

# Conditions of Terminal Services

## §.1. SUBJECT

This Schedule sets forth the rates, regulations and practices, and contractual terms and conditions, which shall apply whenever a ticket has been issued, and/or the customer receives any access to and/or use of a terminal facility and/or terminal service of Operator whatsoever, including any providing of, access to and/or use of any personnel, materials, supplies, tools, equipment, personal real property at and/or associated with a terminal facility. This Schedule shall be governed by the laws of Turkey. For any dispute arising out of or in any way relating to this Schedule, Commercial Courts of Istanbul have exclusive jurisdiction.

## §.2. DEFINITIONS

*Act* means Turkish Commercial Code and any other applicable source of Turkish law.

*Checking* means the service of counting and checking cargo against appropriate documents for the account of the truck, flatbad, cargo or the vessel, or other person requesting same.

*Customer* refers to any vessel, truck, conveyance, person and/or business entity who requests, is provided with and/or receives any terminal services whatsoever.

*Goods* refers to all cargo and other personal property items with respect to which Operator is requested to and/or does perform any terminal services, and all packing, packaging, crates, cradles, pallets, tanks, platforms, trucks, flatbeds, trailers, containers and other items, materials and supplies associated therewith.

*Handling* means the terminal service of physically moving goods.

*Heavy lift* means the service of providing heavy lift cranes and equipment for lifting goods.

*Loading and unloading* means the service of loading or unloading goods between a place of rest at the terminal facility and any vessel, rail car, trucks/motor vehicle or other conveyance.

*Operator* refers to the marine terminal operator(s) subscribing to this Schedule which owns and/or operates the relevant terminal facility as well as all other companies and/or facilities subscribing to this Schedule, as identified above, and the respective owners, shareholders, members, directors, officers, employees and agents of each of the foregoing, all of whom shall be entitled to all benefits, defenses, exceptions, immunities and limitations upon liability available to Operator hereunder, by law, at equity or otherwise.

*Package* refers to the largest single unit used to transport the goods, such as a single container, flatbed, or trailer, etc., or a single machine or item of equipment, etc., and not the individual contents, pieces, boxes, parts or components thereon, therein or thereof.

*Person* includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, drivers, assignees and personal representatives.

*Rate* means a price quoted by Operator in a schedule or otherwise for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a definite time frame.

*Terminal facility* means one or more structures comprising a terminal unit owned and/or operated by Operator, including, but not limited to, docks, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators or other bulk cargo loading/unloading structures, landings and receiving stations used for the handling, transmission, care and convenience of cargo or passengers in the receipt, interchange and/or delivery of the same between shippers, carriers and/or consignees.

*Terminal services* includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined herein, as well as any other providing

of, use of and/or access to a terminal facility whatsoever, including any providing of, use of and/or access to personnel, labor, services, materials, supplies, tools, equipment, personal property and real property at and/or associated with such terminal facility, and whether provided at such terminal facility or elsewhere.

*Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

### **§.3. RATES, CHARGES, INVOICING AND PAYMENT and OPERATOR'S LIEN RIGHTS**

1. Rates and Charges. Customer shall pay for terminal services upon the rates and charges on Operator's written quotation or other document, which quotation or other document from Operator shall be deemed accepted by Customer upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer. Upon any such acceptance, Operator's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Operator's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.

2. Other Charges. Customer shall also be responsible for paying/reimbursing Operator for any advances made respecting the goods, expenses incurred due to any act, omission and/or failure to perform by or on behalf of Customer, and expenses incurred with respect to the goods resulting in whole or part from any unforeseen or extraordinary circumstance.

3. Recalculation. Rates/charges based on inaccurate or incomplete descriptions, instructions or particulars may be recalculated at any time and without notice to Customer. Operator shall have the right to inspect the goods and any manifests, bills of lading, receipts, cargo lists and other documents relating thereto in order to check, recalculate and/or confirm rates/charges hereunder, and Customer agrees to fully cooperate with Operator to that end.

4. Invoice, Payment and Interest. Rates/charges hereunder shall be due and payable to Operator upon completion of the relevant terminal services and presentation of invoice. All payments shall be made in ..... currency without deduction or offset; in no event may amounts due Operator hereunder be withheld to offset any claim of Customer against Operator. Sums which are due Operator but which have not been paid for ..... (...) days or more shall accrue interest at the rate of ..... percent (.....%) per month from the date due until paid in full.

5. Invoice Disputes. Questions regarding the validity of any invoice from Operator must be submitted to Operator in writing within .... (...) days of presentation, failing which such invoice shall be deemed accurate, valid and accepted by Customer.

6. Collection. Should Operator engage a collection agent and/or attorney to collect amounts due hereunder, Customer shall be responsible for paying/ reimbursing Operator for all fees and costs relating thereto, including legal fees and costs, in litigation or otherwise.

Customer grants Operator a lien on the goods while in the possession of Operator and a lien against any vessel, container, truck, flatbed, etc. respecting such goods to provide security for the payment of amounts due Operator hereunder. As additional security for said amounts due Operator, Customer grants Operator a consensual lien on all other goods, cargo and personal property of Customer subsequently in Operator's possession. Operator may assert its lien rights at any time, and in furtherance thereof may hold and/or store such goods, cargo and personal property until payment is received and/or sell such goods, cargo and personal property publicly or privately; in the event of sale, proceeds shall first be applied to sale costs, then to amounts due Operator, with the balance, if any, to be remitted to Customer.

### **§.4. LIBERTIES AND PERFORMANCE**

1. Operator shall perform services hereunder with due diligence but does not guaranty any particular speed or starting or completion dates or times. Operator shall have liberty with respect to selection of equipment, procedures and methods utilized for its performance, except to the extent such matters have been specifically agreed otherwise. Operator reserves the right to control and perform all weighing, loading,

handling and discharging of goods at the terminal facility, but shall not be obligated to receive, handle or deliver goods unless and until all proper documentation has been presented. Operator may, at its option and without notice, refuse, reject, move within and/or remove from the terminal facility any goods, trucks or flatbeds, which it believes may present a risk to persons or property, at Operator's sole discretion and Customer's sole risk and expense. (2) **SUBCONTRACTING:** Operator may subcontract all or any portion of the terminal services at its discretion and without notice, including without limitation to related/affiliated entities, with all benefits, defenses, exceptions, immunities and limitations upon liability set forth in this Schedule to remain applicable whenever claim is made against Operator and/or any servant, agent, contractor or any other whose services have been used to perform terminal services or otherwise respecting the goods. (3) **EXCEPTIONS FROM PERFORMANCE – FORCE MAJEUR:** Operator shall not be responsible for any delay or failure to perform resulting from any cause which is beyond Operator's control and/or which arises without the actual fault and privity of Operator, including without limitation any delay and/or failure to perform caused by any one or more of the following: act of God; weather conditions; fire; war; act of public enemies; terrorism; arrest, decisions of rulers or people; seizure under legal process; quarantine; act or omission of Customer or its agent or representative; strike, lockout, stoppage or restraint of labor from whatever cause and whether partial or general; riot or other civil commotion; latent defect, insufficiency or inadequacy of markings applicable to the goods; and/or terminal congestion. (4) **OPERATOR AS INDEPENDENT CONTRACTOR:** Operator shall at all times perform as, and shall for all purposes hereunder be deemed, an independent contractor. Operator is not a common carrier, contract carrier, freight forwarder, freight broker or vessel charterer, nor an agent, employee, partner, joint venturer or landlord of Customer.

#### **§.5. CUSTOMER'S DESCRIPTION AND TENDER OF GOODS**

Customer shall be solely responsible for providing Operator with, and hereby warrants the completeness and accuracy of, all information, descriptions, particulars and instructions relating to the goods, including as to their nature, characteristics, markings, number, count, weight, dimensions, volume and quantity, as well as any special instructions or conditions applicable to the goods, their handling and/or transportation, upon all of which Operator shall be entitled to rely. Customer shall be responsible for, and agrees to indemnify and hold Operator harmless (including legal fees and costs) from and against, any loss, damage, expense, claim, liability, suit, fine and/or penalty resulting from any false, inaccurate and/or incomplete information, descriptions, particulars and/or instructions respecting the goods.

Customer shall tender goods to Operator at the date, time and place agreed by Operator in good order, count and condition, and packaged, protected, packed and stowed sufficiently to withstand the contemplated terminal services, handling and subsequent transportation, including by vessel, rail car, motor vehicle and/or airplane, as applicable.

#### **§.6. BILLS OF LADING**

Customer specifically agrees that Operator's liability for loss/damage to or in connection with the goods shall at all times be subject to and limited by section 8, that the forum identified in section 1, shall apply to any dispute involving Operator, and that Operator does not and will not consent to the jurisdiction of any court or arbitration proceeding identified in, nor shall Operator otherwise be bound by, any forum selection clause in any bill of lading or transportation agreement applicable to the goods.

Without limitation upon the foregoing, Customer shall be responsible for ensuring that all bills of lading and transportation agreements applicable to the goods incorporate the Hague-Visby Rules 1968 and / or United States Carriage of Goods by Sea Act (COGSA), as amended, and that all the benefits, defenses, exceptions, immunities and limitations upon liability granted under such regime for benefit of the carrier are extended to the periods of time prior to and during the loading of the goods, and during and following the discharging of the goods, and otherwise to and for the benefit of Operator.

In addition, whenever any such benefits, defenses, exceptions, immunities and limitations have been waived, limited and/or omitted, as in the case of ad valorem or dangerous goods, for example, Customer shall be responsible for providing Operator with written notice thereof prior to tender of the goods to Operator.

Customer agrees to indemnify and hold Operator harmless (including legal fees and costs) of and from its failure, in whole or part, to meet the requirements of this section.

**§.7. MOTOR VEHICLE RULES:** (1) Unless otherwise agreed by Operator in writing, if the goods include one or more motor vehicle(s), a single motor vehicle shall be deemed a single "package". Operator may require additional shoring-lashing to handle such goods, at its discretion, in which event additional charges may apply if not otherwise identified on Operator's written quotation. (2) Any truck/motor vehicle having business at the terminal facility, including its owner, operator and driver, shall be considered a Customer requesting and/or receiving access to and/or use of the facility subject to the provisions of this Schedule, including without limitation the security provisions. (3) **Loss/Damage to Equipment and Property:** Customer shall be responsible for, and shall indemnify and hold Operator harmless (including legal fees and costs) from and against, all loss/damage to Customer's/Operators/Third parties equipment and property, including all of its materials, supplies, tools, equipment, trucks, motor vehicles, trailers, chassis, flatbeds and other equipment and/or property, howsoever caused and even if resulting in whole or part from the negligence or other fault of Operator. (4)**Loading/Unloading:** Customer shall be responsible for assuring that all trucks/motor vehicles, and chassis, trailers, etc., are fit and suited for safe loading and unloading, and that the goods are situated such that loading/unloading can be performed continuously and without interruption. Unless otherwise agreed by Operator in advance and in writing, all loading/unloading shall be performed by Operator with the assistance and under the supervision of the driver/motor carrier. If the driver/motor carrier does not so assist and supervise, additional charges may be incurred.

**§.8. LOSS/DAMAGE TO GOODS:** (1) Turkish Commercial Code is incorporated into this Schedule and shall be applicable at all times the goods are, or are deemed, in the care, custody and/or control of Operator. The Operator will have also benefit of the defences and limitations available to the carrier under Hague - Visby Rules where applicable, unless inconsistent with any other provision in these Conditions. Operator shall not be liable for any loss/damage to or in connection with the goods in an amount exceeding SDR 667 per package or 2 SDR per kilo, which ever is higher, in the event of goods not in such packages per customary freight unit, unless a higher value for the goods has been declared in writing to Operator prior to the commencement of any terminal services whatsoever and Customer has paid increased rates/charges resulting from such declaration of higher value. SDR will be calculated on daily TCMB rates. Operator shall not be responsible in any event for any loss/damage to or in connection with the goods if the nature or value thereof has been knowingly and fraudulently misstated. Operator shall not be liable to Customer or any other respecting the goods except as set forth in this section, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, and/or in tort, contract or other theory. (2) **NO CONSEQUENTIAL DAMAGES:** Operator shall not under any circumstances be liable to Customer or any other for any indirect, consequential or special damages of any type or nature whatsoever, including, without limitation, any damages consisting of lost profits, lost income, lost business, lost business opportunity, interruption of business, loss or use and/or loss of ability to use undamaged component or system parts, regardless of whether such damages may have been foreseeable. (3) **CLAIM DOCUMENTATION:** Operator shall not be liable for any loss/damage to or in connection with the goods which arises and/or results from any of the following: unseaworthiness, unless caused by want of due diligence; act, neglect or default of master, mariner or pilot in the navigation or management of a vessel; fire, unless caused by the actual fault and privity of Operator; perils, dangers and accidents of the sea or other navigable waters; act of God; act of war; act of public enemies (including terrorism); arrest or restraint of princes, rulers or people, or seizure under legal process; quarantine restrictions; act or omission of Customer, its agent or representative; strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general; riots and civil commotions; saving or attempting to save life or property at sea; wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods; insufficiency of packing; insufficiency or inadequacy of marks; latent defects not discoverable by due diligence; and any other cause arising without the actual fault and privity of Operator.

Customer's written notice of loss/damage to or in connection with the goods must include and attach copies of the following, as applicable: all bill(s) of lading, transportation agreement(s), receipt(s) and other document(s) identifying the goods, consignor, consignee, vessel, voyage, shipping date, etc.; all manifests, packing lists, stow plans, loading/discharge reports, tally/count sheets, cargo receipts, etc.; all agreements, invoices and receipts respecting any sale of the goods; all correspondence respecting the goods and/or their transportation; all inspections, surveys, photographs, claim bills, invoices and statement of losses respecting the goods and/or the loss/damage being claimed, including documents supportive of any mitigation, salvage, market analysis and disposition efforts; and all other documents, instruments, records, data, drawings, photographs and information of any kind or nature whatsoever which may be pertinent or helpful to an understanding of the nature of the goods, the particulars of their transportation and/or the loss/damage being claimed. (4) **PERSONEL INJURY / DEATH:** Customer assumes responsibility for any bodily/personal injury, illness and/or death of its employees (including those of its subcontractors), and

agrees to indemnify and hold Operator harmless (including legal fees and costs) of and from the same. In addition, Customer assumes responsibility for, and agrees to indemnify and hold Operator harmless (including legal fees and costs) of and from, any bodily/personal injury, illness and/or death of any other person at the facility which arises out of or is in any way connected with Customer's access and/or use of the terminal facility or terminal services. The foregoing indemnification shall be deemed to include any claim or suit by any employee (present or former) of Customer, and in furtherance thereof Customer waives any immunity from suit, exclusivity of remedy and limitation of liability under any workers compensation act or similar law.

#### **§.9. DUTY TO ACCEPT GOODS**

Customer shall be responsible for accepting the goods, or having the goods accepted, from Operator upon completion of services and any inspection thereof requested by Operator, even if such goods are claimed to have suffered loss/damage. Customer shall not abandon any goods at the terminal facility or otherwise with Operator for any purpose or under any circumstances whatsoever.

#### **§.10. ASSUMPTION OF RISK AND INDEMNITY**

Customer specifically understands, acknowledges and agrees that any and all providing of, access to and/or use of the terminal facility and/or terminal services of Operator by or on behalf of Customer shall be at Customer's sole risk and expense. Aside from loss/damage to the goods themselves, as addressed herein, Customer assumes sole responsibility for, and agrees to indemnify and hold Operator harmless from and against (including legal fees and costs), all other loss, damage, expense, claim, liability, suit, fine and/or penalty of any type or nature whatsoever which in any way arises out of and/or relates to any providing of, access to and/or use of the terminal facility and/or terminal services of Operator by or on behalf of Customer, including, without limitation, those respecting any loss/damage to the property of Operator, Customer or any other as well as those respecting the personal injury, illness and/or death claims of any person, including without limitation of any agent, employee, representative, guest, invitee, vendor and/or subcontractor of Operator, Customer or any other, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other legal fault of Operator. In furtherance of the foregoing, Customer shall waive any immunity from suit, exclusivity of remedy and limitation upon liability which would have otherwise been afforded pursuant to any workers compensation act or similar law.