties or otherwise, including but not limited to the use or misuse of the User Manuals, the interruption or failure of the Intermediary Service, the EDI System, machines or transmission lines contributory thereto, or any other failures whether or not attributable to human error.

### **7.8 Termination**

The use of the EDI System by the parties may be terminated (without prejudice to the continuing application of the remaining clauses of these Terms of Business) by one party giving to the other not less than three (3)

months notice, whereupon the transmission of any message, notice or information between the parties shall revert to the existing manual or other agreed system.

Notwithstanding the termination of the use of the EDI System for any reason:-

- (a) Each of the parties shall complete and/or implement any action required by any Message sent prior to such termination; and
- (b) The rights and obligations of each of the parties as to the maintenance of a Message Data Log and the Security of Messages shall continue after such termination.

## **8. MISCELLANEOUS**

- 8.1 **Amendment:** MICT reserves the right to amend the Business Terms. It is understood and agreed that the Terms of Business as on the date that the Customer shall avail the Container Terminal Services shall apply and govern the relationship between MICT and the Customer.
- 8.2 **Governing Law:** These Terms of Business shall be governed by and construed in accordance with the laws of India. For any disputes, issues of law arising hereunder shall be determined exclusively by the High Court at Mumbai.
- 8.3 **Relationship:** It is expressly agreed and understood that the performance of Container Terminal Services by MICT does not constitute any employer - employee relationship or partnership or agency. The Customer shall not be entitled to commit or bind MICT in any manner
- 8.4 **Assignment:** The Customer shall not be entitled to assign the benefit or burden of these Terms of Business without the prior express written permission of MICT.
- 8.5 **Sub-contract:** MICT expressly reserves the right to engage the service of Sub-contractors for the performance of the Container Terminal Services or any service ancillary or incidental to the performance of the Container Terminal Services.
- 8.6 **Severability:** If any provision or part of a provision of these Terms of Business is, or is found, by any authority or court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Business Terms, all of which shall remain in full force and effect.
- 8.7 **Waiver:** All waivers under these Terms of Business shall be in writing, and failure at any time by MICT to require the Customer's performance of any obligation under these Terms of Business shall not affect the right of MICT subsequently to require performance of that obligation.
- 8.8 In case of specific contracts entered into between the Customer and the Terminal the Terminal Service Agreement provisions shall supersede the Terms of Business to the extent covered by the Terminal Services Agreement and for matters not covered under the TSA the terms set out in the TOB shall apply.

## **9. COMPLIANCE WITH DP WORLD POLICIES:**

The Customer shall make themselves aware of DP World Anti-Bribery and Corruption Policy and thereby agree to abide by the same. The Customer shall further agree to take necessary steps to

adopt a similar policy within their organization and monitor its effective implementation to stop any bribery and corruption activities between the parties and the concerned stakeholders.

The Customer shall ensure compliance with all national and international rules and regulations relating to human and labour rights including applicable laws prohibiting slavery and human trafficking.

The Customer undertakes to abide by the objectives as set in the Safety and Security policy of the Company and assure to communicate the requirement to all their respective employees when working in the terminal premises or on the vessel at berth in the terminal.

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