

# NHAVA SHEVA FREEPORT TERMINAL

## STANDARD TERMS OF BUSINESS ("TERMS")

The following terms and conditions ("T&C") shall apply to all Services provided by the Nhava Sheva Freeport Terminal Private Limited (NSFT) to the Customers as well as Users in the Terminal. The Customers/ Users of the Berth and the Services of NSFT are deemed to have acknowledged, read, understood, agreed to be legally bound by, and accepted the T&C upon the entry of their Vessel or their Container into the NSFT. The T&C is in addition to any rules and regulations that NSFT may issue/update from time to time.

In the absence of express acceptance by the User of the T&C, by receiving or using the Services from the Operator, or by using or entering the Terminal, including by berthing any Vessel at the Terminal, the User is deemed to have read, understood and agreed to the T&C, without amendments.

### A. Definitions:

Act:	means the Major Port Trusts Act, 1963;
BerthingWindow:	means the time frame within which a Vessel is to arrive on schedule, perform cargo operations and depart at the end of time frame prescribed in Berthing Program as Berthing Window; Berthing Window is not associated with a fixed berth number dedicated to any Customer. Vessels may be berthed to any berth, considering Vessel and operation specifications at the sole discretion of NSFT according to the daily operation plan of the Terminal.
BerthingProgram:	Means the schedule of berthing for all ships at the Terminal.
Cargo Cut-Off Time:	means the closing time for receipt of Containers at the Terminal in accordance with NSFT's procedures in force from time to time.
Customer:	means any person or entity requesting receiving or benefiting from the delivery of services by NSFT including, without limitation: (i) the owner of, charterer (of whatsoever nature) of the Vessel, the members of any shipping consortium or alliance or any other person who is or may become interested in a Vessel calling at NSFT, the Vessel's Master and any person who has control of the operation of such Vessel; (ii) the owner or any other person who is or may become interested in the Goods; (iii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; (iv) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; (v) any person who drives or operates such vehicle and any person who visits, uses and/or enters the Terminal;
Consortium Members:	means the shipping line members of a consortium, vessel sharing agreement, slot charter agreement or other type of shipping line combination on whose behalf also the Customer enters into these Terms.
Container-transporter:	means any road vehicle (including articulated vehicles) used for the carriage of Containers, Non-standard Containers and Out of Gauge Containers or any vehicle other than a Vessel;
CSC:	means the International Convention for Safe Containers, 1972, as amended from time to time;
EDI Services:	means Electronic Data Interchange Services and is defined as the application-to-application transfer of business documents between computer application systems of trading partners and/or administrations with minimal manual intervention;
Force Majeure:	means an event or circumstance beyond the reasonable control of the Affected Party including, but not limited to, any act of God, act of public enemies, war, warlike acts, (cyber)terrorism, restraint of governments, princes or peoples of any nation, riots, strikes, lockouts or other labour or industrial disputes, failure of a utility service, insurrections, civil commotion, civil disobedience, floods, fire, restrictions due to

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quarantines, sanctions or radioactivity, epidemics, storms, tempest, typhoon, tsunami or any other event or circumstance beyond the reasonable control of the Affected Party. Notwithstanding the aforesaid the following shall be considered as Force Majeure within the meaning of these Terms: (i) restrictions on imports imposed by the Port authorities or any other authority, organ or instrumentality of India; (ii) confiscation, expropriation or nationalization of Terminal assets; (iii) commandeering or requisition of Terminal assets; (ii) any law or governmental order, rule, regulation or direction, in each case outlined in (ii), (iii) and (iv), by the Government of the country where NSFT has its registered office or primary place of business; or (v) any event or circumstance of a nature analogous to any of the foregoing;

Goods/Cargo:	means the whole or any part of the cargo of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container and includes non-containerized cargo, Hazardous Goods and Dutiable Goods carried on a Vessel;
Government:	means any national or local government, including any department, agency or other instrumentality thereof, and any government owned or controlled enterprise;
Hazardous Goods:	means Goods which are, or which may become, of a dangerous, noxious, toxic, poisonous, hazardous, explosive, flammable, or otherwise damaging nature (including radioactive material), or which may, or may become liable for, damage any persons or property whatsoever, and whether or not so listed in any official or unofficial, international or national code, convention, listing or table;
Intermediary Service:	means, in relation to the use of the EDI Service, services or facilities provided by an intermediary as mutually agreed by the Parties to facilitate the interchange of data by electronic means;
ISPS Code:	means International Ship and Port Security Code of the International Maritime Organization and includes any amendments or extensions thereto and any regulation issued pursuant thereto;
JNPA:	means Jawaharlal Nehru Port Authority.
Master:	includes every person, except a pilot, having for the time being the command or charge of any Vessel;
Moves:	means the total number of Containers loaded or discharged on the vessel, Moves includes full, empty, shifting, restows, transshipment containers, lock bins and hatch covers loaded or discharge to or from a Vessel;
NSFT:	means Nhava Sheva Freeport Terminal Private Limited
Notice of Arrival:	means the notice given by the Customer/Master to NSFT in writing within twenty-four (24) hours prior to the arrival of the Vessel;
Non-standard Container:	means any Container which NSFT cannot handle as a normal lift with a container spreader but can handle with alternative means;
Out of Gauge Container:	means any Container the Goods in which exceed the dimensions of a standard Container as specified in section (i) of the definition of Container; which must be handled with the use of special attachments to a Container spreader.
Port:	means Jawaharlal Nehru Port Authority;
Port Procedures:	means such actions or series of actions as may be laid down by the Jawaharlal Nehru Port Authority for Masters of vessels arriving at, staying in or departing from the Jawaharlal Nehru Port including but not limited to adherence to Major Port Trust

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Act, 1963 and providing previous notification on a variety of subjects, ranging from health & safety, environment, immigration and dangerous goods.

Reefer Container:	means a Container designed for the refrigerated transportation of Goods, including its reefer machinery unit;
Scale of Rates:	means the rates and tariffs published and updated by NSFT from time to time on its website.
Services:	means all services and activities performed or arranged, and all the facilities made available, by the NSFT pursuant to the terminal .
SOLAS:	means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines and as may be amended or supplemented from time to time;
SOLAS Guidelines:	means the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization, as may be amended, supplemented or replaced from time to time;
Sub- Contractors:	means any sub-contractor appointed by the NSFT for the performance of the Services or any part thereof.
Terminal:	means NSFT Terminal facilities at JNPA, Nhava Sheva,
Terminal Services:	means the services provided by NSFT to its Customers at the Terminal (type of services, service description) as set out in the Rates & Tariffs;
Unprotected Cargo:	means, where they relate to containerized cargo, shall mean cargo that is packed, stuffed or stowed either in or on a flat rack, u-rack, platform, or placed in an open-side or open-top container or in a container where the bottom is not sufficiently secured. Where they relate to bulk or break bulk, or out of gauge cargo, it shall mean cargo not placed in a carton or any form of packaging. In both containerized, bulk and break bulk cargo, the packing, stuffing or storage is such that the cargo is exposed in a manner that will result in their damage, loss in weight, value or quality;
User:	means (a) the Client; (b) the Client's Customers; and (c) any other Person who uses and/or enters the Terminal.
Vessel:	means a ship of allowable size, fitted for the carriage of Containers, transporting permitted cargo, whether above or below deck, including all lashing equipment required for the proper securing of Containers, its gear and all other equipment or other property on board;
Verified Gross Mass: (VGM)	means the total gross mass of a packed Container as obtained and verified in accordance with methods prescribed by SOLAS;
Wharf:	includes berth, quay, jetty, ramp, landing place and any wall adjoining the foreshore, seabed for loading or discharging Goods
Work Order:	shall mean work orders executed between the Parties in furtherance to the Contract. The Contract, all Work Orders and the T&C shall be considered one composite contract.
Working Day:	means any day (including any public holidays and Sundays) that the Terminal is open for business.

**B. Scope**

1. These Terms shall apply to any provision of Terminal Services, of any nature whatsoever, by NSFT to the Customer and all Vessels which call at the Terminal and otherwise to any Customer. By requesting the delivery of Terminal Services, the Customer warrants to be authorized to enter into an agreement with NSFT not only for itself but also as agent for the owners of the Vessel (if chartered), Goods and Containers and other Consortium Members. The Customer and NSFT are collectively referred to as the “Parties” and each individually as “Party”.
2. NSFT shall only be bound and an agreement for the provision of Terminal Services between NSFT and the Customer on these Terms shall only be concluded once NSFT confirms any request by Customer for the provision of Terminal Services. Notwithstanding the foregoing, the use of the Terminal or the Terminal Services by the Customer, entry into the Terminal or berthing of any Vessel at the Terminal, shall constitute acceptance of these Terms.
3. Notwithstanding any language to the contrary in any Customer documents, any correspondence or any other form of acknowledgement, the Customer shall be bound by these Terms and any other terms and conditions are hereby expressly excluded and rejected.
4. No variation to these Terms shall be binding unless agreed in writing by an authorized representative of NSFT. Prior dealings, usage of trade or a course of performance shall not be relevant to determine the meaning of these Terms even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.
5. If not otherwise agreed in writing between the Parties, the scope of services (kind of services, service description, rates) shall be as set out in the applicable tariff of NSFT scale of rates as published and amended from time to time at [www.nsft.com](http://www.nsft.com). The terms and conditions of the applicable Tariff are incorporated herein). In the case of inconsistency between these Terms and the Tariff, the published Tariff shall prevail. The services are referred to here after as “Container Terminal Services”.
6. The Customer/User represents and warrants that it will bring the T&C (including the limits, defences, exceptions, liberties and exclusions herein) to the attention of any Person who the Customer/User may instruct to enter the Port and Berth or otherwise deal with the NSFT including any sub-contractor, agent, employee or other party instructed by the Customer/User.
7. The Customer / User shall ensure that it is familiar with, and that it follows, all Applicable Law, and all instructions or directions issued by the Operator, the Operations Manager, any employee, Client or authorised agent of the Operator, which relate to the use of the Berth and entry to the Port.
8. The Customer/ User is solely responsible for and will Indemnify NSFT and hold NSFT harmless from, all and any duties, taxes, imposts, levies, deposits, damages, outlays and losses of whatsoever nature levied by any Governmental Authority and/or any expenses incurred in complying with the requirements of any Governmental Authority in relation to the Permitted Cargo and the Vessel.
9. The T&C do not create a relationship of employer and employee, principal and agent or partnership between the NSFT and the Customer/User
10. Nothing in the T&C shall operate to limit or deprive the NSFT of any statutory protection, defence, exception or limitation of liability authorised by any Applicable Law, and the Operator shall have the full benefit of such laws, statutes or regulations.

**C. Payment and Rates**

1. The consideration payable by the Customer for the provision of Terminal Services by NSFT shall be in accordance with the tariff mentioned in the Scale of Rates.
2. NSFT will decide its rates for the Terminal Services independently, unless any such rates shall be mutually agreed and amended between NSFT and the Customer.
3. If not otherwise agreed in writing between the Parties, the Scale of Rates shall be paid in accordance with the following payment terms:
  - (i) the Customer shall pay into the designated account of the Terminal at least three (3) Working Days prior to the commencement of the Terminal Services, the Scale of Rates that shall be payable by the Customer to NSFT for the Terminal Services ;
  - (ii) the amounts paid by the Customer pursuant to Clause C3(i) shall be deducted from the invoice amount raised as per the Scale of Rates and the unutilized amount, if any, shall be adjusted in the next call of the Vessel that may be made by the Customer to the Terminal;
  - (iii) the Parties hereby agree that the Customer shall, maintain with NSFT such amount as equivalent to two

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- (2) weeks' pre-delivery advance (PDA) or such amount as may be mutually agreed between the Parties, as an interest free security deposit;
  - (iv) all payments shall refer to the invoice or other reference number (if available) and the amount.
  - (v) If no reference to the respective invoice number and amount is indicated by the Customer, NSFT reserves the right to allocate such payments to the oldest outstanding sums owed to NSFT by the Customer. NSFT will inform the Customer accordingly. Any payments to be made from NSFT to the Customer shall only become due when the Customer is in compliance with its contractual obligations towards NSFT; and
  - (vi) all payments due shall be made without any set off, counter claim, deduction or stay of execution.
  - (vii) Overdue amounts, if any, will be subject to an interest of Fifteen percent (15 %) per annum or fraction of the delay period calculated upon the amount owed.
4. If a change in applicable laws, rules, or regulations (including SOLAS) results in increased costs for NSFT to comply with its obligations, NSFT may recover these additional costs from the Customer.

## D. Provision of Terminal Services

Any provision of Terminal Services shall be subject to the conditions set out in these Terms.

1. Information Exchange
- (i) If not otherwise agreed between the Parties or specifically outlined in the Rates & Tariffs, the Customer shall provide the information requested by NSFT as set out in these Terms.
  - (ii) If not agreed otherwise, the Customer shall, or shall ensure that a VGM Declarant shall, provide NSFT with the Verified Gross Mass as soon as possible and in any event, no later than:
    - a. Cargo Cut-Off Time or when gated in, for all packed Containers for export; and
    - b. sufficiently in advance of outbound Vessel loading or in advance of inbound Vessel discharge or Cargo Cut- Off Time for all packed transshipment Containers, to be used by NSFT to prepare and implement the Vessel stowage plan in accordance with SOLAS.
  - (iii) The Customer warrants that all information requested by NSFT contained in the Scale of Rates or these Terms, including but not limited to any permits, the Verified Gross Mass and custom clearance documents, is complete and accurate and, where appropriate, is valid and in full force and effect and NSFT can rely on any such information in good faith without further investigation and without endangering safe and secure provision of the Terminal Services in line with applicable laws, rules and regulations.
  - (iv) NSFT is not obliged to provide any Terminal Services unless complete information has been provided.
  - (v) The Customer shall inform NSFT about any change to the initial submitted information as early as possible but not later than four (4) hours before the change shall become effective. Any change request will only become effective upon (a) written confirmation by NSFT and (b) written acceptance by the Customer of any additional payments or rate adjustments requested by NSFT.
  - (vi) In cases of: (a) unannounced or not timely announced changes or (b) in the absence of an acceptance in accordance with Clause D.1(v) and no cancellation of the change request; NSFT shall be entitled at its discretion to accommodate the changes or provide the Terminal Services as initially agreed. In case NSFT accommodates the change, the rates as published in the Scale of Rates in relation to the Special Service Request ("SSR"), shall apply. NSFT reserves the right to claim reimbursement of any additional costs that result from the provision of the Terminal Services in excess of the SSR.
  - (vii) Notwithstanding anything in this Clause, NSFT shall not be responsible for any information which may be received by any other means or from a third party.
2. Berthing Requirements
- (i) The Customer shall provide NSFT with the sailing schedule and berthing requirements in accordance with the provisions set out in the Port Procedures, not later than two (2) weeks before each Vessel's expected date of arrival at the Terminal. The berthing requirements shall include details of the projected number of any Containers, information relating to Hazardous Goods, OOG container and Dutiable Goods contained in or intended to be contained in a Container to be discharged from, or loaded onto, that Vessel at the Terminal.
  - (i) Not less than ninety-six (96) hours before the estimated time of arrival of a Vessel at the Terminal, the Customer shall supply to NSFT such particulars in writing as NSFT may require as set out in the Port Procedures or as otherwise required from time to time of the Containers (including the contents thereof) on-board to be discharged from, or loaded onto, that Vessel at the Terminal. The particulars shall include, but shall not be limited to, information relating to Hazardous Goods, OOG and Dutiable Goods contained in or intended to be contained in a Container.
  - (ii) Any changes to the berthing requirements provided to NSFT in accordance with Clause D.2(ii) above, must be promptly notified to NSFT, but in any event not later than seventy-two (72) hours before the estimated

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- time of arrival of the Vessel at the Terminal or as agreed in accordance with the Port Procedures.
- (iii) The final time for arrival of a Vessel shall be confirmed in writing at least twenty-four (24) hours before the Vessel's anticipated time of arrival.
  - (iv) The Customer warrants that all information provided to NSFT is accurate.
  - (v) The Customer is responsible for changes in berthing schedules and delays to Vessels or other Vessels arising from inaccurate information. Customer shall be solely liable for any consequences which it may suffer due to changes in the berthing schedule arising out of inaccurate information.
  - (vi) The Customer shall use reasonable skill and care when berthing the Vessel at the Berth.
  - (vii) At all times when a Vessel is berthed at the Berth, the Customer shall ensure that:
    - a. the Vessel furnishes adequate lighting and safe ingress and egress (for the Operator's personnel);
    - b. the Vessel maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Operator to provide the Services;
    - c. the Vessel maintains engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth; and
    - d. the Vessel's crew members adhere at all times to all health and safety rules of the Operator notified to the Customer from time to time.
3. Arrival of a Vessel at the Terminal
- (i) Notification to the Vessel's Master that the Terminal is ready to receive the Vessel will be given by NSFT in such manner as may be appropriate having regard to the current circumstances at that time. Such notification shall be given by NSFT, on receipt of communication from the Harbor Master /Dock Master of JNPA that the vessel berthing movement is confirmed. The Customer shall ensure that each of its Master shall not berth or attempt to berth a Vessel at a Wharf alongside the Terminal until notice has been given by NSFT to the Master that the Terminal is ready to receive the Vessel and the Customer has complied with the procedures of the Indian Ports Act 1908 and arranged to call for a Pilot, Harbor master.
  - (ii) NSFT does not give any warranty or representation that the Vessel will not ground whilst approaching, leaving or lying alongside the Terminal. Each Vessel approaching, leaving and whilst lying alongside the Terminal does so at the sole risk and responsibility of the Customer. The Customer shall indemnify NSFT for any loss, damage, expense, cost or injury, including loss of business, arising as a consequence of a Vessel causing an obstruction to the approach channel or berth due to grounding or otherwise.
  - (iii) NSFT shall not be responsible for or liable in any way for any damage or loss suffered or incurred during the berthing and un-berthing of a Vessel.
  - (iv) NSFT shall not be responsible for the security or safety of the Vessel while berthed at the Berth.
  - (v) The berthing officer and the mooring crew shall operate under the instructions and the responsibility of the Master of the Vessel for the sole purpose of making fast or casting off the Vessel's hawsers and mooring ropes.
  - (vi) NSFT shall not be responsible for or liable in any way for latent defects in mooring bollards or posts, nor for any improper mooring of the Vessel at the Terminal, whether or not such mooring was completed with the assistance of a berthing officer and mooring crew provided by JNPA.
  - (vii) The Customer shall provide proper gangway from the Vessel to the wharf for safe access of the terminal staff. The safety and illumination of gangways shall be the sole responsibility of the Customer.
  - (viii) The customer shall enforce controls on its vessels whilst berthed at Berth in order to prevent unauthorized access to the terminal berth area.
4. Vessels calling the Terminal
- (i) The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Vessel and all matters whatsoever relating to the Vessel.
  - (ii) The Customer shall ensure that all equipment on Vessels for discharging and loading Containers is technically compatible with NSFT's equipment at the Terminal.
  - (iii) NSFT shall supply labour on-board the Vessel for lashing and unlashings of Containers. However, for Out of Gauge Containers, break bulk or any other cargo, the Customer shall be responsible for providing lashing/unlashing services.
  - (iv) In case NSFT incurs any expenditure on behalf of the Customer and makes any payment to the lashing Contractor, the Customer shall reimburse the same to NSFT immediately.
  - (v) The Customer may bring trucks alongside Vessels, to load and discharge Vessels' stores at such times as may be permitted by NSFT and access to the Terminal to authorized personnel of the Customer to proceed on board a Vessel for carrying out repairs shall be subject to NSFT written permission and complying to NSFT's safety standards. NSFT and the Customer agree that access as referred to in this

Clause is permitted by NSFT on condition that the same is carried out in accordance with the rules and regulations of NSFT and the customs authorities and Port authorities. NSFT shall not be responsible or liable in any way for any loss, damage, cost, expense or injury arising in any way howsoever to any person or thing granted access in accordance with this Clause. The Customer shall indemnify NSFT for any loss, damage, costs, expenses or injury arising in any way howsoever caused by reason of NSFT permitting access under this Clause.

- (vi) The Customer shall indemnify NSFT for any loss, damage, expense, cost or injury in any way howsoever caused to NSFT except when it is solely caused by gross negligence or willful default of NSFT, its servants and sub-contractors.
5. Terminal Damage:
- (i) The Customer shall be solely responsible for any damage to the Wharf and/or to the Port, Terminal premises, equipment, fendering or mooring bollards, Vessels, injury to personal and other property belonging to NSFT or any third party, caused during or arising from the act of berthing or unberthing or a Pilot in charge of the Vessel, or as a result of insecure or improper mooring of the Vessel whilst lying alongside the Wharf, and shall hold NSFT fully indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage, except it is solely caused by gross negligence or willful default of NSFT, its servants and sub-contractors.
  - (ii) In case of any Vessel allision causing damage to the Berth or any of the NSFT's facilities or equipment, the provisions of this Article shall apply. Vessel allisions cause the NSFT and its Affiliates significant financial losses including the costs associated with repair and/or repairing property; operational impact and inefficiencies, reputation damage; loss of business; increases in insurance premiums; unrecoverable legal costs; and management time and cost in responding to vessel allisions and investigating purchase and carriage options for repair and/or replacement of damaged property. In developing the following sections of the T&C, the NSFT has sought to provide for a regime that allows the NSFT to recover its losses in a formulaic way and seeks to strike a fair balance between the interests of the NSFT on the one hand and the Customer and Vessel owner on the other hand. The Customer hereby warrants that it has the authority to bind the Vessel owner to the terms of this Article.
  - (iii) The Customer hereby agrees, for and on behalf of itself, and the Vessel owner, that in the event of any Vessel allision causing damage to the Berth or any of the NSFT's facilities or equipment, the Customer and the Vessel owner will provide security, in a form acceptable to the NSFT, for the NSFT's worst realistic case losses, as determined by NSFT, together with written agreement from the Customer as to the NSFT's submission for appropriate jurisdiction. In the event that such security is not provided, NSFT shall, without prejudice to any other remedies available to it, be entitled to arrest the Vessel at the Berth or elsewhere until such time as the foregoing security and written agreement have been provided by the Customer or Vessel owner.
  - (iv)
  - (v) . In the event of the NSFT's property being damaged, NSFT shall be entitled to recover from the Customer or the Vessel owner, the cost of repairing or restoring the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new. In the event of the NSFT's property being destroyed (which for the purposes of this Article, shall mean when the property cannot be repaired within a reasonable time or to a condition at least equal to its condition prior to damage without incurring costs greater than the value of the property prior to it being damaged), NSFT shall be entitled to recover from the Customer or the Vessel owner, the cost of replacing the damaged property with a similar property in a condition equal to, but not better or more extensive than, its condition when new.
  - (vi) The Parties shall individually appoint, or procure that their insurers appoint on their behalf, a professional and independent forensic accountant to quantify the actual losses (including financial and business interruption losses) suffered by the Operator arising from the Vessel allision. The Parties shall provide all appointed forensic accountants with all reasonable co-operation and documents.
  - (vii) Within 45 days from the date of the Vessel allision, the appointed forensic accounts shall jointly issue a summary of the actual losses suffered by the Operator arising from the Vessel allision.
  - (viii) If the forensic accountants disagree on the assessment of losses under Article 5(vi), then each forensic account shall, within 15 days of the expiry of the period stipulated in Article 5 (vi), issue to the Parties its sole assessment of the losses suffered by the NSFT arising from the Vessel. If the results of the loss assessments made by the 2 (two) forensic accountants appointed by the Parties (or their insurers) pursuant to Article 5 (vi) differ by [5% (five percent)] or less, then such values will be averaged, and such result shall be final and binding for the Parties as the value of the business interruption element of the Operator's claim for the applicable period.

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- (ix) If the results of the loss assessments made by the 2 (two) forensic accountants appointed by the Parties (or their insurers) pursuant to Article 5(vi) differ by more than [5% (five percent)], then the Parties shall mutually agree and appoint a third independent appraiser within 15 days of the date of a written notice proposing the identity of a third independent appraiser.
  - (x) Costs of appointed forensic accountants - The Parties shall bear their own costs in relation to the appointment of any forensic accountants pursuant to this Article. The cost of any third independent appraiser appointed in accordance with Article 15(viii) shall be shared equally between the Parties.
  - (xi) The Customer shall pay to the NSFT, in addition to any other remedies available to the NSFT under the T&C or under law, the amount determined pursuant to Article 15(vi) to Article 15(viii) within 14 days of receipt of an invoice from the Operator issued following completion of the process set out in Article 15(vi) to Article 15 (viii).
6. Allocation of Berth
- (i) No Vessel shall be berthed or unberthed, or be placed alongside a Wharf, without the prior written approval of NSFT (or approval provided by any other mode acceptable to NSFT).
  - (ii) Following receipt of a Notice of Arrival, NSFT shall do its best to allocate a berth to the Customer in accordance with its requirements, as set out in the Notice of Arrival.
  - (iii) If the Vessel fails for any reason whatsoever to arrive at the Terminal and/or is unable to berth at the berth allotted to it during the Berthing Window and the Customer requests NSFT to reallocate a berth to the Vessel, reallocation of such berth to the Vessel will be at the sole discretion of NSFT.
  - (iv) If a Vessel defaults in occupying a berth allocated to it during the Berthing Window as result of which the berth is vacant, NSFT shall be entitled to allocate such berth to any other Vessel owner/operator for optimizing the use of berths as it deems fit, during the period of such Berthing Window.
  - (v) Notwithstanding anything stated in this document, the allocation of berths shall be at the sole discretion of NSFT. NSFT may vary the berthing order from time to time, if it considers that it is necessary to do so.
  - (vi) If a Customer has entered into a specific arrangement for allotment of berth with the Terminal, but for any reasons its Vessel could not berth at the Terminal, then the Customer should obtain a No objection certificate (NOC) from the Terminal for berthing its vessel at any other container terminal operating from Jawaharlal Nehru Port (JNPA), Nhava Sheva. In the event the Customer does not obtain the NOC, the Terminal will be entitled to charge for the proforma moves / moves agreed in the specific arrangement for allotment of berth with the Terminal.
  - (vii) NSFT shall not be responsible for the following events:
    - a) any non-compliance with the ISPS Code, or any other related and necessary requirements which may prevent a Vessel from being permitted to berth at a Wharf in the Terminal; breakdown, fire, explosion, sinking, or any accident or incident which occurs to the Vessel, due to Vessel owner's or Vessel operator's or Vessel Mater's fault, resulting in the Vessel being denied permission to berth at Wharf in the Terminal; and
    - b) if the arrival of the Vessel demonstrates a significant time gap between Notice of Arrival and actual arrival which gives rise to a prolonged waiting time.
  - (viii) Refusal of Berth  
NSFT, at its sole discretion and without any obligation to give any reasons, reserves the right to reject any Notice of Arrival if, it is of the opinion that a Vessel should not be berthed at any of the Wharves provided by NSFT.
7. Vessels Berthed Alongside
- (i) The Customer and the Master of the Vessel shall be in sole charge of the Vessel whilst using any of the Wharves in the Terminal, and her safety shall be the sole responsibility of the Customer. The Customer/Master of the vessel shall be held responsible for any loss and/or damage that may arise as a consequence of her faulty navigation, or by reason of her breaking adrift from her moorings, provided always that notices of danger shall, as far as possible, be given to the Vessel by NSFT as and when the need arises. No instruction or direction given, or act performed by NSFT or its officers or servants shall place any responsibility upon NSFT, with respect to the security or safety of such Vessel.
  - (ii) When a Vessel is berthed, the Customer shall comply with all relevant laws of India, and NSFT's operating procedures and safety requirements.
  - (iii) Master of the vessel shall ensure that the vessel is secured with required mooring ropes to ensure that the vessel is staying upright without any trim/list for carrying safe operation.
  - (iv) In case a Vessel drifts away from the Terminal while berthing or otherwise, it will be the sole responsibility of the Customer and Master of the Vessel.

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8. Operations at the Terminal
- (i) The Customer and its agents, employees or any third parties acting on behalf of or at the request of the Customer shall comply with laws, rules and regulations, relating to them, the Goods, the Containers, the Vessels and the use of the Port and the Terminal and any policies and instructions given by NSFT unless agreed differently between the Parties or otherwise stated in the Rates & Tariffs.
  - (ii) The Customer shall provide the advance list (IAL, EAL) , BAPLIE, Stowage plan to the terminal at least 12 hrs before the arrival of the vessel for planning the discharge /loading operation on the vessel.
  - (iii) NSFT shall not be obliged to provide any services which are not permitted under, or are not in line with, the laws, rules or regulations as set forth by the authorities of the Port or other mandatory applicable laws, rules and regulations. In particular, NSFT shall not load any packed Container on board a Vessel, without a Verified Gross Mass provided by the customer/vessel operator.
  - (iv) NSFT shall inform the Customer of a missing Verified Gross Mass requesting the Container to be removed from the Terminal. The Customer shall pay the rates outlined in the Scale of Rates as if such yard space was fully occupied by the Customer for the time between receipt and removal.
  - (v) In order to ensure safe working practices, NSFT may inspect the Vessel work areas and gear to determine that all applicable laws, rules and regulations have been satisfied. The Customer shall ensure that (a) the Vessel furnishes adequate lighting and safe access for NSFT's personnel for handling containers /cargo onboard the vessel.
  - (vi) The Customer agrees to allow NSFT to inspect Vessels, including valid registers and certificates applicable to all gear, prior to the commencement of the provision of Terminal Services and as required under applicable laws, rules and regulations.
  - (vii) NSFT shall not be required to provide Terminal Services if the Terminal Manager at the Terminal, after discussing the issue with the Vessel's Master, reasonably believes that safety violations or deficiencies exist relating to the Vessel. The preceding sentence will not preclude the applicable terminal manager at the Terminal from suspending the provision of Terminal Services on a temporary basis prior to discussing the issue with the Vessel's Master.
  - (viii) All equipment on a Vessel for loading and discharging Containers must technically be compatible with ISO standard equipment provided by NSFT. The Customer warrants that all Vessels are fitted with twist locks, lashing gears which are in good working order.
  - (ix) The Vessel Master, crew and agents shall exercise due care when mooring, departing or occupying a berth or navigating in the vicinity of the Terminal.
9. Condition of Containers
- (i) If not agreed otherwise, NSFT shall only be required to handle Containers which are (a) nominated to NSFT, (b) located at the Terminal and (c) ready for operation within the Cargo Cut-Off Time. Containers for export shall be customs cleared in all respects when gated in.
  - (ii) The Customer warrants and undertakes that each Container which it delivers or causes to be delivered to NSFT is upon delivery secure, in a good state for shipment, appropriately certified and suitable for its purpose. NSFT reserves the right to refuse to accept any Containers or Goods which appear to be damaged or are in its opinion in an unsatisfactory condition.
  - (iii) In respect of all Goods and Containers, the Customer warrants and represents that they:
    - a. are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the Containers;
    - b. are not liable to give off any injurious dust, gas, fumes, liquid or radiation;
    - c. are not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Terminal;
    - d. are not over-heated or under-heated or liable to become so while at the Terminal;
    - e. will not contaminate or cause danger, injury or pollution or damage to any person, the Terminal, any other goods, equipment or Vessel or the environment adjacent thereto or generally;
    - f. require for their safekeeping no special protection (other than as may be agreed in writing between the Parties) but will remain safe if left standing at the Terminal;
    - g. contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and
    - h. are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by NSFT.
  - (iv) NSFT shall endeavor to identify and inform the Customer of any damage to any Container, its contents or packaging which comes to the attention of NSFT and may refuse to load or handle such Containers. However, NSFT shall not be responsible for damage that is not identified during the

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- loading/unloading operations and are subsequently identified after the Container leaves the Terminal.
- (v) If NSFT gives notice to the Customer of damage to a Container, its contents or packaging, the Customer shall be entitled, immediately after such notice being dispatched, to inform NSFT in writing that an inspection of the relevant items is required. NSFT will thereafter permit the Customer or its duly appointed agents upon reasonable notice to inspect the Container, its contents or packaging. For storage and handling of any such Container, its contents or packaging the rates as agreed between the Parties or, in the absence of such agreement, as set forth in the Rates & Tariffs, shall apply.
  - (vi) All Containers under the Customer's control, to be handled shall be CSC compliant.
  - (vii) With respect to the Containers laden with, or labelled as containing Hazardous Goods, which are being transported pursuant to a Customer's or Vessel's bill of lading, the Customer shall ensure that such shipments are documented, labeled, packed and secured in accordance with current International Maritime Organization (IMO) requirements for international freight appearing in the International Maritime Dangerous Goods Code and in accordance with current applicable laws, rules and regulations promulgated by any governmental authority with jurisdiction over same. If not otherwise agreed, the Customer shall inform NSFT of Hazardous Goods at least forty- eight (48) hours before arrival at the Terminal including such other data, manifests etc. as may be required by NSFT.
  - (viii) For exceptional cases (Perishable cargo, OOG Shipment, Hazardous cargo or high value cargo), there shall be requirement for direct delivery of container(s) under the quay-crane. For performing this, the customer shall inform NSFT of the container details 24 hours prior vessel arrival. NSFT shall inform the customer about the expected time of discharging of the container based on the container stowage and operation plan. The truck shall be placed at NSFT Two (2) hours before the agreed time of container discharge by the customer. Customer shall comply with the NSFT safety rules, and requisite customs permission required for direct delivery of the containers.
  - (ix) The Customer shall pay any costs and expenses which may be incurred by NSFT in the clean-up of any leaking Container or in complying with any applicable laws, rules and regulations requiring the movement, treatment, removal or destruction of waste material of Goods or infested, contaminated or condemned Goods or the treatment of the Terminal as a result of any infestation or contamination arising from handling such. In the event that a part of the Terminal cannot be occupied as a result of NSFT complying with such applicable laws, rules or regulations the Customer shall pay the rates outlined in the Scale of Rates as if such yard space was fully occupied by the Customer.
  - (x) If NSFT carries out an instruction to open the doors of a Container or to unpack a Container for any purpose whatsoever, this shall be at the sole risk of the Customer and NSFT shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Goods by reason of such deterioration. The Customer shall provide appropriate instructions to NSFT to ensure compliance with the rules and regulations of customs for opening and unpacking of any Container.
  - (xi) Subsequent to the initial opening of the Container or the unpacking of a Container, NSFT may (but under no obligation to do so) close, reconnect, or connect to a power supply (in the case of a reefer Container), repack or otherwise deal with any such Container and/or its contents at the request of and at the sole cost and expense of the Customer or its agent or any such authority as may have jurisdiction.
  - (xii) Containers delivered from or to the Customer or a consignor or a consignee shall be brought for acceptance to, or received from, such area within the Terminal or other place adjacent to the Terminal as may be designated from time to time by NSFT.
  - (xiii) NSFT is not obliged to receive or deliver Containers unless full covering documentation has been provided to NSFT in accordance with the Port Procedures. NSFT's responsibility to the Customer for Containers shall commence only when the Containers have been delivered to the area designated and notice of acceptance has been duly given by NSFT.
  - (xiv) Prior to the presentation for acceptance to NSFT of any Containers, the Customer shall supply to NSFT such particulars in writing thereof and where appropriate of the contents of a Container including weight, dimensions and other measurements set out in the Port Procedures or as may be requested by NSFT. NSFT is entitled to rely upon such particulars of the Container, the contents of a Container, as are furnished by the Customer or consignor. Any damage or loss resulting from the inaccuracy of, or omission from, such particulars given by the Customer or the Consignor shall be the Customer's responsibility and the Customer shall indemnify NSFT against any loss, damages, claims, costs and expenses which NSFT may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.
  - (xv) Upon the delivery of any Container to NSFT, the Customer shall verify and confirm and accordingly undertake to NSFT that all values and other particulars in respect thereof supplied to NSFT for customs

or other purposes and all necessary customs removal permits are complete and accurate and, are valid and in full force and effect. The Customer shall indemnify NSFT and its servants, sub-contractors or agents against all loss, damages, claims, costs, expenses, fines and penalties that NSFT or its servants, sub-contractors or agents may incur or suffer directly or indirectly as a result of any breach of this undertaking.

- (xvi) NSFT shall be responsible for correct delivery of containers to a consignee or to a Vessel. NSFT shall not be responsible or liable for any incorrect information provided by the customer or delayed delivery of any Container which is insufficiently, incorrectly or otherwise not properly marked.
  - (xvii) The Customer shall be liable to NSFT for any loss, damage, claim or expense arising from inaccurate, incomplete or absence of information relating to the weight, dimensions, other measurements and contents of a Container or the nature of the Goods, or from incorrect stowage of Containers or any information that is provided to NSFT.
  - (xviii) NSFT shall be entitled at any time, and at the expense of the Customer, to reject any Container and/or Goods and/or package not conforming to the above requirements and guidelines as may be provided from time- to-time.
  - (xix) The delivery of Goods and/or Containers shall not be considered to have been made to NSFT until the Goods and/or Containers have been Landed or disconnected from the Vessel's gear (if the vessel is performing). "Landed" means landed on any Wharf deck, trailer or other vehicle designated for such use by NSFT, whether owned by NSFT or otherwise.
  - (xx) All the containers arriving in the terminal by Road, Sea and Rail should have the doors faced towards aft/rear end of the carrier (i.e. Truck, Vessel and Train). It may be noted that Containers are stacked inside the terminal in a unidirectional manner so as to enable a smooth and safe operation. If the containers arrive in the terminal with doors facing forward, the NSFT will be load these containers on the vessel/truck/rail in the same condition as received for such containers where the door direction is reverse on the carrier, on request from the customer. NSFT shall be using its resources to change the door direction prior offloading container in the CY. The necessary Lift on/Lift Off charges shall be levied on the respective Customer as per Scale of Rates.
10. Delays
- (i) Any unlashng time extending beyond the scheduled Vessel operation start time caused by the Customer or Vessel shall be on account of customer /vessel.
  - (ii) The Vessel shall maintain its engines in a state of readiness to respond to emergency situations and to avoid delays in leaving the Terminal as soon as NSFT informs the Customer that the Terminal Services have been completed. The Customer shall pay the applicable rates for each additional hour that the Vessel is berthed at the Terminal for any reason, including for the avoidance of doubt, if a Vessel is berthed at a Terminal due to engine failure.
  - (iii) Shipment delays, charges and/or costs, including any civil fines, associated with non-compliance with the terms of this Clause 10 shall be the responsibility of the Customer. Any idle time incurred by NSFT due to non-compliance by the Customer shall be charged at the "Detention Rate" as set forth in the Scale of Rates.
11. Damage During Cranage
- Where NSFT undertakes the handling of cargo and/or Containers to and from Vessels or vehicles, except in case of sole gross negligence of NSFT, its servants, sub-contractors and agents, NSFT shall not be responsible for any loss, damage or costs suffered or incurred, arising out of or in connection to:
- a) any of the cranes or the load attached thereto colliding with the rigging, spares or other equipment of the Vessel, or resulting from the shifting or movement of the Vessel or any of its equipment;
  - b) faulty slinging or improper loading of any Goods and/or Containers by persons, other than the servants of NSFT acting within the scope of their employment;
  - c) Damaged or improper cell guides in the vessel,
  - d) the Vessel having been improperly or insecurely moored.
12. Loading or Discharging in Rain
- No Goods and/or Containers that are likely to be damaged by rainwater shall be loaded or discharged whilst it is raining. The Customer shall communicate the same to NSFT in advance for such handling operation.
13. Refusal of Objectionable Goods
- NSFT may prohibit the landing of, or refuse to receive any Goods (including, but not limited to Hazardous Goods) and/or Containers, which in NSFT's opinion are detrimental to the safety of NSFT, or to other Goods and/or Containers or things within the Terminal premises.
14. Unprotected Cargo

- NSFT shall not be liable for breakage, loss of contents, damage or complete destruction of Unprotected Cargo.
15. Reefer Containers
- a. NSFT has no obligation to check and report upon the temperature of Reefer Containers stored at the Terminal.
  - b. Notwithstanding the above, power supply and temperature monitoring shall be performed by NSFT at 4-hour interval.
  - c. The reports shall be issued by NSFT to the customer from the time of arrival/plugging of container till the time of departure/unplugging. Any variation observed shall be immediately brought to the notice of NSFT planning section by the customer.
  - d. NSFT shall not be responsible or liable in any way for any Reefer Container or the refrigeration of refrigerated Goods if the Customer fails to give written instructions in the prescribed format, or provides wrong or inadequate instructions concerning the handling thereof.
  - e. NSFT shall, within a reasonable time of receipt, connect the Reefer Container to a main power supply. NSFT shall not be obliged to maintain an auxiliary power supply and NSFT shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the main power supply howsoever arising.
  - f. NSFT shall not be responsible or liable in any way for the malfunctioning of any Reefer Container stored at the Terminal. NSFT shall however, wherever possible, intimate the Customer of such malfunctioning to enable the Customer to take appropriate steps for the removal of the malfunctioning Reefer Container.
  - g. If the Customer fails to remove the malfunctioning Reefer Container stored at the Terminal within two (2) days of receipt of such intimation, NSFT shall be authorized to remove such Reefer Container from the Terminal at the cost and consequences of the Customer.
16. Stripping of Containers
- If NSFT carries out an instruction received from the Customer to open the doors of a Container or to unpack a Container for any purpose whatsoever, this shall be at the sole risk of the Customer and NSFT shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Goods by reason of such deterioration. The Customer shall ensure compliance with the rules and regulations of customs for opening and unpacking of any Container. NSFT may (but shall be under no obligation so to do) close, reconnect, or connect to a power supply (in the case of a Reefer Container), repack or otherwise deal with any such Container and/or its contents at the sole cost and expense of the Customer.
17. Hazardous Goods and Dutiable Goods
- a. The Customer shall ensure that all goods tendered to NSFT for loading and/or unloading, comply with all applicable laws, rules, regulations and guidelines for Hazardous Goods and/or Dutiable Goods and NSFT's rules for Hazardous Goods and Dutiable Goods as set out in the Port Procedures, and shall indemnify NSFT against any breach of this Clause.
  - b. NSFT shall accept as correct details of Hazardous Goods and/or Dutiable Goods furnished by the Customer and may accept as correct the certificate which the Customer is required to give.
  - c. NSFT has the right to refuse to handle Goods which, upon inspection, is found not to comply with the said rules or regulations or ordinances and to reject and/or return such Goods at the sole expense and risk of the Customer.
  - d. If NSFT receives notice from the Authority that a Vessel arriving at the Terminal is carrying Hazardous Goods which should be sold, NSFT shall comply with the said notice and hand over the Goods to the authority.
18. Valuable Goods
- a. NSFT shall not be bound to accept Goods of high value or which requires special care. The Customer shall give to NSFT at least ninety-six (96) hours prior notice of its intended delivery of such Goods to the Terminal whether by Vessel or Container-transporter to enable NSFT to decide whether or not it will accept such Goods. Under no circumstances shall the Customer deliver to the Terminal such Goods, without the prior written approval of NSFT. If such Goods are delivered to NSFT without its prior written approval, such Goods will at all times be at the sole risk of the Customer and NSFT shall not be liable for any loss or damage howsoever caused to such Goods.
  - b. Notwithstanding the prior written approval of NSFT in accordance with Clause D. 18 (i), NSFT's liability for loss of and/or damage to valuable Goods shall be limited to the amounts as set out in Clause F (Liability) except to the extent NSFT agrees in writing to a higher limit on liability in a particular case. The Customer shall be responsible for any additional costs of insurance (including, but not limited to, additional premiums and fees) that NSFT incurs as a consequence of acceptance of valuable Goods.

19. Lien

All Containers, Goods and all documents relating to Containers and Goods shall be subject to a particular and general lien respectively for charges due to NSFT in respect of such Containers or Goods from the Customer. If any charges are not paid by the Customer in compliance with Section 58 of the Act, within one (1) calendar month after notice requiring payment has been given to the Customer, the Containers or Goods subject to such lien, may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by NSFT in such sale. Any sale of Containers or Goods by NSFT pursuant to these terms and conditions, may be conducted by private treaty, by public auction or otherwise in such manner as NSFT shall in its sole discretion determine and NSFT shall not be liable for any loss and/or damage to any person whatsoever as a result thereof. This lien shall be in addition to any other lien allowed by law.

**E. Compliance**

1. The Customer represents that in the context of these Terms and the acceptance of Terminal Services:
  - a. neither itself nor, to the best of its knowledge, any of its affiliates, directors or officers has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption, competition or anti-money laundering laws or regulations and it has instituted and maintain policies and procedures designated to prevent violation of such laws, regulations and rules; and
  - b. neither itself nor, to the best of its knowledge, any of its affiliates, directors or officers is: (i) the subject of any sanctions (a "Sanctioned Person") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of sanctions broadly prohibiting dealings with such government, country, or territory (a "Sanctioned Country").
2. The Customer represents and undertakes that:
  - a. in its performance under these Terms, it and all of its affiliates, directors, officers or sub-contractors will comply in all material respects with all applicable laws, rules, regulations or similar instruments including relating to anti-corruption, competition law and foreign trade controls (export controls and sanctions laws of the UN, the EU and US or other relevant regulator), and specifically, Customer shall not deliver to the Terminal any Containers that would cause NSFT to be in violation of foreign trade controls;
  - b. It will not directly or indirectly, lend, contribute or otherwise make available any amount received in connection with these Terms to a Sanctioned Person or a person located in a Sanctioned Country or otherwise violate any applicable foreign trade control regulation or sanction.
  - c. it will not give, promise or attempt to give or approve the giving of anything of value to any person, for illegal purposes or for improperly obtaining or retaining business;
  - d. it shall not deal, or cause NSFT to deal, with any person or entity in respect of transactions prohibited by foreign trade controls, except with NSFT's prior written consent; or which could damage NSFT's commercial or other reputation interests, even if not in violation of any foreign trade controls.
3. At the reasonable request of NSFT with at least five (5) business days' prior notice, NSFT may at its own expense during regular business hours inspect or have a mutually-agreed independent third party audit the Customer's books, records, and other documents as necessary to verify compliance with the terms and conditions of this Agreement.
4. If the Customer breaches any of its obligations or representations in this Clause E (Compliance):
  - a. The Customer shall indemnify and hold NSFT harmless from all fines, penalties and all associated expenses arising out of or resulting from such violation; and
  - b. NSFT may terminate its commercial arrangements with the Customer and recover from the Customer the amount of any loss or damage resulting from the termination.
5. The Customer shall appraise and follow the principles set forth in NSFT's Code of Conduct, a copy of which is available upon request.

**F. Liability**

1. To the extent permitted by law, the Customer hereby agrees, for and on behalf of itself, and the Vessel owner, to waive any statutory right to limit liability for personal injury or property damage by establishing a limitation fund under any applicable international convention or national law governing the liability of owners and/or operators of seagoing Vessels, including the Limitation Conventions. The Customer hereby warrants that it has the authority to bind the Vessel owner to such waiver of limitation. For the purpose of this Article, "Limitation Conventions" means the Convention on Limitation of Liability for Maritime Claims 1924, the Convention on Limitation of Liability for Maritime Claims 1957, the Convention on Limitation of Liability for Maritime Claims 1976, and the 1996 Protocol thereto.

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2. Loss or damage to Goods:
  - a. NSFT shall only be liable for loss of or damage to, any Goods whilst in the custody or control of NSFT.
  - b. Containers shall be deemed to be in the custody of the NSFT:
    - i. in respect of import Containers, when the Container is physically lifted off from the Vessel's deck, hold or from the top of other Containers on the Vessel;
    - ii. in respect of the export Containers, when the Container is physically lifted off from the truck or wagon by the Operator's cargo handling equipment for stacking at the container yard of the Terminal or when detached from the incoming truck;
    - iii. in respect of transshipment Containers, when the Container, is physically lifted off from one Vessel's deck, hold or from the top of the Containers on one Vessel.
  - c. Containers shall cease to be deemed to be in the custody of the Operator:
    - i. in respect of import Containers, when the Container, is (i) mounted onto the withdrawing truck or wagon by the Operator's cargo handling equipment for delivery to the consignee; or (ii) attached to the withdrawing truck for delivery to the consignee; or (iii) passing out of the Terminal's gate into the custody of the Person duly authorized to receive the Container/cargo according to the relevant equipment interchange receipt to be issued by the Operator; or (iv) received by the Person duly authorized to take delivery of the Container/cargo according to the relevant equipment interchange receipt to be issued by the Operator;
    - ii. in respect of export Containers, when the Container, is (i) stowed on the Vessel's deck, or hold; or (ii) on top of another Container on the Vessel (as from locking twist locks on board);
  - d. in respect of transshipment Containers, when the Container, is restowed on another Vessel's deck, hold or on top of another Container on another Vessel (as from locking twist locks on board).

NSFT shall only be liable to the extent the same is caused by the negligence or willful misconduct of NSFT and such liability shall be limited to the lesser of:

    - i. the value of the Goods actually lost or damaged, namely the reasonable repair cost or
    - ii. replacement cost (with Goods of the same age and in the same condition) of the Goods lost or damaged;  
and subject to maximum limits mentioned under Clause F (6) & (10) Limitation of liability per incident
    - iii. the limits of liability upon which the Customer could rely in a claim brought against it in accordance with the bill of lading or other transport document, evidencing a contract of carriage which has been issued in respect of Goods carried by the Customer ("Carriage Contract"); and
  - e. NSFT shall have no liability for such loss and/or damage; PROVIDED ALWAYS that in no circumstances shall NSFT's liability exceed the limits of liability in accordance with the terms and conditions contained within the Customer's Carriage Contract or, if applicable, the Vessel's limitation fund except to the extent NSFT agrees in writing to a higher limit on liability in a particular case.
  - f. In addition to being able to rely on these Terms, NSFT has the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defense, right, remedy and/or law and jurisdiction clause contained in the Carriage Contract as if NSFT were the carrier and Customer were the merchant referred to in the Carriage Contract.
3. Loss or damage to Containers:
  - a. NSFT shall only be liable for loss of, or damage to, any Container or other Customer equipment whilst in the custody or control of NSFT to the extent the same was caused by the gross negligence or willful misconduct of NSFT and such liability shall be limited to the lesser of the reasonable repair cost of the Container or other equipment damaged; and the depreciated value of the Container.
    - i. The depreciated value of the Container or other equipment shall be calculated on the basis of the respective values with a straight-line depreciation of five per cent. (5%) per annum from the date of manufacture (as evidenced for Containers in the container safety certificate) until the day before the incident.
4. Loss or damage to Vessels  
NSFT shall only be liable for loss of, or damage to, any Vessel whilst at the Terminal to the extent the same was caused by the negligence or willful misconduct of NSFT and liability shall be limited to the lesser of:
  - a. the reasonable repair cost of the Vessel damaged;
  - b. limiting to Three million US Dollars (US\$3,000,000) per Vessel.
5. Proof of liability  
NSFT shall not be liable under Clauses F.1, F.2 or F.3 unless the Customer can establish that the loss or damage was caused by the negligence or willful misconduct of NSFT. If the loss or damage was contributed to by the act or omission of the Customer or any other person, NSFT shall be exonerated from liability under Clauses F.1, F.2 or F.3 to the extent that such act or omission contributed to the loss or damage.

6. Limitation of liability per incident  
The maximum aggregate liability of NSFT for losses and/or damages under Clauses F.1, F.2 or F.3 which arises out of a single incident or series of connected incidents, and whether such losses and/or damages are sustained by more than one person, shall in no circumstances exceed Three million US Dollars (US\$ 3,000,000) ("Overall Liability Cap"). Where, in respect of a single incident or series of connected incidents, the losses and/or damages are sustained by more than one person, the Overall Liability Cap shall be applied to all claims brought by each person on a pro-rata basis (i.e. based on the proportion each person's claims bear to the total amount claimed by all such persons).
7. Delay
  - a. Except under special arrangements made previously in writing between NSFT and the Customer, in no circumstances shall NSFT have any liability whatsoever or howsoever arising (including negligence and willful misconduct) with regard to any failure to adhere to any timeframe or any delay.
  - b. If NSFT fails to adhere to timeframes agreed with the Customer or if (without prejudice to Clause F.7(a)) NSFT is found liable for loss or damage caused by delay, the liability of NSFT for such loss or damage shall not in any circumstances whatsoever exceed a sum equal to the amount of the rates in respect of the Terminal Services provided in relation to the relevant Goods, Container(s) and/or Vessel.
8. Entire liability
  - a. Save as set out in this Clause F, NSFT or any other person or party shall not be liable for loss of or damage to any Goods, Container(s) or Vessel howsoever arising (whether caused by negligence or otherwise).
  - b. There is no agreement between the Customer and any director, employee or Client (whether employed or self-employed) of the Operator (each, an "Employee"), and any Services provided by such Employees are provided on behalf of the Operator and not in his or her personal capacity and no Employee assumes any personal responsibility, obligation or duty to the Customer. The Customer undertakes that it will not bring any claim (including under the T&C or under the law of tort) against an Employee, Client, Sub-contractor or agent of the Operator.
  - c. Notwithstanding any other provision herein, 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 Customer is entitled to bring a claim against the NSFT under the T&C.
9. Exclusion of liability for certain losses
  - a. NSFT shall have no liability for loss of or damage to any Goods, Container(s) or Vessel howsoever arising (whether caused by negligence or otherwise) if such loss or damage has been caused by matters beyond the control of NSFT including, without limitation to the generality of this exclusion:
    - i. any failure of the Customer, or any third party, to comply with the advice and recommendations of the IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units (CTU Code); or
    - ii. any failure of the Customer, or any third party, to comply with the SOLAS Regulations; or
    - iii. the receipt by NSFT of an Overweight Container;
    - iv. NSFT not having received a Verified Gross Mass before the relevant deadline contained in Clause D.1;
    - v. insufficient, inadequate or defective packing or marks; or
    - vi. incorrect setting of any thermostatic, ventilation or other special controls of the Container; or
    - vii. inherent vice of the Goods; or
    - viii. instructions of the Customer; or
    - ix. the delivery of Goods, Containers or equipment to incorrect persons where delivery has been made against a fraudulent or stolen bill of lading or similar document of title; or
    - x. failure of Customer or third party to comply with any instruction/advisory that may be issued by NSFT from time to time.
  - b. Notwithstanding any other provision of these Terms, NSFT shall have no liability for any loss of profit, loss of revenue, loss of business, loss of goodwill or reputation or for any special, indirect, consequential or penal loss.
10. General liability limit  
Notwithstanding any other provision of these Terms, but subject to Clause F, the liability of NSFT in respect of any claim shall be limited to the rates payable in respect of that part of the Terminal Services to which the claim relates. This general liability limit contained in this Clause F.10 shall not apply to the liability of NSFT under Clauses F.1, F.2 or F.3.

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11. Notification of claims  
Any claim by the Customer against NSFT arising in respect of any Terminal Service provided to Customer, or which NSFT has undertaken to provide shall be made in writing, stating in reasonable detail the nature of the claim, and notified to NSFT within a reasonable time, but in any event within thirty (30) days from the date upon which the Customer became, or ought reasonably to have become, aware of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred.
12. Time limit for claims  
Notwithstanding the provisions of Clause F.10, NSFT shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Terminal Service provided to the Customer, or which NSFT has undertaken to provide, unless legal proceedings are commenced and written notice thereof given to NSFT within twelve (12) months from the date of the loss, damage, delay or failure to adhere to any timeframe alleged to give rise to a claim.
13. Minimum claim threshold  
Customer shall not be entitled to bring any claim howsoever arising (including (gross) negligence or willful misconduct) unless and until the amount of any such claim exceeds one thousand United States dollars (USD 1,000).
14. Joint and several liabilities  
These Terms are between NSFT and the Customer. Every person defined as the Customer is jointly and severally liable to NSFT for all of the Customer's undertakings, responsibilities and liabilities under or in connection with these Terms and to pay the rates listed in the Scale of Rates.
15. Application to Claims in Tort  
The defenses, exclusions and limits of liability provided for in these Terms shall apply in any claim against NSFT whether the claim be founded in tort, bailment, contract, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of (gross) negligence, willful misconduct or fundamental breach of contract.
16. Indemnity for excess liability
  - a. The Customer shall indemnify NSFT against any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by NSFT, as a result of, or in connection with:
    - i. any claim (including without limitation a claim made by the owner of the Goods, the Containers or the Vessel or any other person who is, or may become, interested in the Goods, the Containers or the Vessel or any customs authority) when such claim arises from or in connection with the Terminal Services (whether caused by the negligence of NSFT or otherwise) or the information required under Clause D.1 and to the extent such claim exceeds the liability of NSFT under these Terms;
    - ii. any breach by Customer of the obligations or warranties given in these Terms (or any combination of the foregoing);
    - iii. weighing, loading, non-loading, storage, demurrage, additional transport, shunting, handling, stripping, stuffing, release or return to the Customer or the Shipper or other charges for any packed Container which is an Overweight Container, does not have a Verified Gross Mass provided by the Customer or another VGM Declarant or has a Verified Gross Mass provided by the Customer or another VGM Declarant found to be incorrect or inaccurate by NSFT;
    - iv. NSFT acting in accordance with Customer's instructions; and
    - v. any death or personal injury of any person or damage to any property whatsoever arising from the presence of the Customer at the Terminal, the use by the Customer of the Terminal, the presence of the Vessel at the Terminal or the presence of the Goods on the Vessel (whilst the Vessel is at the Terminal) or within the Terminal but only to the extent that such is caused by a breach of contract, default or negligence of the Customer or its customers.
17. Insurance
  - a. NSFT is under no obligation to maintain property insurance for Goods, Containers or Vessels.
  - b. NSFT shall, at its own expense, procure and maintain policies of insurance covering:
    - i. any liabilities assumed by it under these Terms; and
    - ii. any requirements by law, including public and third-party liability.
  - c. The Customer shall maintain or shall cause Vessels and their equipment, appurtenances, gear and machinery to be maintained in a thoroughly fit and seaworthy condition at all times. Vessels shall be kept continuously in class in accordance with the rules of their classification society. The Customer

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shall ensure that third-party owners of Vessels, maintain the following insurances and shall furnish Terminal's representative certificates or copies of policies (or in the case of P&I cover, a certificate of entry) evidencing such insurance:

- i. Hull and Machinery insurance, in accordance with ITC hull clauses 1983 or equivalent conditions, in an amount no less than the full market value of the Vessel; and
  - ii. P&I cover standard terms and customary limits with a member of the International Group of P&I Clubs.
- d. The Customer/ User shall provide the NSFT with a copy of the certificate of insurance confirming that the requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the User's obligations to arrange insurance required by Applicable Law or under the T&C.
- e. NSFT reserves the right to not allow those Vessels to berth, which do not have adequate insurance in respect of the Vessels, from a club being a member of the international group of protection & indemnity clubs, together with insurances adequate to cover its liabilities under the Contract and this T&C.

## G. Force Majeure

1. A Party (the "Affected Party") shall be relieved from liability for any delay in the performance or failure to perform part or all of its obligations under these Terms if such delay or failure is caused by or results from Force Majeure for so long as the event of Force Majeure or the delay in the performance or failure to perform continues. Provided however that an event of Force Majeure shall not release any Party from its payment obligations arising under these Terms.
2. The Affected Party shall use all reasonable efforts to mitigate and overcome the effects of the occurrence of Force Majeure in order to maintain or resume performance. Provided that no Party shall be required under this provision to settle any strike, lockout, or other labor or industrial dispute under terms it considers as being unfavorable to itself.
3. If an event of Force Majeure occurs, the Affected Party shall notify the other Party (the "Non-Affected Party"), as soon as reasonably practicable and in any event within seven (7) Working Days after the Affected Party has reasonably determined that the occurrence of the event of Force Majeure may affect the performance of part or all of its obligations in a material way, of:
  - (i) the occurrence and nature of the event of Force Majeure;
  - (ii) its expected duration (so far as can be reasonably assessed);
  - (iii) the obligations of the Affected Party, which cannot be fully performed as a result; and
  - (iv) the mitigating actions and remedies, which the Affected Party proposes to take.
4. The Affected Party shall keep the Non-Affected Party fully informed of developments, including the performance by it of the mitigating actions and remedies, and the results thereof.

## H. Use of EDI (Electronic Data Interchange) Communication

1. This Clause shall apply (without prejudice to the other Clauses in these Terms) where partial or exclusive transmission and interchange of information between the Parties happens by means of an EDI communication.
2. Upon such agreement, the Customer and NSFT shall use EDI Communication and shall exchange all details and information required to enable the other Party to fulfill its obligations related to the provision of Terminal Services.
3. All messages submitted via EDI Communication must properly identify the sender and recipient and comply in all respects with the global standards of EDIFACT, ANSI X13 and any other formats agreed by both Parties. NSFT reserves the right to amend these standards from time to time, such amendment to be notified to the Customer indicating the time the amendment shall become operative.
4. The service mailbox or any other receiver, receiving date and time of the transmitted message (or of the first or original transmission in case of repeated transmission of the same message) shall be treated as the receiving date and time of the message by the recipient.
5. The Parties shall maintain (without modification) a message data log containing dates and times of transmission of all EDI messages ("Message Data Log"). Data contained in the Message Data Log shall be retained by way of record for a period of not less than Three (3) months. 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.
6. The Parties acknowledge that in the event of any complete or partial breakdown or failure of the system supporting EDI Communication, 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

- performance of the obligation under these Terms is not adversely affected.
7. Each of the Parties shall:
    - (i) take reasonable care in so far as it is within its power to do so to ensure that the transmissions of messages are secure and prevent unauthorized access to its EDI Communication and the Message Data Log;
    - (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 authorized or used by the recipient outside the terms imposed by the sender. Any authorized disclosure to a third party shall be made only after getting a prior written approval of NSFT; and
    - (iii) apply special protection, where permissible, by encryption or by other agreed means unless the Parties agree otherwise.
  8. NSFT and the Customer shall 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 message can be shown to have been corrupted as a result of technical failure on the part of any machine, system or transmission by the Customer. 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.
  9. The sender is responsible and shall use its best endeavors 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 in accordance with these Terms for the consequences of any such deficiency.
  10. 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.
- I. Law and Jurisdiction**
1. These Terms their interpretation and any non-contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with the Laws of India without regard to any conflict of lawrules.
  2. Any dispute arising out of or connection with these Terms shall be referred exclusively to arbitration in Mumbai, India in accordance with the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof.
  3. The reference shall be to three (3) arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified.
  4. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.
  5. The arbitration shall be conducted in the English language.
- J. General**
1. Should any term, covenant, condition or provision in these Terms be held invalid or unenforceable, the remainder of these Terms and the application of such term, covenant, condition or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant, condition or provision of these Terms shall be valid and enforceable to the extent permitted by law. However, if such term, covenant, condition or provision in these Terms is a material part of these Terms, the Parties shall use their best endeavors to agree a valid and enforceable replacement which achieves (so far as possible) materially the same effect.
  2. Any party for whom NSFT is responsible shall have the benefit of the exclusions of liability contained in, and shall have the right to enforce, the provisions of these Terms in accordance with the provisions of the Contracts Act, 1872.
  3. Except as stated in Clause J.2 the Parties do not intend that these Terms will be enforceable by virtue of the Contracts Act, 1872 or otherwise. No consent of any person who is not a party to these Terms shall be required

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- to amend any term of these Terms or release, settle or compromise any liability under it.
4. The relationship of NSFT and the Customer under these Terms is that of independent contractors, and neither Party is an employee, agent, partner or in a joint venture with the other. Each Party shall be solely responsible and liable for any employment-related taxes, insurance premiums or other employment benefits related to its respective performance under these Terms. Neither Party shall be responsible for the payment of any duties or taxes imposed on the income or profits of the other Party.
  5. NSFT has the right to assign or otherwise transfer its right, title, interest and obligations under these Terms to any affiliate, provided such entity operates in the Port. The Customer shall not be entitled to assign, or otherwise transfer or sub- contract all or any of its rights, title, interest or obligations under these Terms without the prior written consent of NSFT.
  6. NSFT may sub-contract the Terminal Services and NSFT shall remain responsible for its sub-contractors and their performance.
  7. The failure to exercise or delay in exercising a right or remedy provided for in these Terms or by law does not constitute a waiver of the rights or remedies. No single or partial exercise of a right or remedy provided for by these Terms or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
  8. The Customer undertakes that no claim or allegation in respect of the Terminal Services whether arising in contract, bailment, tort or otherwise shall be made against any member of the NSFT group, sub-contractor or any of their employees, servants, agents. If any claim or allegation should nevertheless be made against any member of the NSFT group, sub-contractor or any of their employees, servants, agents, the Customer agrees to indemnify and hold harmless NSFT against all consequences thereof. Without prejudice to the foregoing, all defenses, exemptions, immunities, limitations, liberties and rights of NSFT hereunder, including the right to enforce any law and jurisdiction clause, shall be available and extend to all members of the NSFT, sub- contractors and their employees, servants, agents who shall be entitled to enforce them against the Customer.
  9. Any notice hereunder shall be deemed to have been duly given if sent by registered post or email to the Party concerned at its principal place of business. Notices sent by registered post shall be deemed to have been given seven (7) days after dispatch and notices sent by email shall be deemed to have been given twenty-four (24) hours after dispatch.
  10. If there is any conflict between the English version of these Terms and any translation thereof into any other language, the English language version shall prevail.