

1. CFS and other logistics services

1.1 The CFS operator shall provide the CFS & other logistic services specified in Schedule 1 to the customer and other such services as required by the customer and agreed by CFS operator from time to time in and around the CFS as more particularly detailed and priced in Schedule 1 and in accordance with the terms of this agreement (the "CFS and Logistics Services")

1.2 The CFS operator reserves the right to enter into arrangements and contracts with other parties providing any services whatsoever (whether or not the same as, or similar to the CFS services).

2. Billing and Financials Terms

2.1 The CFS operator shall prepare an itemised invoice (for activities like special operations, any auction charges, any empty ground rent etc. when special services are requested) within the number of days set out in Schedule 1 together with the relevant supporting documents reflecting the necessary information requested by the Customer and forward it to the Customer's designated representative office, no later than the number of days set out in Schedule 1 and such invoice shall be prepared in accordance with the Customer's accounting procedures and instructions. The CFS operator shall when requested, provide the customer with full evidence and explanation, for clarification on any item

2.2 The customer shall pay all undisputed invoices into the designated account of the CFS operator with the number of days set out in Schedule 1 from the date of invoice.

2.3 The CFS operator may at any time or times, with prior written notice to the Customer, set off any admitted liability of the Customer to the CFS Operator which is mutually agreed by the Parties against any liability of the CFS operator to the Customer, whether any such liability is present or future (whensoever arising), liquidated or unliquidated, under this Agreement or not and irrespective of the currency of its denomination. Any exercise by the CFS operator of its rights under this clause 2.3 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

3. Representation and Warranties

3.1 The Customer hereby represents, warrants and undertakes to the CFS Operator that, throughout the Term:

3.1.1. The customer shall:

- (a) pay the Rates and Tariffs and all other amounts due under this Agreement on time
- (b) at all times, comply fully with the terms of this Agreement
- (c) comply with any directions imposed by or agreed with the CFS Operator for the use of the CFS or relating to Containers; and

3.1.2 This Agreement, as executed and delivered, will constitute, valid and legally binding obligations of the Customer in accordance with its respective terms.

3.1.3 upon delivery of a container to the CFS operator, the Customer shall supply all values and other particulars in respect of the Container to the CFS Operator for customs or other purposes

3.1.4 all necessary customs removal permits are complete and accurate and, where appropriate, are valid and in full force and effect.

3.2 The CFS Operator hereby represents, warrants and undertakes, to the Customer that, throughout the Term:

3.2.1. The CFS operator shall:

- (a) ensure that all Containers stored on behalf of the Customer are stacked in a safe and secured manner and that it will not cause any harm or damage to their structure;
- (b) at all times, comply fully with the terms of this Agreement and with all applicable laws and regulations issued by any authority having jurisdiction; and

3.2.2 This Agreement, as executed and delivered, will constitute, valid and legally binding obligations of the CFS Operator

4. Indemnity and Liability

4.1 Each Party shall notify the other Party without undue delay upon becoming aware of any matter which gives rise to or may give rise to a claim for loss or damage(s) under this Agreement, including under this clause 5, stating in reasonable detail the nature of the matter and claim, and so far as practicable, the amount claimed

4.2 The CFS Operator shall be liable for and shall indemnify the Customer against any liability for claims or legal actions of any kind, including reasonable costs and expenses incidental thereto, in respect of loss of or damage to any of the Customer's Containers whilst in the custody and/or control of the CFS Operator, its servants, agents or subcontractors, caused in each case, by and to the extent of the negligence of the CFS Operator, its servants, agents or sub-contractors.

4.3 Any liabilities of the CFS Operator to the Customer under this Agreement shall be limited and/or exempted as follows

4.3.1 the CFS Operator assumes no liability for the delivery or receipt of cargo, Containers or equipment based upon delivery or receiving papers subsequently found to be fraudulent, inaccurate or stolen;

4.3.2 unless stuffed and /or packed by the CFS Operator, the CFS Operator shall not be liable for loss or damage to any Goods caused by insufficient protection or packing of the Goods within the Container;

4.3.3 Except in the extent the CFS Operator has contributed or caused any loss or damage to the Customer or has been in breach of its obligations under this Agreement, in all other cases the CFS Operator shall not be liable for loss of or damage to Goods and the Customer shall indemnify the CFS Operator against any injury, loss, damage, liability or expense whatsoever incurred or claimed by the CFS Operator if such loss of or damage to the Goods and /or such injury, loss, damage, liability or expense has been caused by matters beyond the CFS Operator's control including, inter alia, without prejudice to the generality of this exclusion:

- i. the manner in which the Container has been packed; or
- ii. the unsuitability of the Goods for carriage in Containers; or
- iii. the unsuitability or defective condition of the Container or the incorrect setting of any thermostatic, ventilation or other special controls thereof; or
- iv. insufficient or defective condition of packing or marks; or
- v. insufficient protection of the cargo within the Container; or
- vi. improper bracing of the cargo within the Container; or
- vii. inherent vice of the Goods.

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

4.5 Notwithstanding anything herein to the contrary, neither Party shall be responsible or liable to the other for any consequential, punitive or other similar indirect loss or damages, whether foreseeable or not, which shall include, without limitation, loss of profits, loss of revenue or business or goodwill and even if such claim or liability were to be based upon any breach by a Party of its obligations under this Agreement or any negligent act, fault or omission by a Party.

5. Claim notification and Time Bar

5.1 The Parties must without undue delay notify the other of an event which customarily requires or is deemed to require a survey of loss or damage.

5.2 A Party shall be discharged from any liability and the other Party (the claimant) shall save, protect, defend, indemnify and hold the former Party harmless of any liability in respect of:

5.2.1 loss or damage to a Party's property (owned, leased or otherwise managed/operated), unless the claimant has brought a formal claim or commenced formal proceedings against the other Party within six (6) months of becoming aware of the event or occurrence giving rise to such claim,

5.2.2 bodily injury or death, unless the claimant has brought a formal claim or commenced formal proceedings against the other Party within 3 (three) months of the date of final judgment in a claim or action against the claimant, or from the date that the claimant has settled any such claim or action.

6. Force Majeure

6.1 Neither Party shall be liable in respect of any breach or non-performance of this Agreement if and to the extent that such Party is prevented or delayed from performing its obligations under this Agreement due to extraordinary circumstances outside such Party's control and provided that such circumstances could not have been avoided by such Party and were not foreseeable at the time of execution of this Agreement. The foregoing shall include but not be limited to riot, commotion, terrorism, invasion, armed conflict, hostile act of foreign enemy, revolution, insurrection, war, explosion, blockade, fire, flood, tsunami, rainstorm, earthquake, landslide, storm or other natural disaster, strike/ lock out (but not relating to the employees of the Party claiming it), orders passed by any court/ governmental body preventing the conduct of activities partially or completely or any other act, omission or intervention of government, court or other competent authorities ("Force Majeure Event").

6.2 In the event of the occurrence of any such Force Majeure Event, such of the obligations that cannot be performed by either Party shall be suspended during the continuance of such Force Majeure Event. The Party concerned shall immediately communicate in writing to the other Party, the existence of such Force Majeure Event and use best endeavours to alleviate the difficulty caused by such Force Majeure Event.

6.3 If the affected Party fails to promptly notify the other Party within 7 days of occurrence of any such Force Majeure Event in writing of the occurrence of a Force Majeure Event, such affected Party shall have no right to appeal to the other Party on this ground for discharge from its liability.

6.4 In the event a Force Majeure Event, either Party may terminate this Agreement in writing as set out in clause 8.2.4.

7. Anti Corruption and Compliance

7.1 The Customer undertakes and warrants to the CFS Operator that neither it nor any member of the Customer's Group in India, nor any agent, consultant or other intermediary acting on behalf of the Customer or the Customer's Group, shall, directly or indirectly, in relation to this Agreement, give, promise or attempt to give, or approve or authorise the giving of, anything of value, including by transferring all or part of the remuneration payable under this Agreement, to:

- (i) any employee, officer or director of or any person representing the CFS Operator or its Group;
- (ii) any other person, including any Public Official;
- (iii) a political party or a labor union controlled by any Government or political party, or
- (iv) a charitable or other organization, or an officer, director or employee thereof, or any person acting directly or indirectly on behalf of the same;

for the purpose of (i) securing any improper advantage for the Customer or its Group; (ii) inducing or influencing that Public Official improperly to take any action or refrain from taking any action in order for either Party's Group to obtain or retain business, or to secure the direction of business to either Group, or (iii) inducing or influencing that Public Official to use his/her influence with any Government or public international organisation, or any or any department, agency or other instrumentality thereof, for any such purpose.

8. Termination

8.1 This Agreement may be terminated by either party upon serving a 90 (Ninety) days prior notice in writing upon the other party in general.

8.2 This Agreement may be terminated by either party upon serving a 30 (Thirty) days prior notice in writing upon the other party if:

- 8.2.1 if any party commits a breach of any of the provisions of this Agreement including clause 8, or
- 8.2.2 if any of the party is declared insolvent or there is an attachment order upon its property(ies), or if any party makes an assignment for the benefit of its creditors or enters a composition with its creditors,
- 8.2.3 any approval, consent, license or other approval granted by any regulatory or governmental body being withdrawn, cancelled or otherwise no longer applicable, making it impossible for the CFS Operator to continue with the provision of the CFS & other Logistics Services during the Term.
- 8.2.4 notice of termination with immediate effect by either Party following an event of Force Majeure continuing for a period of 30 (Thirty) days;

8.3 Any such termination shall be without prejudice to the accrued rights and liabilities of the Parties in respect hereof as at the date of such termination or which may thereafter accrue in respect of any act or omission prior to such termination and shall be without prejudice to any provisions of this Agreement which are expressed to remain in force thereafter.

9. Arbitration and Law & Jurisdiction

9.1 This Agreement shall be governed by and construed in accordance with the laws of India.

9.2 In the event of any disputes, differences or claims arising between the Parties in connection with this Agreement, during its subsistence or/and after its termination in any manner whatsoever, including the validity or the construction or interpretation of any of the clauses hereof or anything done or omitted to be done pursuant hereto, the same shall be referred and resolved through arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactment or modification thereof;

9.3 The Arbitral Tribunal shall comprise of three Arbitrators, each Party shall be entitled to appoint one Arbitrator each, who in turn will then appoint the third Arbitrator who shall preside as chairman.

9.4 The decision of the Arbitral Tribunal thereon shall be final, conclusive, and binding on both the Parties to the Agreement.

9.5 The venue of such arbitration proceedings shall be in Mumbai and the proceedings shall be in English. The arbitration shall be conducted in accordance with the substantive and procedural laws of India.

9.6 Subject to the provisions of the preceding clause relating to arbitration, the civil courts in Mumbai shall have exclusive jurisdiction to deal with all issues arising under this agreement.

10. Miscellaneous

10.1 Subcontracting

The CFS Operator may sub-contract the CFS & other Logistics Services, keeping all its rights & obligation intact under the agreement however the CFS Operator shall always remain responsible and liable for the acts or omissions of its subcontractors under this Agreement or as per law.

10.2 Independent Contractor

This Agreement, does not create, nor shall the same be construed as creating any partnership, joint venture or association. Nothing in this Agreement shall be deemed to constitute a Party as a partner, agent or legal representative of the other Party for any purpose whatsoever.

10.3 Lien

10.3.1 All Goods and all documents relating to Goods and any other property owned or controlled by the Customer shall be subject to both a particular and general lien for any charges due to the CFS Operator from the Customer in respect of the CFS Services. Storage charges will continue to accrue under the lien.

10.3.2 The CFS Operator shall have the right to sell the aforementioned, Goods / documents and other property by public auction or private treaty without notice to the Customer and at the Customer's expense.

10.3.3 The CFS Operator shall be discharged of any liability whatsoever in respect of the Goods / documents and other property.

10.3.4 Notwithstanding the foregoing, any general lien right including the right to sell as set out in sub-clause 11.4.1 and 11.4.2, which is invoked by the CFS Operator over the goods and documents must be with prior written notice to the Customer and in strict compliance with prevailing customs regulations and directions/orders by competent government authorities.

10.4 Notices

Any notices to be given by either Party to the other Party shall be in writing and may be sent by email or registered mail. The address of the Parties for such service shall be as stated in Part I, Box 5.

10.5 Entire Agreement

This Agreement constitutes the entire agreement between the CFS Operator and the Customer, in connection with the provision of CFS Services by the CFS Operator to the Customer, the handling of Containers and all other matters incidental thereto, and the terms and conditions in this Agreement shall supersede any other terms and conditions which may appear from time to time in any documents used by the Customer (unless the same have been accepted by the CFS Operator in writing) or elsewhere and shall override and exclude any other terms and conditions stipulated or incorporated or referred to by either Party, whether in any negotiation or course of dealing between them in connection with the matters referred to in this Agreement.

Any additions and modifications hereto shall be by written instrument signed by both Parties.

10.6 Severability

If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

10.7 Confidentiality

10.7.1 The Parties agree and undertake that they and their respective directors, employees, advisers, contractors, Sub-contractors or agents will treat and safeguard as strictly private and confidential the terms and conditions of this Agreement and will not at any time, without the prior written consent of the others, disclose or reveal such terms and conditions to any other person whatsoever unless such matter is in the public domain (by reason other than disclosure by that Party) or if any Party shall be compelled by any judicial authority (including, but not limited to, the Authority) to disclose any such information. If any Party is compelled by a judicial authority to disclose or reveal such terms and conditions to any other person, the disclosing Party will immediately notify the other Party of that fact so that the other Party may, if it wishes, seek to prevent or to limit that disclosure.

10.7.2 No Party shall make any announcement, statement or press release concerning the terms and conditions of this Agreement without the prior written consent of the other Party.

10.7.3 The provisions of this clause 11.7 shall remain in full force and effect notwithstanding the expiry of the Term or earlier termination (for whatever reason).

10.8 Waiver

The rights of each Party under this Agreement are independent, cumulative and without prejudice to all other rights available to it and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other rights of a Party, whether under this Agreement or otherwise.

10.9 Assignment

The CFS Operator shall have the right to assign or otherwise transfer its right, title, interest and obligations under this Agreement to any affiliate, provided such entity operates in the Port sector.

10.10 Counterparts

This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party executes at least one counterpart. Each counterpart when executed shall constitute an original of this Agreement, but all the counterparts shall together constitute one same instrument.