



**Tanzania International
Container Terminal Services**

TERMS OF BUSINESS

CONTENTS

- A. DEFINITIONS AND INTERPRETATION
- B. SERVICES WHICH THE COMPANY PROVIDE TO LINES
- C. SERVICES WHICH THE COMPANY PROVIDE TO OPERATORS
- D. CONDITIONS APPLICABLE TO ALL SERVICES PROVIDED BY THE COMPANY

A. **DEFINITIONS AND INTERPRETATION**

In these Terms of Business and in any Contract entered into by the Company, which include these Terms of Business by reference, the following words and expressions shall, unless the context shall otherwise require, have the following meanings:

“Break-Bulk Cargo”	any cargo or merchandise or goods not stowed within a Container;
“CFS”	the Container Freight Station or stations operated by the Company including Kurasini Inland Clearance Depot (KICD) and Ubungo Inland Clearance Depot (UICD);
“The Company”	Tanzania International Container Terminal Services Limited;
“Consignee”	any company or person(s) entitled to receive Container or Break-Bulk Cargo;
“Consignor”	any company or person(s) who delivers Containers or Break-Bulk Cargo;
“Consolidation”	Break-Bulk Cargo from different Consignors, or from the same Consignor but on separate Bills of Lading, which the Operator requires to be held and grouped together for subsequent loading into one or more Containers;
“Container”	a container as defined by the International Standards Organisation Recommendations R668, R1161 and DR1496 and such other recommendations as may be promulgated by that body, being either 20 feet or 40 feet in length and shall include unless the context

	otherwise requires, FCL Container and LCL Container;
“Containership”	an ocean going vessel used for transporting containers bulk and capable of undertaking international voyages;
“Container-transporter”	any road vehicle (whether articulated or not) used for the carriage of Containers on the public highway;
“Container Yard or CY”	any area of the Terminal or Port used for the storage of Containers;
“Dangerous Goods”	dangerous goods defined as such in the International Maritime Dangerous Goods Code;
“Dutiable Commodities”	dutiable goods as defined by the Customs Laws applicable to customs matters in the United Republic of Tanzania;
“FCL Container”	a loaded and sealed Container, including its contents, which is received by the Company for delivery at the Terminal to a Containership or to a Container-transporter or train at the terminal railhead;
“LCL Container”	a Container carrying cargo covered by two or more bills of lading and which is packed or unpacked at the KICD or within the Port of Dar Es Salaam by the Company;
“Line”	a Shipping Operator whose vessels (either owned or chartered) berth at the Terminal;

“Operator”	any company or person (including if appropriate, a Line) entering into a commitment with the Company in regard to Containers or Break-Bulk Cargo services.
“Reefer Container”	a Container used for the transportation of refrigerated cargo;
“The Terminal”	the Company’s Container Terminal at Dar Es Salaam Container Terminal, or such other place as shall be so designated by the Company;
“Working Day”	any day (including any public holidays and Sundays), upon which the Terminal is open for business.
“Working day at KICD”	Monday to Friday 0800-1800 and Saturday 0600-1800 except public holidays.
“Working day at UICD”	Monday to Friday 0800-1800 and Saturday 0600-1800 except public holidays.

In these Terms of Business, the words importing the plural shall include the singular and vice versa and words importing any gender shall include every gender.

B. SERVICES WHICH THE COMPANY PROVIDE TO THE LINES

The services which the company will provide to Lines, include:

Coordination of berthing/unberthing times; loading and discharging containers to/from containerships; lashing and unlashings of deck containers; ship planning and the handling of break-bulk cargo onto or from containerships alongside the Terminal using shore based cranes or ships’ derricks or cranes.

The terms which apply to the provision of services to the Line are those set out in Section D below and the following:

- (1) Time of berthing or unberthing a Containership will be by agreement between the Harbour Master's Office, the Company and the Containership's Master or Agents.
- (2) Notification to the Containership's Master that the Terminal is ready to receive the Containership, will be given in such manner as may be appropriate having regard to the current circumstances at the time. The Line shall ensure that each of their Masters will not berth or attempt to berth his Containerships alongside the Terminal until notice has been given by the Company that the Terminal is ready to receive the Containership.
- (3) The Company does not and shall not be deemed to give any warranty or representation that the Containership will not ground while approaching, leaving or lying alongside the Terminal. Without prejudice to the foregoing, each Containership approaching or leaving and whilst lying alongside the Terminal does so at the sole risk of the Line, the Master and Owner. Pilotage for Containerships is compulsory in the Port of Dar Es Salaam under the sole responsibility of the Port Authority, the Tanzania Ports Authority.
- (4) The Containership shall be berthed and unberthed by its Master and at the sole risk and responsibility of the Line. The Company shall not be responsible for or liable in any way for any damage or loss suffered or incurred during the berthing and unberthing of a Containership.
- (5) The Company will not be liable in any manner whatsoever for any latent defects in mooring bollards or posts, nor for any improper mooring of the Containership at the Terminal.
- (6) The supply of gangways from each Containership to the Terminal, their safety and illumination is the sole responsibility of the Line.

- (7) The Line is responsible for compliance with all laws or regulations in force relating to the Containership and all matters whatsoever appertaining to the Containership.
- (8) The Line shall be responsible for any damage to the Company's premises, equipment, fendering, or mooring bollards and other property, and other Containerships, vessels and property belonging to the third parties, caused during or arising from the act of berthing or unberthing or as a result of insecure or improper mooring of the Containership whilst lying alongside the Terminal and shall hold the Company fully indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage.
- (9) The Company shall not be responsible to the Line whether for loss of profits or otherwise whatsoever, for any detention or delay of the Containership howsoever caused including but without limitation, any delays in discharging or loading Containers caused by inclement weather, mechanical failure in any cranes or other equipment.
- (10) In the event of handling of break-bulk cargo to or from containerships, the Company reserves the right to stipulate such terms additional to those contained in these Terms of Business and/or in the Contract between the Company and the respective Line.
- (11) The Company will supply labour on board the Containership for lashing and unlashng Containers on deck as may be required by the Master of the Containership. Such work will be undertaken at the sole risk and will at all times be the responsibility of the Containership's Owner and Master and the Line. The Company shall not be liable to any party for work undertaken by the labour provided by it.
- (12) Not less than 24 hours before the estimated arrival of a Containership at the Terminal or within such other time as shall be mutually agreed, the Line shall supply to the Company such particulars in writing of the Containers on board and their contents to be discharged from or

loaded onto that Containership at the Terminal, as the Company may from time to time require including, but without limitation, information relating to Dangerous Goods and Dutiable Commodities contained in or intended to be contained in any Container as well as temperature controlled cargo including required temperatures in centigrade.

- (13) All charges for services rendered by the Company in connection with Containers and Break-Bulk Cargo which are unloaded from Containership at the Terminal shall be the responsibility of the Line until such responsibility is assumed and paid in a manner acceptable to the Company, by the Consignee, Consignor or his Agent.

C. SERVICES WHICH THE COMPANY PROVIDE TO OPERATORS

The services which the Company will provide to Operators, include such of the following as may be required:

Receiving Containers from or for loading aboard Containerships berthed at the Terminal; transferring Containers to or from the Container Yard; receiving and delivering Containers from and to Container-transporters; transfer of Containers to or from the CFS; moving empty Containers to and from storage; cleaning of Containers; packing and unpacking Containers and receiving Break-Bulk Cargo for packing from and delivering after unpacking to Container-transporters.

The terms which apply to the provision of services to Operators are those set out in Section D below and the following:

- (1) FCL Containers and empty Containers delivered from or to the Operator or Consignors, shall be brought for acceptance to or received from, such area within the Terminal or other place adjacent to the Terminal, as may be designated from time to time by the Company.

- The Company shall only receive or deliver Containers after full covering documentation has been provided to the Company as required by these Terms of Business or any Contract between the Company and the Operator. The Company's responsibility to the Operator for Containers shall commence only when the Containers have been delivered to the area designated as aforesaid and notice of acceptance duly given by the Company.
- (2) Break-Bulk Cargo for export shall be brought to the CFS or any other area within the Terminal as may be designated from time to time by the Company for acceptance by the Company. The Company shall only receive or deliver Break-Bulk Cargo after full covering documentation has been provided to the Company, as required by these Terms of Business or any Contract between the Company and the Operator. The Company's responsibility to the Operator for Break-Bulk Cargo for export shall commence only when such cargo is delivered by the Operator or Consignor to the CFS door or such other part of or place adjacent to the Terminal as the Company may designate and notice of acceptance duly given by the Company.
 - (3) Prior to the presentation for acceptance by the Company of any Container or Break-Bulk Cargo, the Operator shall supply to the Company such particulars in writing thereof and where appropriate of the contents including weight and other measurements as may be requested by the Company. The Company is entitled to rely upon such particulars of the Container, its contents and/or Break-Bulk Cargo, as the case may be, as are furnished by the Operator or Consignor, and any damage or loss resulting from the inaccuracy of or omission from such particulars shall be the Operator's responsibility and accordingly, it shall indemnify the Company against any loss, damages, claims, costs and expenses which the Company may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.
 - (4) The Operator shall be deemed to warrant that on delivery of any Container to the Company, every Container which it delivers or

- causes to be delivered to the Company and whether full or empty, is in a good state of repair and suitable for its purpose or intended purpose and the Company shall be entitled to rely upon such warranty.
- (5) In the event that the Company shall give notice to the Operator of damage to a Container and/or its contents and/or Break-Bulk Cargo and/or its packaging and if the Operator shall within 7 days of such notice being dispatched inform the Company in writing that inspection of the relevant items is required, the Company will permit the Operator or its agents upon reasonable notice to inspect the same.
 - (6) Break-Bulk Cargo which has been unpacked from a Container by the Company, will be allowed three (3) working days (exclusive of the day of unpacking) free storage at the Terminal. It is the Operator's responsibility to arrange for such Break-Bulk Cargo to be removed from the Company's premises within such time and the Company may at its option refrain from unpacking goods from a Container until it is satisfied that arrangement for such removal have been made without prejudice to the provisions of Clause C (7).
 - (7) When the Break-Bulk Cargo is not collected from the Terminal within the free storage period, the Company reserves the right to warehouse such goods either at its own premises or elsewhere at the sole risk and expense of the Operator.
 - (8) The Operator shall be deemed on delivery to the Company of any Container or cargo, to warrant that all values and other particulars in respect thereof supplied to the Company for Customs or other purposes and all necessary Customs removal permits are accurate and complete and, where appropriate, are valid and in full force and effect and shall indemnify the Company by payment on demand, against all loss, damages, claims, costs, expenses, fines and penalties that the Company or its employees, or agents may incur or suffer directly or indirectly as a result of any inaccuracy, omission or invalidity of such particulars and permits, as the case may be.

- (9) No cargo or containers will be accepted by the Company for handling or storage until the Company is satisfied that adequate space reservation arrangements have been made for the onward carriage of the same within a period acceptable to the Company.
- (10) The Operator shall hold the Company free of all liability and shall indemnify the Company by payment on demand, against all claims arising by reason of any defects in any Container, inherent vice either of the goods or other goods with which such are packed, and any mixture or confusion of cargo or through shifting or movement consolidation of the cargo.
- (11) The Company does not and shall not be deemed to warrant to the Operator that in selecting any Container for packing that it has surveyed the same or that the Container is watertight or otherwise fit for the goods to be packed in it.
- (12) (a) If and only if instructions are given in writing to the Company at least 2 working days in advance of receipt by the Company of a specific Reefer Container and such instructions are accepted by the Company, the Company will check and report upon the temperatures of Containers as shown by the Company's equipment at such times and occasions as shall be agreed.
- (b) If and only if so instructed in writing in advance a Reefer Container will within a reasonable time of receipt by the Company be connected to a main power supply but there shall be no obligation upon the Company to maintain an auxiliary power supply and the Company shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the main power supply howsoever arising.
- (13) (a) Unless the Company shall agree otherwise, the closing time for the receipt by the Company at the Terminal of LCL cargo shall be two workings days at KICD prior to the arrival of the vessel.

- (b) For cargo which the Operator requires the Company to consolidate at the KICD, the closing time for receipt by the Company at the KICD or Terminal of such cargo is one KICD working day prior to the arrival of the vessel.
- (c) The closing time for receipt by the Company of FCL Containers at the Terminal is 24 hours prior to the arrival of the vessel.

D. CONDITIONS APPLICABLE TO ALL SERVICES PROVIDED BY THE COMPANY

- (1) Containers received by the Company will be stored in the open and it is therefore the responsibility of the Line or Operator, as the case may be, to ensure that Containers delivered to the Company are weather proof. The Company will under no circumstances, be responsible for any damage whether the Containers or their contents, caused directly or indirectly by such storage, whether by rust, rain typhoon, flood, tempest, lightning, fire or any similar event or occurrence.
- (2) The Company shall not be responsible for failing to note any damage to any Container or its contents upon discharge, receipt or handling of such.
- (3) The Company shall not be responsible for any Reefer Container or the refrigeration of the refrigerated cargo if the Line and/or Operator fails to give written instructions, or provides wrong instructions concerning the handling thereof.
- (4) No insurance of goods or Containers will be effected by the Company. Accordingly, Lines and Operators are recommended to effect their own insurance.
- (5) The Company will endeavour to ensure the correct tallying of Break-Bulk Cargo and the correct delivery to Consignees and to Containerships of Break-Bulk Cargo and Containers. The Company

- will not be responsible or liable for any errors in the tallying or delivery of any Break-Bulk Cargo or Container which is insufficiently, incorrectly or otherwise not properly marked.
- (6) When in the Company's sole opinion there are any circumstances which will or may prevent or hinder the safe handling, storage, loading, unloading or transport of any Break-Bulk Cargo or Container, the Company may refuse to handle the same and shall give notice of such refusal to the Line, Operator, or Consignor as the case may be whereupon the recipient of such notice will remove or procure the removal of, such Break-Bulk Cargo or Container as the case may be, from the Terminal forthwith at its own risk and expense. In the event of the Line, Operator or Consignor not removing the said Break-Bulk Cargo or Container, a surcharge of US\$50.00 per day plus normal storage charge as per TICTS Tariff, is payable after three (3) working days from the date of such notification.
- (7) So as to enable the Company to carry out efficiently the services provided hereunder, the Line or Operator as the case may be warrants that:
- (a) All particulars relating to Containers, Reefer Containers and Cargo furnished by the Line and/or Operator are full and accurate.
 - (b) All cargo is properly packed, labeled and, if received already stowed in Containers and Reefer Containers, is properly stowed and secured therein.
 - (c) All Containers, Reefer Containers and Cargo are fit for their intended purpose and are 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 by the Company.

- (d) All Containers, Reefer Containers and cargo comply with all applicable laws, orders, regulations, or other requirements of Government, Customs, municipal or other authorities whatsoever and the Line and/or Operator shall indemnify the Company in respect of the consequence of the breach of any of these warranties.
 - (e) With regard to Reefer Containers that they have been properly pre-cooled or pre-heated as appropriate and that its thermostatic controls have been properly set.
- (8) The Company shall not be responsible for and the Line, Operator, or Consignor, as the case may be, shall indemnify the Company against all damages, claims, costs and expenses suffered or incurred by the Company resulting directly or indirectly from any defects in a Container and/or its contents and any Break-Bulk Cargo unless it can be established that such damages, claims, costs and expenses were directly caused by the negligence of the Company or its employees.
- (9) (a) The Line (or its Authorised Agent) signs on the Delivery Order will be deemed adequate justification for the Company to deliver to the bearer a container, break-bulk cargo or package(s). Any other arrangement required by the Line must be agreed in writing by the Company Chief Executive Officer or his authorised representative.
- (b) The Company undertakes only to check that the Line's/Agent's signature has been applied to the Delivery Order and that the Delivery Order bears the name of the Line or his Authorised Agent. The production of such delivery order checked as aforesaid shall be conclusive proof that the cargo has been properly delivered by the Company and the Company shall have no responsibility for any miss-delivery that may in fact have occurred.

- (c) Where any party whatsoever (whether a bank or other named or unnamed party), is required to endorse or has endorsed a docket, bill of lading, delivery order or other instrument so long as sub-clause (b) above shall have been complied with, such party shall have no right of claim against the Company. If notwithstanding the foregoing, such party shall make a claim against the person or company to whom the Containers and/or cargo have been in fact delivered then such party shall indemnify and hold harmless the Company from all damage or detriment thereby suffered.
- (10) The Company shall not be bound to accept Containers containing cargo or Break-Bulk Cargo which cargo in either case is of high value or requires special care including but without limitation, bullion, coins, precious stones, jewelry, antiques, copper, milk powder, textiles and any other valuables. The Line or Operator as the case may be, shall give to the Company at least 96 hours prior notice of their intended delivery whether by Containership or Container-transporter to the Terminal of such cargo, to enable the Company to decide whether or not it will accept such. Under no circumstances, shall a Line or Operator deliver to the Terminal any such cargo or Container containing any such cargo, without the prior written approval of the Company. If in fact, such cargo or any Container containing such cargo is delivered to the Company without its prior written approval, such cargo will at all times be at the sole risk of the relevant Line or Operator and the Company shall not be liable for any loss or damage howsoever caused to such cargo.
- (11) If the Company carries out an instruction given by or on behalf of a Line or Operator, to open the doors of a Reefer Container for any purpose whatsoever or to unpack a Reefer Container, it shall be at the sole risk of the line or the Operator, as the case may be and the Company shall not be responsible for any deterioration of the contents of the Container or any Break-Bulk Cargo caused as a result or for contamination to other cargo by reason of such deterioration. The Line or Operator is responsible to ensure compliance with the rules

- and regulations of the Bureau of Customs for opening and unpacking of any container. The Company may, but shall be under no obligation so to do, at the sole cost and expense of the Line and/or the Operator, as the case may be, close, reconnect, or connect to a power supply, repack or otherwise deal with any such Reefer Container and/or its contents.
- (12) The Company shall not be under any liability or responsibility whatsoever unless (but subject always to the other provisions of these Terms of Business and any Contract with the Company), it is established that the company or its employees acting within the scope of their duties, have acted with negligence.
- (13) Every contractual obligation entered into with the Company shall, in so far as the same are applicable, be governed by these Terms of Business and any ancillary conditions and provisions as in force for the time being. The Terms of Business set out herein are in force and applicable at the time of publication and the Company reserves the right without notice to alter such Terms from time to time and such amendment shall be immediately operative upon publication, which will be circulated to the Lines and/or Operators by e-mail message, fax message or hand delivery.
- (14) All Containers, goods and all documents relating to goods and Containers shall be subject to a particular and general lien respectively for charges due to the company in respect of such goods and/or Containers from the Line or Operator. If any charges are not paid within one calendar month after notice requiring payment has been given to such Line or Operator, the goods and/or Containers subject to such lien, may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by the Company in such sale. Any sale of goods and/or Containers by the Company pursuant to this Agreement, may be conducted by private treaty, by public auction or otherwise in such manner as permitted under the Laws of the Republic of Tanzania and the Company shall

not be liable for any loss and/or damage to any person whatsoever as a result thereof.

- (15) (a) The Line or the Operator as the case may be shall be liable and responsible for:
- (i) the charges shown in the Company's published tariff from time to time for all services rendered on its behalf and the Company may agree to collect some or all of such charges from other persons on behalf of the Line or the Operator, provided always that by such agreement the Company shall not in any way prejudice the liability of the Line and Operator for such charges;
 - (ii) any costs and expenses which may be incurred by the Company in complying with any Government regulations requiring the movement, treatment, removal or destruction of Dangerous Goods, infested, contaminated or condemned goods or the treatment of the Company's premises as a result of any infestation or contamination arising from such goods; and
 - (iii) all costs and expenses incurred by the Company arising out of or incidental to the failure by the Line or the Operator to observe these general conditions, the special conditions in the Company's tariff, the rules for dangerous and obnoxious goods or any of them.
- (b) The interim stevedoring charge based on a pro-forma invoice shall be settled prior to departure of the vessel. All other sums payable by the Line or Operator pursuant to these Terms of Business, shall be paid in full, within 15 days from receipt of invoice by the customers or their representative's office in Tanzania. In the event that any sum is not paid within such period, the relevant Line or Operator shall pay the Company interest at a rate of three (3%) per cent per month on US Dollar

and 7% on Tanzania Shilling compounded on a monthly basis, on all sums not paid as aforesaid, from the date of the invoice until date of actual payment, and refusal of services may be imposed as permitted under Clause 4.1.3 (1) of the Lease Agreement.

- (16) In executing an agreement incorporating these conditions, the officers of the Company duly authorised to sign for the Company do so on behalf of the Company, and the Company takes full responsibility for their acts herein:
- (a) Without prejudice to any other provision of these Terms of Business, the Liability of the Company, its employees, agents and sub-contractors for any loss, damage or expense however arising sustained or incurred by a Line, an Operator, the employees, agents, sub-contractors or customers of Line or an Operator or any other person whatsoever and which has been established to be the responsibility of the company shall not exceed United States Dollars 1,000,000.00 for any one accident or occurrence or, in the case of loss of or damage to cargo, the lower of (i) United States Dollars 500.00 and (ii) the sum of United States Dollars 2.00 per kilo (unless special value has been declared to the Company by the Line or Operator in writing 96 hours before the receipt of that cargo and the Company has accepted such declaration in writing and the additional tariff is paid, in which case liability shall not exceed the amount of such special value) or, in the case of the loss of or damage to any Container or Container-transporter, the market value of the lost item or, as the case may be, the cost of repairing the damaged item at the option of the Company.
 - (b) Whilst the Company will use its best endeavours to carry out the instructions of Line and/or an Operator for the delivery or handling of cargo or containers, neither the Company, nor any of its employees, agents or sub-contractors shall in any circumstances be liable for any loss, damage or expense

however arising sustained or incurred by a Line, an Operator, the employees, agents, sub-contractors or customers of a Line or an Operator or any other person caused by any delay by the company in the delivery or handling of cargo or Containers in accordance with the instructions of a Line and/or an Operator or any failure by the Company to carry out such instructions promptly and in a proper manner.

- (c) The Company shall not in any event be liable for any loss or damage whether direct or indirect, suffered by a Line and/or an Operator due to:
 - (i) fire, explosion, theft or any act done with intent (unless the loss or damage arising therefrom is due to the negligence of the Company's employees or agents) riots, civil commotion, strikes, lockouts, labour stoppages or restraint of labour from whatever cause and whether partial or general latent or inherent vice in any equipment or Containers (whether owned by the Company or otherwise), defect or liability to wastage whether bulk or weight or otherwise or other natural deterioration, (unless the loss or damage is due to delay and it is proved that delay was due solely to the negligence of the Company) storm, tempest, typhoon, flood or lightning, or act of God, act of public enemy in war, whether declared or not; revolution, rebellion, insurrection civil strife arising therefrom, or acts of terrorism; order or act of competent public authority;
 - (ii) physical loss or damage except upon proof that such was solely due to the negligence of the Company;
 - (iii) delay or detention of any Containership, Container or cargo except when it is established that such delay or detention was due solely to the negligence of the Company; and

- (iv) any warranty of the Line and/or Operator proving to be false.
- (d) When any Containers, Break-Bulk Cargo or other goods, covered by the same Bill of Lading or other applicable documentation (“the Bill of Lading Items”), shall be the subject of similar treatment or action which shall be established to have been effected by the Company (or for which the Company may otherwise be responsible) in breach of its obligations hereunder, then such treatment or action shall constitute one instance of breach only and if any of the Bill of Lading Items shall sustain loss or damage on more than one occasion or from more than one cause, the entire resulting loss or damage shall constitute one event of damage only.
- (e) The Company will be under no responsibility in respect of claims, details of which are not received in writing by the Company within fifteen days of the date of the occurrence of the circumstances giving rise to such claim. In any event and without prejudice to any other provision of these Terms of Business, the Company shall be under no responsibility or liability for any damage unless it shall have been given reasonable opportunity of inspecting such damage in Tanzania.
- (f) The Company shall not under any circumstances be liable for any claim for any alleged default negligence or other wrongful act unless suit shall have been commenced against the Company within 12 months of the occurrence of the alleged default negligence or other wrongful act or if the claim arises from non-delivery or misdelivery of goods or from circumstances the exact nature and time of happening of which are unascertained within 12 months of the time when the goods ought to have been delivered (and in the event of doubt as to which of the foregoing provisions apply then according to

whichever calculation allows the longest period on which to commence suit).

- (g) All limitations and exclusions of the liability of the Company, its employees, agents and sub-contractors hereunder and the Terms of Business shall apply to all claims in tort as well as in contract.
- (17) The Line and/or Operator shall indemnify the Company, its employees, agents and sub-contractors at all times, by payment on demand, against:
- (a) All claims, demands and proceedings, which may be made or brought by any person for whatever reason against the Company, its employees, agents or sub-contractors in respect of the services or any defect therein provided by the Company pursuant to these Terms of Business and against all costs and expenses (including legal costs and expenses), which any of them may incur or sustain in respect of such claims, demands and proceedings in excess of the limitations referred to in Clause 15 above; and
 - (b) All losses, damages, costs and expenses (including legal costs and expenses) which the Company, its employees agents or sub-contractors may incur or suffer, in the course of the performance of any services, due to any act or omission (howsoever arising) of a Line, an Operator or any third party or if any warranty proves to be false.
- (18) Any agreement incorporating these conditions shall be subject to Tanzanian Laws. These Terms of Business shall in any event be governed by and construed in all respects with the Laws of the United Republic of the Tanzania and each Line and Operator submits to the exclusive jurisdiction of Tanzanian Courts.
- (19) Dangerous Dutiable and Obnoxious Goods

- (a) The Line and/or the Operator is responsible for ensuring that all goods tendered to the Company for loading and/or unloading, comply with the Tanzanian Dangerous Goods and/or Dutiable Commodities Regulations and the Company's rules (if any) for dangerous, dutiable and obnoxious goods, if relevant. In particular all containers or break-bulk cargo must bear the correct IMCO label and all documents must show the correct IMDG code and UN number.
 - (b) The Company may accept as correct, details of the goods furnished to the Operator or the Line by the Consignor or Consignee and in the case of Dangerous or Dutiable Goods, it may accept as correct, the certificate of which the Consignor or Consignee is required to give.
 - (c) The Line or the Operator as the case may be, shall fully indemnify the Company against any loss arising out of or in connection with the failure of the Line, Operator, Consignor or Consignee to comply with the Dangerous Goods and Dutiable Commodities Laws, or the Company's rules and regulations (if any) for the time being in force, for such goods or for obnoxious goods and/or to obtain the appropriate certification from the Consignor.
 - (d) The Company has the right to refuse to handle goods, which upon inspection are found not to comply with the said rules or regulations or laws and to reject and/or return them at the sole expense and risk of the Line or Operator, as the case may be.
- (20) (a) Definition of terms as used in this Clause

In addition to the definitions of the words and expressions provided under Section A of these Terms of Business, the following words and expressions used in this Clause shall, unless the context otherwise requires, have the following meanings:

Contract	The relevant Terminal Contract or other Contracts between the Company and the Line and/or the Operator incorporating these Terms of Business.
EDI System	a system whereby any Message is transmitted, from one party to another party by electronic means.
Intermediary Service	services(s) or facility(ies) provided by an intermediary(ies) as mutually agreed by the Parties to facilitate the interchange of data by electronic means.
Message	data structured in accordance with the User Manuals and adopting the EDIFACT standards, which is transmitted between the Company and the Line and/or the Operator using an EDI System through the medium of the Intermediary Service.
Message Data Log	a complete record maintained by the Parties of Messages, Message Transmissions and Message Retrievals transmitted to and received from the Intermediary Service Database.
Message Transmission	the deposit of a Message by any of the Parties in the Intermediary Service Database.
Message Retrieval	the access by any of the Parties to the Intermediary Service database and the retrieval by such party of any Message stored in the Database.

and such of the Intermediary Service standard conditions as may be applicable from time to time.

- (f) If the sender issuing a Message Transmission requires a receipt and does not receive a confirmatory receipt, the original Message should be re-transmitted until a receipt is received.
- (g) 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.
- (h) Message Data Log:
 - (i) 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 12 months.
 - (ii) 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.
 - (iii) 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.
- (i) 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 the Contract is not adversely affected.

- (j) The Company reserves the right to amend the User Manuals from time to time provided however that any amendments will only be effective after giving prior notice to the Line and/or the Operator.
- (k) Security of Messages.

Each of the Parties shall:

- (i) 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.
- (ii) ensure that Messages containing confidential information as designated by the sender of the Message are maintained by the recipient in confidence and are not disclosed to any person not otherwise authorised or used by the recipient outside the terms imposed by the sender. Any authorised disclosure to a third party shall be on the same terms as to confidentiality as contained in sub-clause (k).
- (iii) 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 agreed the recipient of a Message so protected shall use at least the same level of protection for any further transmission of such Message.

(l) Integrity of Messages:

- (i) 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 line.
- (ii) Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified by the sender as incorrect, it shall be re-transmitted as soon as practicable with a clear indication that it is a corrected Message.
- (iii) 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 sub-clause (iii) for the consequences of any such deficiency.
- (iv) 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.

(m) Limitation on Liability:

Without prejudice to the provisions of Section D, Clause 15, 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 human or non-human.

(n) Term of Termination:

The application of this Clause 20 shall take effect from the date of the agreement referred to in sub-clause (b) hereof and 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 3 months notice or otherwise automatically upon termination of the Contract, whereupon the transmission of any message, notice or information between the Parties shall revert to the existing manual or other agreed system.

(o) Notwithstanding the termination of the application of this Clause 20 for any reason:

- (i) Each of the Parties shall complete and/or implement any action required by any Message sent prior to such termination; and
- (ii) The rights and obligations of each of the Parties as to the maintenance of a Message Data Log {sub-clause (h)} and the Security of Messages {sub-clause (k)} shall continue after such termination and the termination of the Contract.

(p) Notice:

- (i) All notices required to be given by one party to the other under this Clause shall be in writing and delivered by hand or sent by registered mail to the address of the recipient as set out in the Contract or to such other address as the recipient may from time to time have notified for the purpose of this Clause or sent by electronic means of Message Transmission producing hard copy readout including telex and facsimile.
- (ii) Notices shall be deemed to have been received if sent by registered mail 3 business days after posting exclusive of the day of posting; if delivered by hand on the day of delivery; and if sent by electronic means receipt shall be determined in accordance with sub-clause (g) hereof.

(21) Severability:

If any provision of these Terms of Business and/or the Contract incorporating the same shall be determined (by the Company, the Line and/or the Operator or otherwise) to be illegal, void or unenforceable under any law, regulation or decree affecting the same, these Terms of Business and/or the Contract incorporating the same shall continue in force save that the affected provision(s) shall be curtailed or limited to the extent necessary to bring it within the requirements of such law, regulation or decree or if such is not possible shall be excised herefrom with effect from the date of such determination.