

# **GENERAL CONDITIONS**

**FOR SERVICES AND FACILITIES**

**CHENNAI INTERNATIONAL TERMINALS PRIVATE  
LIMITED (“CITPL”)**

15 March 2016

## DEFINITIONS AND INTERPRETATION

### 1. Definitions

1.1 Each of the following expressions and their grammatical variations used in the Contract shall have the following meaning unless the context of the Contract requires otherwise:

1.1.1 **"Application"** means the application for the Services/Facilities, made by or for the Customer to CITPL in writing or by any other mode required or accepted by CITPL and granted by CITPL.

1.1.2 **"Claim"** means any loss, damage, cost, expense and/or liability incurred due to any circumstances, including but not limited to any property or environmental damage, death or personal injury, economic or consequential loss, or legal obligations and all related legal costs.

1.1.3 **"Conditions"** means these General Conditions and **"Condition"** means each one of them.

1.1.4 **"Container"** means a receptacle 6.1 metres or more in length equipped with corner castings to facilitate handling by mechanical equipment.

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

1.1.6 **"Contract Period"** means the period of the Contract from the commencement date until the expiry date both stipulated in the Application or in the absence of such stipulation:

- (a) until the complete performance of the Contract; or
- (b) until the termination of the Contract in accordance with the provisions of the Contract,

whichever shall be earlier.

1.1.7 **"Contract Sum"** means all or any sums payable by or for the Customer to CITPL under the Contract or at law in accordance

(where applicable) with the rate stipulated in the Contract or in the absence of such stipulation, in accordance with the rate stipulated in the CITPL Scale of Rates, and shall include without limitation any and all interest due on the same.

1.1.8 **"Customer"** means the person whose Application has been granted by CITPL, or the successors and permitted assigns of such person.

1.1.9 **"Customer's Representative"** means any one or more persons authorised by the Customer and approved by CITPL under **Condition 13.1**.

1.1.10 **"Dangerous Goods"** means cargo falling into any of the classes of dangerous Goods set out in the International Maritime Dangerous Goods Code and any empty receptacles previously used for the carriage of such Goods unless already rendered safe.

1.1.11 **"Delivery/Shipment Note"** means the document issued by CITPL in respect of the Goods pursuant to **Condition 7.4.1(c)** or its duplicate issued by CITPL pursuant to **Condition 7.4.3**.

1.1.12 **"Facilities"** means all or any part of the facilities described as such in the Application or any facilities provided by CITPL, whether for use in themselves or for use in connection with the provision of the Services.

1.1.13 **"Force Majeure"** means any of the following events:

- (a) acts of God or other natural disaster, epidemic or pandemic;
- (b) terrorist attack, riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) any law or action taken by a government or public authority, including but not limited to imposition of an export or import restriction, quota or prohibition;
- (d) any fire, explosion, nuclear reaction, shortage of power, fuel,

- transport, materials, or interruption of utilities services necessary for the performance of the Contract, abnormally high prices, obstruction of access to any part of CITPL, or accident including but not limited to the breaking adrift of any vessel from any part of CITPL;
- (e) any labour or trade dispute, strikes, industrial action, lockouts or sabotage;
- (f) any defect, inherent vice or natural property of the Goods and/or change in quality of the Goods or its packaging, containers or means of transport, and damage caused by other Goods, delay in delivery of the Goods to or from any CITPL on the part of any person other than CITPL, its employees or agents, failure in or delayed arrival of packing materials, containers or means of transport used in respect of the Goods or a third party's interference with the Services/Facilities; and/or
- (g) any other circumstances the occurrence or extent of which CITPL could not reasonably have controlled, foreseen, avoided, prevented or forestalled.
- 1.1.14 **"Goods"** means all or any part of any property of any kind whatsoever brought into any part CITPL by the Customer or for the Customer for the purposes of the Contract including any Container.
- 1.1.15 **"Goods Handling"** means all or any of the following services and facilities provided by CITPL which are the subject of the Application:
- (a) shifting Goods between any Vessel and any part of CITPL;
- (b) shifting Goods from place to place within any part of CITPL;
- (c) shifting Containers from place to place within any Vessel;
- (d) shifting Containers from any part of CITPL to another part of CITPL;
- (e) loading or unloading Dangerous Goods in containerised or breakbulk form;
- (f) lashing/unlashing Goods;
- (g) stuffing/unstuffing Goods;
- (h) stowage planning of any Vessel;
- (i) storing Goods in any part of CITPL;
- (j) storing Goods classified by CITPL as Valuable Articles;
- (k) delivery of any Container; and
- (l) pre-trip inspection/Run test of any Container.
- 1.1.16 **"Party"** means CITPL or the Customer.
- 1.1.17 **"CITPL"** means the party designated and/or defined as such in the Application, its successors and assigns.
- 1.1.18 **"CITPL Scale of Rates"** means the document titled as such and listing charges payable to CITPL from time to time for the use of the Services/Facilities, the current edition of which has been made available to the Customer (and which the Customer hereby acknowledges as having read and agreed to).
- 1.1.19 **"Chennai International Terminals Pvt Ltd"** or **"CITPL"** means all or any part of any land, place, structure or building in which the Services/Facilities shall be provided by CITPL irrespective of whether or not such land, place, structure, or building shall be owned, operated, managed or controlled by CITPL, including any berth, jetty or wharf.
- 1.1.20 **"Reefer Services"** means all or any of the following services and facilities provided by CITPL which are the subject of the Application:
- (a) connecting or disconnecting any refrigerated Container to or from power plugs in any reefer yard forming part of CITPL;
- (b) supplying electricity to any refrigerated Container and monitoring the temperature within the Container;
- (c) repairing the reefer machinery of any refrigerated Container; and

- (d) pre-trip inspection/Run test of any refrigerated Container.
- 1.1.21 **“Services”** means any service described as such in the Application and/or any operation, work or services performed or provided by CITPL in connection with Goods or a Vessel, including without limitation:
- (a) Goods Handling;
- (b) berthing or unberthing of any Vessel;
- (c) shifting or hauling of Vessel;
- (d) repair of any Container;
- (e) surveyor inspection of any Goods and their contents to ascertain the nature and extent of any loss or damage of the same;
- (f) Goods
- (g) supply of mechanical equipment and manpower for the lifting and moving of any Goods;
- (h) Reefer Services
- (i) Weighing of Containers
- (j) Documentation processing; and
- (k) Inspection and survey of containers and vessels
- (a) provision of space, either open or covered, for the storage, loading, unloading, stuffing, unstuffing, repair, fumigation or inspection of any Goods;
- (b) distribution of any Goods;
- (c) survey of any Goods;
- 1.2 Interpretation**
- 1.2.1** Where the context so admits or requires, words denoting the singular include the plural and vice versa, and words denoting any gender include all genders.
- 1.2.2** Unless expressly provided otherwise in the Contract:
- (a) these Conditions shall prevail in the event of any contradiction or inconsistency between any Condition and any other provision of the Contract; or
- (b) in the event of any other contradiction or inconsistency between any provision of the Contract (except the Conditions) and any other provision of the Contract, the provision with a later date shall prevail.
- 1.2.3** All agreements and undertakings on the part of either Party which comprise more than one person or entity shall be joint and several.
- 1.2.4** All applications, notices, consents and all other communication under the Contract to be made or given to CITPL shall be made or given in writing or in a mode acceptable by CITPL.
- 1.2.5** Reference in the Contract to any statute includes a reference to such statute in force from time to time and any regulations or orders made under such statute.
- 1.2.6** If the whole or any part of any provision of the Contract shall be or become illegal, invalid or unenforceable for any reason whatsoever, such whole or part of such provision shall be deemed to be deleted
- 1.1.22 **“Services/Facilities”** means the Services and/or the Facilities, as the case may be.
- 1.1.23 **“Valuable Articles”** means any article of extraordinary value.
- 1.1.24 **“Vessel”** means the vessel in respect of which any Service/Facilities is provided or to be provided under the Contract.
- 1.1.25 **“Warehousing”** means all or any of the following services or facilities provided by CITPL and which are the subject of the Application:

- from the Contract **Provided that** if any such deletion substantially affects or alters the commercial basis of the Contract, the Parties shall negotiate in good faith to amend the provisions of the Contract where necessary or desirable in the circumstances.
- 1.2.7 The headings in the Contract are for convenience only and shall not affect its interpretation.
- 2. CONTRACT**
- 2.1 The Contract**
- 2.1.1 CITPL shall provide and the Customer shall accept the Services/Facilities during the Contract Period in consideration of the payment of the Contract Sum, all in accordance with the terms and conditions of the Contract.
- 2.1.2 Any undertaking by CITPL under the Contract to do any act may be carried out by its authorised employees, agents or contractors, and all protection from liability afforded to CITPL by the Contract in respect of such acts or omissions shall also be afforded to such persons [to which end CITPL contracts on the Contract on its own behalf and as agent for and trustee for the benefit of its employees and contractors].
- 2.2 Early termination**
- 2.2.1 Notwithstanding the other provisions of the Contract, CITPL may terminate the Contract forthwith at any time without any claim or charge by the Customer if CITPL deems it necessary to do so for the protection of its legal, commercial and/or financial position.
- 3. FACILITIES**
- Unless expressly provided otherwise in the Contract, CITPL shall allocate the Facilities in its absolute discretion.
- 4. INFORMATION RELATING TO GOODS**
- 4.1 General**
- 4.1.1 The Customer shall on or before the delivery of any Goods to CITPL, furnish all information required by CITPL in respect of the Goods, including but not limited to information necessary for the safe, proper and efficient handling of the Goods.
- 4.1.2 CITPL shall be entitled, at any time, to inspect, weigh and/or test the Goods and do any acts necessary for this purpose. Costs arising there from, as determined by CITPL, shall be borne by the Customer if the inspection, weighing and/or testing:
- (a) shows that the information provided in respect of the Goods is incomplete and/or inaccurate;
  - (b) is requested by the Customer and/or any competent authority; or
  - (c) is conducted by CITPL to comply with any law or regulation or IMO requirement.
- 4.1.3 CITPL may accept delivery of the Goods notwithstanding CITPL's knowledge of any incorrect or incomplete information relating to the Goods and in that event:
- (a) the Customer shall bear the risk and expense of any necessary or desirable measures carried out by CITPL in respect of the Goods arising from such incorrect or incomplete information and indemnify CITPL against all Claims made by CITPL, its employees or agents, or any third party arising from such measures; and
  - (b) CITPL shall not be liable for any Claim arising from CITPL's acceptance of delivery of the Goods.
- 4.1.4 CITPL shall be entitled to refuse to accept delivery of the Goods or refuse to provide any Services/Facilities in respect thereof, without responsibility for any loss or any liability, consequential or otherwise, if in the opinion of CITPL:
- (a) the Goods do not conform with the information provided by the Customer under **Condition 4.1.1**;
  - (b) the Goods are delivered in an apparently damaged or defective condition; or
  - (c) the provision of such Services/ Facilities may lead to a Claim against CITPL, its employees or agents.
- 4.1.5 CITPL shall be entitled to require payment from the Customer of any cost or expense

- incurred by CITPL in respect of the Services /Facilities provided prior to CITPL’s refusal to accept delivery of the Goods pursuant to **Condition 4.1.4.**
- 4.1.6 The Customer shall be liable to CITPL for and shall indemnify CITPL against all Claims suffered by or made against CITPL, its employees or agents arising from any incorrect or incomplete description, statement, indication, information, notice, direction or instruction made or given by the Customer to CITPL, in addition to the costs payable by the Customer under **Condition 4.1.2.**
- 4.2 For duties, taxes and charges
- 4.2.1 For Goods subject (or that may be subject) to duties, taxes or other charges by the competent authorities, the Customer shall, reasonably in advance, provide to CITPL all information required of CITPL by such authorities in respect of such Goods.
- 4.2.2 The Customer shall be liable for and indemnify CITPL against any Claim, penalties, taxes or duties suffered or payable by CITPL arising from any delay in or complete or partial failure to provide the required information and/or documents.
- 4.3 The Customer shall not deposit any illegal narcotics, arms, explosives or Dangerous Goods with CITPL unless CITPL has provided written agreement to the same.
5. **TRANSPORTATION, PACKING MATERIALS AND CONTAINERS**
- 5.1 Standards
- The Customer shall ensure at all times that the means of transportation, packing materials and containers and their accessories used in the delivery of the Goods to CITPL shall be in a sound, clean, tight and staunch condition, fit for use in respect of the Goods and in compliance with the requirements of the competent authorities. CITPL will not be liable for any Claim arising from such standards not being met and the Customer shall indemnify CITPL against such Claim.
- 5.2 Inspection
- CITPL shall be entitled at any time on, before or after accepting delivery of the Goods, to open, weigh, measure, test or examine such means of transportation, packing materials and containers for the purposes of inspection.
- 5.3 Refusal to accept delivery
- If in the opinion of CITPL, such means of transportation, packing materials or containers are not as that described in **Condition 5.1**, CITPL is entitled to refuse to accept delivery of the Goods and/or remove or require immediate removal of the Goods at the risk and expense of the Customer.
6. **GENERAL CONDITION ON ARRIVAL**
- 6.1 Acceptance of delivery not proof of condition
- Any acceptance of delivery of the Goods by CITPL shall be without prejudice to **Condition 5** and shall not constitute proof that the Goods were delivered in a good and undamaged condition or that the means of transportation, packing materials or containers used in respect thereof conformed with the requirements of **Condition 5.**
- 6.2 Notice of damage, defect or deterioration
- CITPL shall, as soon as practicable, notify the Customer of any damage or defect of the Goods or of such means of transportation, materials or containers which is apparent at the time of delivery thereof but the Customer shall not make any Claim against CITPL, its employees or agents by reason of the fact that it has not been so notified.
- 6.3 Remedial measures
- CITPL shall be entitled, at the expense of the Customer, to do all things deemed by CITPL to be necessary to remedy such damage or defect or to prevent or reduce further damage, defect or deterioration in the condition of the Goods or of such means of transportation, materials or containers and to arrange for a report to be made on the condition of the Goods or of such means, materials or containers without being liable for any Claim arising from doing such things and the Customer shall indemnify CITPL, its employees and agents against such Claim.

**7. DELIVERY OR RE-DELIVERY**

**7.1 Point of delivery to CITPL**

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

**7.2 Point of re-delivery to Customer**

The Goods shall be deemed to have been re-delivered to the Customer from the Facilities or any part of CITPL, immediately after such Goods are loaded onto or into the Vessel or vehicle or re-delivery accepted by the Customer whether expressly or by conduct at the Facilities or any part of CITPL.

**7.3 Time and date to be notified**

**7.3.1** The Customer shall comply with CITPL the time and date when the Goods shall be delivered to CITPL or re-delivered to the Customer.

**7.3.2** If the Goods shall not be delivered or taken re-delivery of at the times and dates agreed under **Condition 7.3.1**:

- (a) the Customer shall be liable for any Claim suffered by CITPL, its employees and agents arising there from and indemnify CITPL, its employees and agents against such Claim; and
- (b) in the case of delivery of the Goods, CITPL shall no longer be required to make available the Facilities pursuant to the Contract or in the case of re-delivery of the Goods, CITPL shall be entitled to remove the Goods forthwith from the Facilities at the risk and expense of the Customer.

**7.3.3** Time shall be of the essence for the purposes of this **Condition 7.3** and the Customer shall not be entitled to any notice of such failure.

**7.4 Re-delivery requirements**

**7.4.1** Subject to **Conditions 18.1** and **18.2**, CITPL shall re-deliver the Goods to the Customer:

- (a) if so instructed by the Customer;

- (b) against the presentation of a receipt in a form approved by CITPL and duly signed and stamped by the Customer; or

- (c) against the surrender of a Delivery/Shipment Note (if any) issued in respect of such Goods,

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

**7.4.2** CITPL shall be entitled but not obliged:

- (a) to demand from any person purporting to be entitled or authorised to take re-delivery of the Goods, satisfactory proof of the person's identity and of such entitlement and authority; and
- (b) to satisfy itself that the signature and stamp appearing on the instructions, receipts and the Delivery/Shipment Note are correct and valid as at the date of re-delivery.

**7.4.3** In the event that a Delivery/Shipment Note has been issued in respect of the Goods and the re-delivery of a part of the Goods by CITPL to the Customer such re-delivery shall be recorded in the Delivery/Shipment Note surrendered pursuant to **Condition 7.4.1(c)** and CITPL may then at its absolute discretion either:

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

**7.4.4** In the event of any partial or total loss or destruction of the Goods due to any cause whatsoever, the date of commencement of such loss or destruction shall be deemed to be the date of re-delivery of the Goods by CITPL to the Customer.

**7.5 Discharge from liability**

**7.5.1** CITPL shall be discharged from all liability in respect of the Goods by re-delivery thereof to the Customer or other person presenting

- a bill of lading, Delivery/Shipment Note or letter of authorisation as the case may be, relating thereto and shall not be bound to make any enquiry whatsoever as to the legal entitlement or otherwise of the Customer or such person to the Goods.
- 7.5.2** CITPL shall be discharged from all liability for wrongful delivery of the Goods where the carrying vessel advises CITPL that it is unable to discharge the Goods therefrom by marks.
- 7.5.3** CITPL shall not be bound to make any enquiry as to the correctness, proper authentication or otherwise of any endorsement appearing or purporting to have been made on any of the aforesaid bill of lading, Delivery/Shipment Note or letter of authorisation.
- 8. MOVEMENT OF GOODS**
- 8.1** By CITPL
- CITPL shall be entitled to move the Goods from the Facilities to any other part of any CITPL or to another part CITPL from time to time.
- 8.2** Storage of Goods
- CITPL may store the Goods in the open if deemed appropriate and suitable by CITPL.
- 9. SPECIFIC MEASURES**
- 9.1** Fixtures, fittings and measures
- Notwithstanding the other provisions of the Contract, CITPL shall be entitled immediately, and at the risk and expense of the Customer, to install or modify any fixture or fitting to the Facilities and take every measure reasonably deemed by CITPL to be necessary (including the cessation of the provision of the Services/Facilities or the removal or disposal of Goods) as required by any Government or public authority, and/or in order to prevent or reduce any damage (to property and the environment, personal injury or death) and/or to prevent or reduce the risk of any Claim or potential Claim against CITPL. Such fixture or fitting shall be the property of CITPL.
- 9.2** Notification to Customer
- CITPL shall as soon as possible, notify the Customer of such installation, modification and measures but any failure by CITPL to notify the Customer shall not entitle the Customer to make any Claim against CITPL in respect thereof.
- 10. INSPECTION AND WORKS**
- CITPL is entitled to conduct any inspection of or any works to the Facilities which is required, in CITPL's opinion, due to or pursuant to any law effective during the Contract Period, at the risk and expense of the Customer. The Contract Sum remains payable in the event of such inspection/works even if the Customer is deprived of the use of the Services/Facilities. CITPL is entitled to do all acts necessary for such inspection or works to take place and the Customer shall not make any claim arising therefrom save where there has been wilful intent or recklessness on the part of CITPL.
- 11. WORKING HOURS**
- The Services/Facilities shall be provided by CITPL during the normal working hours stipulated by CITPL. CITPL may, at its discretion, provide the Services/Facilities outside the normal working hours, and any costs arising therefrom shall be paid by the Customer.
- 12. REMOVAL OF VESSELS**
- The Customer shall ensure that the Vessel shall be removed from the CITPL immediately upon completion of the discharge/loading of the Goods or at any time as deemed necessary by CITPL.
- 13. CUSTOMER'S REPRESENTATIVE**
- 13.1** CITPL's approval
- CITPL may grant approval for any one or more persons authorised by the Customer to deal with CITPL, its employees and agents for the purposes of the Contract. All acts or omissions by such authorised person shall be deemed to be acts or omissions of the Customer.
- 13.2** Customer's responsibility



**13.2.1** The Customer shall ensure that only the Customer itself or the Customer's Representative shall deal with CITPL for the purposes of the Contract. Notwithstanding the provisions of this **Condition 13.2**, the Customer remains responsible for the due observance of and compliance with the Contract.

**13.2.2** Any undertaking by the Customer under the Contract shall be deemed to include an obligation to ensure that the same shall be carried out by the Customer's Representative.

**13.3** Liability and indemnity for Customer's Representative

CITPL shall not be liable for any Claim suffered by any person due to any cause whatsoever arising from the act or omission of any Customer's Representative or any other person ostensibly or apparently engaged or authorised by the Customer to deal with CITPL and the Customer shall absolve CITPL, its employees and agents in respect of such Claim and shall indemnify CITPL, its employees and agents in respect of such Claim.

**14. ACCESS TO AND PRESENCE AT CITPL**

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

**15. ENVIRONMENT**

The Customer shall not cause or permit any waste matter to be discharged in any manner onto any part of CITPL and no Vessel shall emit smoke, soot, ash, grit or oil beyond levels deemed as reasonable by CITPL at any part of CITPL.

**16. PAYMENT FOR SERVICES OR FACILITIES**

**16.1** Charges and other sums

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

**16.2** Conditions of payment

Except as expressly agreed otherwise between the Parties:

- (a) The Contract Sum shall be:
  - (i) payable without demand and without deduction not later than the date for payment stipulated in the CITPL Scale of Rates or under the Contract, as the case may be; and
  - (ii) recoverable against the Goods and any other property delivered by the Customer to CITPL under any other contract made between CITPL and the Customer.
- (b) CITPL may at any time and from time to time require the Customer to open and maintain for the duration of the Contract Period an account with CITPL subject to the terms and conditions provided in the CITPL Scale of Rates.
- (c) The Customer shall furnish security for a sum and of a form approved by CITPL for the prompt and proper performance and observance by the Customer of the Contract (including without limitation the obligation to pay the Contract Sum).
- (d) The sums due from the Customer or any of its related corporations to CITPL or any of its related corporations may be deducted from any sum due from CITPL to the Customer or any of its related corporations, including sums due pursuant to the Contract or otherwise. Each Party shall procure that its related corporations comply with the terms of this **Condition 16.2(d)**.
- (e) Notwithstanding the period for payment stipulated pursuant to **paragraph (a)(i)** above:

- (i) if the Customer is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
  - (ii) if the value of the assets of the Customer is less than its liabilities (taking into account contingent and prospective liabilities);
  - (iii) if a moratorium is declared in respect of any indebtedness of the Customer;
  - (iv) if any corporate action, legal proceedings or other procedure or step is taken in relation to:
    - (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganisation (by way of voluntary arrangement or otherwise) of the Customer [other than a solvent reorganisation of the Customer];
    - (B) a composition or arrangement with any creditor of the Customer, or an assignment for the benefit of creditors generally of the Customer or a class of such creditors;
    - (C) the appointment of a liquidator, receiver, trustee, judicial manager, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of the Customer or any of its assets; or
  - (D) enforcement of any mortgage, charge, pledge, lien or other security interest (or any other agreement or arrangement having a similar effect) over any assets of the Customer (including the Goods),
    - or any analogous procedure or step is taken in any jurisdiction; or
  - (v) if the Customer ceases or threatens to cease to carry on the whole or any substantial part of its core business as at the date of the Application;
  - (vi) if the Customer shall fail to perform or observe any term or condition of the Contract,
- the Contract Sum shall become immediately due and payable and CITPL shall be entitled to take all necessary steps to mitigate its risks and losses, including without limitation such steps to suspend its provision of Services/Facilities to the Customer.
- (f) Without prejudice to the generality of **paragraph (e)** above, if due to any reason whatsoever (except the default of CITPL) the Customer shall not pay the Contract Sum on or before the due date for payment referred to in **paragraphs (a)(i), (d)** and/or **(d)** above:
    - (i) CITPL shall be entitled to engage the services of any person(s) to recover such sum from the Customer, at the Customer's cost; and
    - (ii) Notwithstanding **sub-paragraph (i)** above, the Customer shall in addition to the Contract Sum and the costs described in **sub-paragraph (i)** above (if any), pay to CITPL interest on such sums at the rate of 2% per month or such other rate as may be notified to the Customer and the costs at the rate equivalent to the rate stipulated in the CITPL Scale of Rates or in the Contract (as the case may be), which interest shall be payable on a day to day basis

from the date immediately after the due date for payment to the date of actual payment of such sums, the costs and interest thereon or to the date of expiry or sooner termination of the Contract, whichever is earlier.

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

## **17. THIRD PARTY CHARGES AND SUMS ON GOODS**

### **17.1 Goods to be free of third party charges or sums**

**17.1.1** The Customer shall ensure that the Goods are delivered to CITPL free of any charges or sums due to third parties including any freight, port charges, Customs, taxes, duties, contributions, fines and any other costs.

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

**17.1.3** CITPL shall not be liable for nor be obliged to recover any such unpaid charges or sums or other charges or sums which have been overpaid or mistakenly paid by the Customer to any third party.

### **17.2 Cost of professional services**

If CITPL, in its absolute discretion, deems it necessary to seek professional services or to commence legal proceedings or to take other legal measures in relation to such unpaid charges or sums payable to the third parties, all costs and expenses incurred by CITPL in respect of such services, proceedings and measures shall be borne by the Customer.

### **17.3 Customer's liability**

Notwithstanding that CITPL may have taken delivery of the Goods, the Customer shall be liable for such unpaid charges and sums and shall indemnify CITPL, its employees and agents against any Claims against CITPL, its employees or agents arising in respect of such unpaid charges and sums, regardless of the location of the Goods at that point in time.

## **18. RIGHTS OVER GOODS AND VESSELS**

### **18.1 Right of lien and retention**

**18.1.1** CITPL shall have the right of lien and retention over all property (including the Goods) and all sums (including any sums collected by CITPL from third parties on behalf of the Customer) and all documents which CITPL shall now or hereafter hold of or for the Customer or which is now or hereafter due to the Customer, to secure the payment of the Contract Sum and the discharge of all liabilities of the Customer to CITPL under the Contract or at law.

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

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

### **18.2 Power to dispose of Goods remaining in custody as per applicable regulations**

**18.2.1** If the Goods are not removed from the Facilities within the period stipulated by CITPL under the Contract or if the Customer fails to pay to CITPL the Contract Sum for any reason, CITPL may dispose of the Goods by sale or in such other manner as it thinks fit **Provided that** in the case of a hazard or an emergency or if the Goods are of a perishable nature CITPL may direct or effect their removal or disposal immediately or within such shorter period as CITPL deems fit.

**18.2.2** CITPL shall render the surplus proceeds of sale (after deducting payments of the any and all sums due to CITPL, including the Contract Sum, and any other sums due to third parties payable by CITPL in relation to the Goods and/or the Customer whether under the Contract or any other contract or at law), if any, to the Customer and any other person entitled thereto on demand, and, in case no such demand is made within one year from the date of the sale of such property the surplus shall be paid to the account of CITPL, whereupon all rights to the same by such person shall be extinguished. If the proceeds of sale of the Goods by CITPL pursuant to this condition is insufficient to

- satisfy in full any claim of CITPL under the Contract, under any other contract made between CITPL and the Customer or at law, CITPL shall be entitled to recover the balance from the Customer as a debt in any court of competent jurisdiction.
- 18.3** Power to distraint for non-payment of Contract Sum
- 18.3.1** If the Customer fails to pay the Contract Sum in accordance with the Contract, CITPL may, in addition to any other remedy, distraint or arrest the Vessel in respect of which such Contract Sum is payable and the tackle, apparel or furniture belonging thereto or any part thereof, and detain the same until the amount so due is paid.
- 18.3.2** In case any part of the Contract Sum or of the costs of the distress or arrest, or of the keeping of the Vessel, tackle, apparel or furniture, remains unpaid for a period of not less than 14 days after any such distress or arrest has been so made, CITPL may cause the Vessel or other thing so distrained or arrested to be sold, and with the proceeds of the sale may satisfy those charges, other sums and costs, including the costs of sale remaining unpaid, rendering the surplus, if any, to the master or owner of the Vessel on demand.
- 19. TRANSFER OF RIGHT OR INTEREST IN GOODS**
- 19.1** CITPL not bound
- 19.1.1** CITPL shall not be obliged to recognise nor be bound by any transfer of ownership or the right to delivery or possession or other right or interest in respect of the Goods.
- 19.1.2** The Customer shall be liable for all Claims arising from any refusal of CITPL to recognise or to be bound by the intended transfer of ownership or other interest in the Goods and shall indemnify CITPL, its employees and agents in respect of such Claims.
- 19.2** Disputes
- 19.2.1** If there shall be any dispute between CITPL and the Customer or between CITPL and any third party relating to the ownership of or other right, title or interest in the Goods or if the Goods shall be attached, detained or seized by a third party in any way, CITPL shall be entitled to detain the Goods until the dispute is resolved by the court, Tribunal, Arbitral Tribunal or any other competent Judicial authority or otherwise settled, as may be the case.
- 19.2.2** CITPL shall be entitled:
- (a) to seek any legal and other professional services or to commence any legal proceedings or to take any measure which it deems necessary to protect its interest in such dispute, attachment, detention or seizure or to resolve such dispute, in which event the risk and expense of such services, proceedings and measure shall be borne by the Customer; and
- (b) notwithstanding **Condition 7**, to retain the Goods and such other Goods forming part of the Goods at the risk and expense of the Customer until the resolution or settlement of such dispute to CITPL's satisfaction.
- 19.3** Responsibility of Customer
- Notwithstanding the transfer of any right or interest in the Goods, until and unless CITPL shall have agreed to recognise and be bound by such transfer, the Customer shall continue to perform and observe the conditions of the Contract (including the obligation to pay the Contract Sum and all Claims) even insofar as they relate to any Services/Facilities provided after the transfer.
- 19.4** When transferee deemed to be Customer
- Upon CITPL's recognition and contract to be bound by the transfer, the transferee shall be deemed to be the Customer for the purposes of the Contract and shall also be jointly and severally liable with its predecessor in title for the performance and observance of the Contract as described.
- 20. REMOVAL OF GOODS**
- Notwithstanding the other provisions of the Contract, CITPL may require the Customer to remove any Goods at any time by giving fourteen days' prior notice or shorter notice

	(as determined by CITPL) for perishable / hazardous Goods. The Customer shall remove all Goods from the Facilities upon expiry or termination of the Contract or as required by CITPL.		negligence or the wilful act of CITPL.
<b>20.1</b>	<u>No liability</u>  CITPL shall not be liable for any Claim arising from the removal, disposal, destruction and intermediate storage of the Goods and the Customer shall indemnify CITPL, its employees and agents against such Claims.	(b) In the event of any claim against CITPL, CITPL shall not be liable, in each contractual year (i.e. a period of twelve (12) months from the date of the commencement of the Contract), for:	
<b>21.</b>	<b>OPERATING REQUIREMENTS AND CITPL RULES</b>		
	The Customer shall comply, and shall ensure that its employees, subcontractors and agents comply with CITPL's operating requirements as and when notified to the Customer, as well as all rules, conditions, policies and directions set by CITPL in respect of the CITPL and activities therein.	(i) Any sum exceeding INR 50 Lakhs (Indian Rupees Fifty Lakhs) in aggregate per incident or series of incidents; or	
<b>22.</b>	<b>FORCE MAJEURE</b>	(ii) Any damage to or loss of goods in a sum exceeding:	
<b>22.1</b>	<u>Affecting performance or observance by CITPL</u>	(A) INR 10 Lakhs (Indian Rupees Ten Lakhs) in the case of a vessel;	
	CITPL shall be released from performing or observing its obligations under the Contract if such performance or observance shall be prevented by any Force Majeure.	(B) INR 5 Lakhs (Indian Rupees Five Lakhs) in the case of a container of up to 20 feet in length;	
<b>23.</b>	<b>LIABILITY AND INDEMNITY</b>	(C) INR 10 Lakhs (Indian Rupees Ten Lakhs) in the case of a container exceeding 20 feet in length;	
<b>23.1</b>	<u>Extent of liability</u>	(D) INR 10 Lakhs (Indian Rupees Ten Lakhs) in the case of a package or unit of such Goods;	
<b>23.1.1</b>	Except where expressly agreed otherwise between the parties:	(E) The reasonable cost of repairs as agreed between surveyor(s) appointed by CITPL and the customer	
	(a) CITPL shall not be liable for any claim arising from:	Whichever is less; or	
	(i) Force majeure;	(iii) Any loss of profit, consequential loss or any indirect loss or damage	
	(ii) Any delay in vessel operations or error in the delivery of the goods to CITPL or re-delivery of the goods to the customer;	(iv) any third party claim made against CITPL.	Provided that CITPL is not liable for any claims less than INR 1 Lakh. (Indian Rupee One Lakh)
	OR	(v) Any death or injury suffered by any person on board any Customer Vessel while at berth pursuant to this Agreement, provided that CITPL's liability will not exceed INR 5 Lakhs	
	(iii) Any other cause unless it is first proven by the customer that such claim has arisen from the gross		

(Indian Rupee Five Lakhs) for any one incident

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

**23.1.3** The limitation of liability granted under this general condition 23 shall relate to the whole of any losses and damages which may arise upon any one incident or series of incidents, although such losses or damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law and notwithstanding anything contained in such written law.

**23.1.4** The claim will be void if the customer shall not have notified CITPL thereof in writing:

- (a) Of damage alleged to have been caused to a vessel or any goods, and to permit inspection thereof, prior to such vessel or goods leaving the facilities or the CITPL;
- (b) Within one week after the occurrence of the event giving rise to the claim; or
- (c) Within one week after the re-delivery of the goods to the customer,

Whichever is earliest.

Such notified claim will become void if no legal proceedings in respect thereof are commenced within 6 months after the date of notice.

**23.1.5** Where a container, pallet or similar article is used to consolidate goods, notwithstanding that the packages or other shipping units have been separately enumerated in the bill of lading as having been packed or consolidated in such container, pallet or article, the resultant consolidation shall be deemed and shall count as one package or shipping unit.

**23.2** Personal liability

Notwithstanding the other provisions of the contract, no matter or thing done and no contract of any kind entered into by CITPL and no matter or thing done by any

employee or agent of CITPL or any other person whomsoever acting under the direction of CITPL shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of providing the services/facilities, subject any such person personally to any action, liability, claim or demand whatsoever in respect thereof.

**23.3** Reasonableness [Non-Exc laudable Liability]

The customer expressly acknowledges that general condition 23 satisfies the requirements of reasonableness under any applicable law relating to the effectiveness of contractual provisions that seek to exclude or limit liability.

**24. DAMAGE TO CITPL OR OTHER CITPL PROPERTY**

If any damage is caused to any CITPL or other property arising out of the provision of the Services/Facilities, CITPL may in its discretion carry out such repairs or replacements as it thinks necessary, in which event the cost of such repairs or replacements, together with all interests, expenses and legal fees that may be incurred in the collection of such costs, shall be borne by the Customer.

**25. CUMULATIVE RIGHTS AND REMEDIES**

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

**26. INSURANCE**

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

**27. COMPLIANCE WITH LAW**

The Parties shall comply with all laws, rules and regulations affecting the Contract. The Customer shall obtain all requisite permissions, approvals and consents from the competent authorities and indemnify CITPL against any fines, penalties, losses, costs or expenses incurred by CITPL in

- respect of any non-compliance with such laws, rules and regulations.
- 28. ASSIGNMENT OF CONTRACT**
- Save as expressly permitted by the Contract, the rights and obligations of the Customer shall not be assigned to or shared in any way with any person without CITPL's prior written consent.
- 29. CONFIDENTIALITY**
- 29.1** No Party shall disclose to any other person any information related to the Contract without the prior consent of the other Party.
- 29.2** Notwithstanding **General Condition 29.1**, either Party may disclose information related to the Contract to:
- (a) such Party's agents or contractors who have a need to know the same provided that such agents and contractors are first subject to the same confidentiality restrictions contained herein;
  - (b) any other person pursuant to a legal requirement to disclose or pursuant to any judicial authority which requires disclosure; or
  - (c) any other person to the extent that such information shall already be known to such Party not due to a breach of this **General Condition 29** or is already a matter of public knowledge through no fault of the disclosing Party.
- 30. NO GRANT OF INTELLECTUAL PROPERTY RIGHT**
- No express or implied intellectual property right or licence belonging to either Party is hereby granted to the other Party.
- 31. COMMUNICATION**
- 31.1** Other forms of writing
- Where the Contract requires any notice or information to be in writing, that requirement is also met by electronic mail
- 31.2** Acknowledgement of receipt
- Except where expressly agreed otherwise, CITPL, its employee or agent is deemed to have received a Data Message when it acknowledges receipt by any communication in writing by CITPL, its employee or agent sufficient to indicate to the sender that the Data Message has been received.
- 31.3** Service
- 31.3.1** Subject to **Conditions 31.1** to **31.2** (inclusive), any notice to be given by either Party under the Contract shall be deemed to be received by the other Party if sent by:
- (a) hand or local urgent mail or express mail or other fast postal service, or
  - (b) registered post,
- to the registered or representative office of the recipient, or by telex, facsimile or other electronic media, followed immediately by a posted confirmation copy.
- 31.3.2** Notwithstanding the provisions of **General Condition 31.3.1**, CITPL may in its absolute discretion where CITPL considers appropriate or conducive to efficiency or expediency, choose to give any notice to the Customer required under the Contract, by writing addressed to users of the Services/Facilities generally or by posting a copy of such notice at the site office of CITPL..
- 32. CONSENT OR WAIVER**
- No consent or express or implied waiver by CITPL to or of any breach of any General Condition or any covenant or duty of the Customer shall be construed as a consent or waiver by CITPL to or of any other breach of the same or any other General Condition, covenant or duty by the Customer and shall not prejudice in any way the rights, powers and remedies of CITPL contained in the Contract or at law.
- 33. ARBITRATION**
- 33.1.** Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the

Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Mumbai, India.

- 33.2.** The Tribunal shall consist of a sole arbitrator. The language of the arbitration shall be English.

**34. SURVIVAL OF OBLIGATIONS**

Notwithstanding the complete performance of the Contract or the termination of the Contract insofar as it relates to the Customer, the terms and conditions of the Contract shall remain in full force and effect between the CITPL and the Customer insofar as such terms and conditions shall remain unfulfilled or relevant.

**35. STAMP DUTY**

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

**36. GOVERNING LAW**

- 36.1** The Contract will be governed by, and construed in all respects in accordance with, the laws of India.