



**TERMS OF BUSINESS (TOB)**

**APM TERMINALS PIPAVAV  
GUJARAT PIPAVAV PORT LTD.  
CORP.OFFICE**

301, TRADE CENTRE  
BANDRA KURLA COMPLEX  
BANDRA (E)  
MUMBAI 400 051  
INDIA

TEL 91-22 3001 1300. FAX: 3001 1333

**REGD.& PORT OFFICE**

PORT OF PIPAVAV,  
P.BAG 45, POST-UCCHAIYA, VIA-RAJULA,  
DISTRICT AMRELI,  
GUJARAT 365560, INDIA

TEL 91-2794 286001/286092.FAX 286044

## **A.1. APPLICATION:**

Save as otherwise specifically provided, the following Terms Of Business (hereinafter referred to as "TOB") apply to all work and services performed by Gujarat Pipavav Port Limited (hereinafter referred to as "GPPL"). Any user of port services (hereinafter referred to as "The Customer") is deemed to have accepted these Terms of Business upon entry of their cargo or vessel into the Port. These Terms of Business are in addition to the Rules and Regulations of GPPL as updated from time to time.

## **A.2.DEFINITIONS AND INTERPRETATION:**

1.1 In this TOB the following words and expressions shall, unless the context shall otherwise require, have the following meanings:

**"Authority"** means Gujarat Maritime Board, Government of Gujarat, Government of India including its employees and agents;

**"GPPL"** means, Gujarat Pipavav Port Limited, P.Bag 45, Post – Uchhaiya, Via Rajula, District Amreli, Gujarat 365560, India, including its successors, legal heirs, executors, administrators and permitted assigns;

**"Cargo"** means (i) any goods or articles of any kind whatsoever including Hazardous Cargo, transported in a Container, Non-standard Container or Out of Gauge Container, excluding Non-containerised Cargo and (ii) empty Containers;

**"CFS"** means the Container Freight Station or stations being the land and premises used by GPPL at the Container Terminal where, amongst other things, Cargo is packed, unpacked and cleared;

**"Consignee"** means a person other than the Customer entitled to receive Cargo;

**"Consignor"** means any person other than the Customer who delivers Cargo;

**"Container"** means

- (i) any container 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height or any other container developed for use in liner shipping at any time, including, but not limited to, flat-racks, platforms, reefer containers and tanks, with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a standard 20', 40' and 45' spreader;
- (ii) a non-standard Container; and/or
- (iii) an Out of Gauge Container.

**"Container Ship"** means a ship fitted for the carriage of Containers;

**"Container Terminal"** means the container terminal at the Port known as Port Pipavav comprising container berths, the Container Yard and CFS and all other equipment and buildings at the Port whether constructed or under construction, together with any additional land, berths, buildings, Container Yards and CFS to be installed in connection with any further developments thereto for the purpose of providing Container Terminal Services;

**"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 vessel other than a Container Ship;

**"Container Yard"** means the land and premises used by GPPL at the Container Terminal where Containers are, amongst other things, stored, received and delivered;

**"Contract of Carriage"** means any contract or other document including, but not limited to bills of lading and contracts of affreightment, seen and accepted by GPPL, which evidence a contract between two parties to ship Containers and/or Cargo onboard a Containership for reward;

**"Container Terminal Services"** means the services to be provided to the Customer by GPPL under this TOB ;

**"Controlled"** and **"Control"** means the holding of power to direct or cause the direction of management, policies and decisions of a company, corporation, partnership or other entity including, without limitation, through control by direct or indirect means of not less than 50% of the voting rights in such company, corporation, partnership or other entity.

**"Dutiable Cargo"** means dutiable goods as defined by the relevant customs and excise authorities;

**"EDI System"** means an electronic data interchange system whereby any Message is transmitted from one party to another party by electronic means;

**"Force Majeure"** means any act of God, act of public enemies, war, warlike acts, terrorism, restraint of governments, princes or peoples of any nation, riots, strikes, lockouts, insurrections, civil commotion, civil disobedience, floods, earthquake, fire, restrictions due to quarantines, epidemics, storms or any other causes beyond the reasonable control of the party claiming an event of Force Majeure;

**"Hazardous Cargo"** means Cargo of any kind classified by the International Maritime Organisation as hazardous cargo and shall include "dangerous goods" as defined in the International Maritime Dangerous Goods Code;

**"Indemnify"** means indemnify and keep indemnified and hold harmless on demand regardless of the negligence or gross negligence of the indemnified party;

**"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;

**"Message"** means data structured in accordance with the User Manual and adopting the EDIFACT standards which is transmitted between GPPL and the Customer using an EDI System through the medium of the Intermediary Service;

**"Message Date Log"** means a complete record maintained by the parties of Messages, Message Transmissions and Message Retrievals transmitted to and received from the Intermediary Service database;

**"Message Retrieval"** means the access by any of the parties to the Intermediary Service data base and the retrieval by such party of any Message stored in the data base;

**"Message Transmission"** means the deposit of a Message by any of the parties in the Intermediary Service database;

**"Non-containerised Cargo"** means any cargo, which cannot be handled by means of normal use of a container spreader, even with attachments;

**"Non-standard Container"** means a Container accepted for transport/carriage on a Container Ship which cannot be handled by means of a normal use of a container spreader, even with attachments;

**"Out of Gauge Container"** (OOG) means a Container whose contents exceed the dimensions of the standard Container of 20', 40' or 45' in length, 8' in width and 8'6"/9'6" in height;

**"Pilot"** means any person not belonging to a Container Ship who has conduct thereof;

**"Port"** means the Port of Pipavav located at Port of Pipavav, P.Bag 45, Post – Uchhaiya, Via Rajula, District Amreli, Gujarat 365560, India

**"Reefer Container"** means a Container used for the transportation of refrigerated Cargo;

**"Sub-contract"** means any sub-contract for the provision of the Container Terminal Services or any part thereof by GPPL to a Sub-contractor;

**"Sub-contractor"** means any sub-contractor appointed by GPPL for the performance of the Container Terminal Services or any part thereof;

**"Terms of Business" (TOB)** means this document.

**"User Manuals"** means the documents or instructions which are produced from time to time by GPPL by way of guidelines to govern the methods and operation of the structure, transmission and receipt of Messages each of which such documents may cover one or more Messages;

**"Wharf"** includes a berth, quay, pier, jetty, docks, ramp, landing place and any wall and building adjoining the foreshore, sea-bed or river bed;

**"Working Day"** means any day (including any public holidays and Sundays), upon which the Port is open for business.

1.2 The headings in this TOB are for information only and shall not be construed as forming part of this TOB.

1.3 Unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include all genders; and
- (c) a reference to a person includes a reference to a body corporate and to an unincorporated body of persons.

## **B .MARINE SERVICES AT THE CONTAINER TERMINAL**

### **1. Marine Services at the container terminal**

GPPL will provide the following services to the Customer at Port:

- (a) receiving Container Ships at Wharves alongside the Container Terminal;
- (b) rendering assistance in making fast and unmooring Container Ships;
- (c) unloading from and loading onto, Container Ships of Containers.;
- (d) acceptance into and removal from the Container Terminal of Containers by means of shore based cranes including lashing and unlashng of Containers on a Container Ship;

together with any other services which may be agreed in advance in writing, at prices agreed mutually.

## **2. Sailing Schedule and Berthing Requirements**

- 2.1 The Customer shall provide GPPL with a sailing schedule and berthing requirements, not later than three (3) weeks before each Container Ship's expected date of arrival at the Container Terminal. The berthing requirements shall include details of the projected number of any Containers to be discharged from, or loaded onto, that Container Ship at the Container Terminal.
- 2.2 Not less than seventy two (72) hours before the estimated time of arrival of a Container Ship at the Container Terminal, the Customer shall supply to GPPL such particulars in writing as GPPL may require or as otherwise required from time to time of the Containers (including the contents & value thereof) onboard to be discharged from, or loaded onto, that Container Ship at the Container Terminal. The particulars shall include, but shall not be limited to, information relating to Hazardous Cargo, OOG cargo, Reefer cargo and Dutiable Cargo contained in or intended to be contained in a Container.
- 2.3 Any changes to the berthing requirements provided to GPPL in accordance with Clause B2.2 above must be promptly notified to GPPL, but in any event not later than forty eight (48) hours before the estimated time of arrival of the Container Ship at the Container Terminal.
- 2.4 The final time for arrival of a Container Ship shall be confirmed in writing at least twenty four (24) hours before the Container Ship's anticipated time of arrival.

## **3. Arrival of a Container Ship at the Container Terminal**

- 3.1 Acceptance to receive the vessel at Port will be given to the vessel agent for each call as may be appropriate having regard to the current circumstances at that time and prior/existing commitments of the Port. The Customer shall ensure that each of its Masters shall not berth or attempt to berth his Container Ship at a Wharf alongside the Container Terminal until such acceptance has been given by GPPL to the Vessel Agent that the Port is ready to receive the Container Ship. All marine movements in the channel shall be done under Pilot's escort and in compliance with Port regulations prevalent at the time.
- 3.2 GPPL will provide mooring crew to render assistance to the Container Ship. The mooring crew shall operate under the instructions and the

responsibility of the Master of the Container Ship for the sole purpose of making fast or casting off the Container Ship's hawsers and mooring ropes.

- 3.3 The Customer shall supply gangways from the Container Ship to the Container Terminal. The safety and illumination of gangways shall be the sole responsibility of the Customer.

#### **4. Container Ships at the Container Terminal**

- 4.1 GPPL shall provide the Customer with an efficient terminal control system controlling the movement of Containers at the Container Terminal and shall report activities relating to Containers
- 4.2 The Customer shall ensure that all equipment on Container Ships for discharging and loading Containers is technically compatible with GPPL's equipment at the Container Terminal.
- 4.3 GPPL shall permit the Customer to bring trucks alongside Container Ships and to load and discharge Container Ships' stores at such times as may be agreed and shall allow access to the Container Terminal to personnel to proceed on board a Container Ship for the purpose of carrying out repairs. GPPL and the Customer agree that access as referred to in this Clause is permitted by GPPL on condition that the same is carried out in accordance with the rules and regulations of GPPL and the Customs Authorities. GPPL will 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 will indemnify GPPL for any loss, damage, expense, cost or injury in any way howsoever caused by reason of GPPL permitting access under this Clause.

### **C. OPERATOR CONTAINER TERMINAL SERVICES :**

#### **1. The Operator Container Terminal Services**

Subject to what is stated in Clause B (2) above, GPPL will provide the following services to the Customer at Port:

- (a) receiving Containers from or for loading aboard Container Ships berthed at Wharves at the Container Terminal;
- (b) transferring Containers to or from the Container Yard;
- (c) receiving and delivering Containers from and to Container-transporters;

- (d) Transferring of Containers to or from the C.F.S.
- (e) Moving empty Containers to and from storage yards
- (f) Packing and unpacking Containers
- (g) movement to rail terminal, loading & unloading from railway flats
- (h) reefer electricity supply, monitoring, PTI & minor repairs together with any other services which may be agreed in writing.

## **2. Acceptance of Containers**

- 2.1 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 Container Terminal or other place adjacent to the Container Terminal as may be designated from time to time by GPPL.
- 2.2 GPPL is not obliged to receive or deliver Containers unless full covering documentation has been provided to GPPL. GPPL's responsibility to the Customer for Containers shall commence only when the Containers have been delivered to the area designated as referred to in Clause C 2.1 above and notice of acceptance has been duly given by GPPL.
- 2.3 Prior to the presentation for acceptance to GPPL of any Containers, the Customer shall supply to GPPL such particulars in writing thereof and where appropriate of the contents of a Container including weight and other measurements or as may be requested by GPPL. GPPL 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 GPPL against any loss, damages, claims, costs and expenses which GPPL may suffer or incur directly or indirectly, as a result of such inaccuracies or omissions.
- 2.4 GPPL will accept no Containers for handling until GPPL is satisfied that adequate space reservation arrangements have been made for the onward carriage of the same within a period of time acceptable to GPPL.

## **3. The Condition of Containers**

- 3.1 The Customer undertakes that, each Container which it delivers or causes to be delivered to GPPL is upon delivery secure, in a good state of repair and suitable for its purpose. GPPL shall be entitled to refuse to load or handle any Container which is not in the condition required by this Clause. Even in case where container as aforesaid in this clause C(3.1) is accepted by GPPL

to load or handle, GPPL shall not, in such case, be responsible for any damage to container or its contents thereof.

- 3.2 GPPL shall inform the Customer of any damage to any Container, its contents or its packaging coming to the attention of GPPL, and may refuse to load or handle such Containers. If GPPL gives notice to the Customer of damage to a Container, its contents or its packaging, the Customer shall be entitled, within seven (7) days of such notice being dispatched, to inform GPPL in writing that an inspection of the relevant items is required. GPPL will thereafter permit the Customer or its duly appointed agents upon reasonable notice to inspect the Container, contents or packaging.

#### 4. **Reefer Containers**

- 4.1 GPPL will check and report upon the temperature of Reefer Containers stored at the Container Terminal subject to instructions being given in writing to GPPL at least two (2) working days in advance of receipt of a specific Reefer Container by GPPL and such instructions are accepted in writing by GPPL, GPPL may check and report upon the temperatures of Containers as mutually agreed.
- 4.2 GPPL shall not be responsible or liable in any way for any Reefer Container or the refrigeration of refrigerated Cargo if the Customer fails to give written instructions, or provides wrong or inadequate instructions concerning the handling thereof.
- 4.3 If GPPL is instructed in writing in accordance with Clause C 4.1 GPPL will, within a reasonable time of receipt, connect the Reefer Container to a main power supply. GPPL shall not be obliged to maintain an auxiliary power supply and GPPL shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the mains power supply howsoever arising.

#### 5. **Stripping of Containers**

If GPPL 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 GPPL shall not be responsible or liable in any way for any deterioration of the contents of the Container or for contamination to other Cargo by reason of such deterioration. The Customer shall ensure compliance with the rules and regulations of Customs for opening and unpacking of any Container. GPPL may, but shall be under no obligation to do so close, reconnect, or connect to a power supply for Reefer Containers, repack or otherwise deal with any such Container and/or its contents at the sole cost and expense of the Customer.

**D. CONDITIONS RELATING TO THE PROVISION OF CONTAINER TERMINAL SERVICES****1. Circumstances preventing safe handling**

When, in GPPL's sole opinion, there are any circumstances which will or may prevent or hinder the safe handling, storage, loading, unloading or transport of any Containers, GPPL may, in its sole discretion, refuse to handle the same and shall give notice of such refusal to the Customer or Consignor, as the case may be. The recipient of such notice will remove or procure the removal of Containers and/or its contents from the Container Terminal forthwith at its own risk and expense.

**2. Warranties and Indemnities given by the Customer**

- (i) So as to enable GPPL to carry out the provision of Container Terminal Services efficiently, the Customer warrants and undertakes that:
  - (a) all particulars relating to Containers (including, but not limited to Reefer Containers) furnished by the Customer in accordance with these Terms of Business are accurate;
  - (b) all Containers are properly packed and labeled and the contents are properly stowed and secured therein;
  - (c) all Containers are fit for their intended purposes and in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed at the Container Terminal;
  - (d) all Containers and Cargo comply with applicable laws, orders, regulations, or other requirements of Government, customs, municipal or other authorities whatsoever; and
  - (e) all Reefer Containers have been properly pre-cooled or pre-heated as appropriate and their controls have been properly set and

the Customer shall Indemnify GPPL in respect of the consequence of the breach of any of these warranties.
- (ii) GPPL shall not be responsible for or liable in any way, and the Customer shall Indemnify GPPL against all damages, claims, costs and expenses suffered or incurred by GPPL resulting directly or indirectly from any defects in a Container and/or its contents.
- (iii) The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container Ship and the Cargo and all matters whatsoever relating to the Container Ship and the Cargo.

- (iv) The Customer shall be responsible for any damage to GPPL's Wharves, premises, equipment, gendering, mooring bollards, all other property, other Container Ships, vessels and property belonging to the third parties, caused during or arising from berthing or unberthing and shall Indemnify GPPL against all claims, demands, losses, costs and expenses arising from any such damage.
- (v) Upon the delivery of any Container to GPPL, the Customer shall undertake to GPPL that all values and other particulars in respect thereof supplied to GPPL for customs or other purposes and all necessary customs removal permits are complete and accurate and, where appropriate, are valid and in full force and effect. The Customer shall Indemnify GPPL and its servants, or agents against all loss, damages, claims, costs, expenses, fines and penalties that GPPL or its servants, or agents may incur or suffer directly or indirectly as a result of any breach of this undertaking.
- (vi) The Customer shall ensure that Containers delivered to GPPL are weatherproof.
- (vii) The Customer shall Indemnify GPPL, against all claims arising by reason of:
  - (a) any defects in any Container or the contents thereof;
  - (b) any mixture or confusion of Cargo; and/or
  - (c) shifting or movement of the Cargo.
- (viii) **Overweight Containers** : In case the weight of cargo or container is understated in the declaration submitted by the customer, the handling of such cargo or container is at the sole risk and responsibility of the Customer, and Customer hereby indemnifies the Port against all injury, loss and damage resulting from the handling of such cargo or container.

### 3. **Delivery Orders etc.**

- (a) The Customer will appoint an agent in the Port ("the Port Agent") for the purposes of this Agreement, and shall make the same known to GPPL by notice in writing. GPPL shall not be required to deliver or otherwise deal with any Container or Cargo except with the authority of a delivery order signed by the Port Agent.
- (b) The Customer shall ensure that the Port Agent registers with GPPL, specimen signature(s) of the person(s) authorised to sign on its behalf. GPPL shall be entitled to deliver or otherwise deal with any Container or Cargo in accordance with a delivery order which appears to it after comparison with the specimen signature(s) registered with it under this Clause D 3(b) to have been properly signed by the Port Agent, and shall not be liable to the Customer or any other person in consequence.

#### 4. **Hazardous Cargo and Dutiable Cargo**

- (a) The Customer shall ensure that all goods tendered to GPPL for loading and/or unloading, comply with all applicable regulations for Hazardous Cargo and/or Dutiable Cargo and shall Indemnify GPPL against any breach of this section D(4) of this Terms of Business.
- (b) The Customer warrants that full details of any hazardous cargo will be correctly declared in writing to GPPL.
- (c) GPPL has the right to refuse to handle Cargo which, upon inspection, is found not to comply with the applicable rules or regulations or ordinances or laws of India and to reject and/or return such Cargo at the sole expense and risk of the Customer.

#### 5. **Valuable Cargo**

- (i) GPPL shall not be bound to accept Cargo of high value or which requires special care including, but without limitation:
  - (a) gold;
  - (b) silver;
  - (c) bullion, coins and currency notes;
  - (d) precious stones;
  - (e) precious metals;
  - (f) securities for cash and stamping;
  - (g) documents and title deeds;
  - (h) opium, essential oils and similar valuable drugs;
  - (i) lace, fur and feathers;
  - (j) works of art and paintings;
  - (k) scientific instruments of all kinds;
  - (l) revenue or postal stamps;
  - (m) gold, silver and platinum watches;
  - (n) precious metal jewellery works; and
  - (o) antiques;

and any other valuables. The Customer shall give to GPPL at least 15 days prior notice of their intended delivery of such Cargo to the Container Terminal

whether by Container Ship or Container-transporter to enable GPPL to decide whether or not it will accept such Cargo. Under no circumstances shall the Customer deliver to the Container Terminal such Cargo, without the prior written approval of GPPL. If such Cargo is delivered to GPPL without its prior written approval, that Cargo will at all times be at the sole risk of the Customer and GPPL shall not be liable for any loss or damage howsoever caused to such Cargo.

- (ii) Notwithstanding the prior written approval of GPPL in accordance with Clause D5(i), GPPL's liability for loss of and/or damage to valuable Cargo as described in Clause D5(i) above shall be limited to the amounts as set out in Clause D(8) except to the extent GPPL 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 GPPL incurs as a consequence of acceptance of valuable Cargo.

## **6. Lien**

All Containers, Cargo and all documents relating to Containers and Cargo shall be subject to a particular and general lien respectively for charges due to GPPL in respect of such Containers or Cargo from the Customer. If any charges are not paid within one (1) calendar month after notice requiring payment has been given to such Customer, the Containers or Cargo subject to such lien, may be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by GPPL in such sale. Any sale of Containers or Cargo by GPPL pursuant to these Terms of Business, may be conducted by a private treaty, by public auction or otherwise in such manner as GPPL shall in its sole discretion determine and GPPL 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 allowed by law.

## **7. Costs and expenses to be paid by the Customer**

The Customer shall pay:

- (a) any costs and expenses which may be incurred by GPPL in complying with any Government regulations requiring the movement, treatment, removal or destruction of Hazardous Cargo or infested, contaminated or condemned goods or the treatment of GPPL's premises as a result of any infestation or contamination arising from such Hazardous Cargo; and
- (b) all costs and expenses incurred by GPPL arising out of or incidental to the failure by the Customer to observe these Terms of Business including, but not limited to, the rules for Hazardous Cargo or any one of them.

## 8. Liability and Indemnity

8.1 The maximum liability of GPPL to the Customer for loss of and/or damage to Containers in the custody of GPPL (i.e from the time of receiving upto and including the time of completion of loading onto any Container Ship or Container-transporter), where such loss and/or damage was caused exclusively by the gross negligence or wilful default of GPPL, its agent, servants or Sub-Contractors , in relation to each incident for each Container, shall be the lesser of either the depreciated value of the Container or the actual cost of the repair provided always that under no circumstances shall the claim exceed the following amounts:

- (a) depreciated value of the Container or USD 1,000, whichever is less in the case of any 20' dry Container;
- (b) depreciated value of the Container or USD 1,500 , whichever is less in the case of any dry Container of more than 20' in length;
- (c) depreciated value of the Container or USD 7,000 , whichever is less in the case of any 20' Reefer Container; and
- (d) depreciated value of the Container or USD 10,000 , whichever is less in the case of any Reefer Container of more than 20' in length

and for the avoidance of doubt, in the absence of gross negligence or willful default, GPPL shall have no liability whatsoever for such loss and/or damage.

8.2 The maximum liability of GPPL to the Customer for loss of and/or damage to all Cargo in the charge of the Customer, its Sub-contractors, agents or their assignees, whilst in the custody of GPPL, where such loss and/or damage was caused by the gross negligence or wilful default of GPPL, its agents, servants or Sub-contractors, in relation to each incident for such Cargo, shall be limited to the following:

- (a) USD 1,000 in the case of any 20' dry Container;
- (b) USD 1,500 in the case of any dry Container of more than 20' in length; and
- (c) USD 7,000 in the case of any Reefer Container

and for the avoidance of doubt, in the absence of gross negligence or willful default, GPPL shall have no liability whatsoever for such loss and/or damage.

Without prejudice to what is stated in this clause in no circumstances shall GPPL's liability exceed the limits of liability in accordance with the terms and conditions contained within the Customer's Contract of Carriage or, if

applicable, the Container Ship's limitation fund except to the extent GPPL agrees in writing to a higher limit on liability in a particular case.

- 8.3 The limitation of liability per incident under this Clause D(8) shall relate to the whole of any losses and damages which may arise upon any one distinct occasion, although such loss and/or damage may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law and notwithstanding anything in such written law.
- 8.4 GPPL shall only be liable to a Customer for any loss or damage to a Container Ship (including gear and all other equipment) where such loss and/or damage was caused by the gross negligence or willful default of GPPL, its agents, servants or Sub-contractors and notwithstanding anything contained in this TOB or elsewhere, the maximum liability of GPPL to the Customer in relation to each incident shall be limited to two hundred thousand United States Dollars US\$200,000.
- 8.5 GPPL shall not be liable to the Customer for any loss or damage to Hazardous Cargo or for any loss, delay, damage or personal injury (including death) arising out of bad stowage in Containers unless caused by gross negligence or willful default of GPPL, its agents, servants or sub-contractors and PROVIDED THAT the maximum liability of GPPL to the Customer in relation to each incident shall be the limits of liability in accordance with clause D(8.2) and subject however to Clause D(8.4).
- 8.6 The Customer shall be liable for and shall fully Indemnify GPPL, its servants, agents and sub-contractors against any liability for claims or suits, including costs and expenses incidental thereto, in respect of loss of or damage to any property and death or injury suffered by any person caused by the negligence or default of the Customer, its servant or agents pursuant to these Terms of Business or otherwise.
- 8.7 GPPL shall not, under any circumstances whatsoever, be responsible for or liable to the Customer for:
- (a) any consequential or indirect loss or damage; or
  - (b) loss of profit, revenue, savings or contracts; injury to goodwill or reputation; or delay howsoever caused, including any breach by GPPL of its obligations under this Contract or its breach of duty, negligence or gross negligence.
- 8.8 In respect of any claim arising under any indemnity in favour of the Customer contained in this Contract the Customer shall:

- (a) Within fifteen (15) days after becoming aware of the claim, notify GPPL in writing of the claim (the "GPPL Claim") against which the Customer is seeking to be indemnified together with all details of GPPL Claim in the actual knowledge or possession of the Customer at the time and becoming known to it at any time thereafter;
  - (b) take such other steps as may be necessary or as GPPL may reasonably require to avoid or mitigate GPPL's Claim;
  - (c) where GPPL Claim relates to a claim by any third party against the Customer, not admit liability or make any offer, promise, compromise or settlement with the third party without the prior written consent of GPPL (which consent not to be unreasonably withheld or delayed); and
  - (d) where GPPL Claim relates to a claim by any third party against the Customer, at the request of GPPL and at GPPL's cost, cooperate with GPPL or its insurers, in the defence, settlement and/or counter claim of such Customer Claim.
- 8.9 Notwithstanding the remaining provisions of these Terms of Business the maximum aggregate liability of GPPL to the Customer in any calendar year regardless of the cause of such claim and number of incidents shall in no circumstances exceed Five Hundred Thousand United States Dollars US\$ 500,000 provided that all amounts payable under any relevant insurances held by the Customer against any Customer claims shall be paid in full to GPPL within fourteen (14) days of receipt of the same by the Customer from the relevant insurer of the Customer. GPPL shall also not be liable for any claim with a value of less than five hundred United States Dollars US\$500.
- 8.10 Save as provided in this Clause D8 GPPL shall not be under any liability to the Customer whether in contract, tort or otherwise in respect of the use of the Container Terminal and the provision of the Container Terminal Services for any death, personal injury, damage or loss resulting from the use of the Container Terminal and the provision of the Container Terminal Services or from any work done in connection therewith.
- 8.11 GPPL does not give any warranty or representation that the Container Ship will not ground whilst approaching, leaving or lying alongside the Container Terminal. Each Container Ship approaching, leaving and whilst lying alongside the Container Terminal does so at the sole risk and responsibility of the Customer.
- 8.12 GPPL shall not be responsible for or liable in any way for any damage or loss suffered or incurred during the berthing and unberthing of a Container Ship.
- 8.13 GPPL will not be responsible for any improper mooring of the Container Ship at the Container Terminal, whether or not such mooring was completed with the assistance of mooring crew provided by GPPL.

- 8.14 GPPL will not be responsible or liable for any incorrect or delayed delivery of any Container which is insufficiently, incorrectly or otherwise not properly marked and/or in respect of which full and complete particulars in respect of such delivery have not been provided to GPPL.
- 8.15 GPPL shall not, under any circumstances, be responsible for or liable in any way for any damage to Containers or their contents caused by rust, rain, typhoon, flood, tempest, lightning, fire or any similar event or occurrence.

## **9. Insurance**

- 9.1 GPPL is under no obligation to maintain insurance of Containers, Cargo or contents of Containers of the Customer.
- 9.2 The Customer shall:
- (a) take out and maintain adequate hull and machinery and P&I Insurance in respect of its Container Ships, the later from a Club being a member of the International Group of P& I Clubs, together with insurances adequate to cover its liabilities under this TOB.
  - (b) If so requested, provide GPPL with a copy of certificate of insurance confirming that these requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the Customer's obligations to arrange insurance required by law or under this TOB.
  - (c) GPPL reserves the right to not allow those vessels to enter Port, which do not have adequate hull and machinery and P&I Insurance in respect of its Container Ships, the later from a Club being a member of the International Group of P& I Clubs, together with insurances adequate to cover its liabilities under this TOB.

## **10. Unauthorised Access to Container Ships**

- (a) GPPL will use reasonable endeavours to enforce strict controls to prevent unauthorised access to the Container Terminal.
- (b) The Customer shall enforce controls on its Container Ships whilst berthed at the Container Terminal in order to prevent unauthorised access to the Container Terminal.

## **11. Force Majeure**

A party shall not be liable for any failure to perform its obligations under this TOB caused by Force Majeure provided it gives prompt notification to the other party of (i) the event of Force Majeure and its likely duration (ii) the obligation(s) which are

affected, and how affected, and provided that it takes all reasonable steps to mitigate the effects of Force Majeure.

## **12. Dispute Resolution:**

- 12.1 Any dispute or difference arising between the Parties out of or in connection with this TOB shall promptly and in good faith be negotiated with a view to its amicable resolution and settlement.
- 12.2 In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the dispute or difference arose, such disputes and/or differences shall be referred to the Arbitration as per clause D(13) of this TOB.

## **13. Law and Jurisdiction:**

- 13.1 This TOB shall be governed by and construed in accordance with the laws of India. Any dispute arising out of or connection with this TOB, not resolved between the parties as per clause D(12) above, shall be referred to arbitration in Mumbai, India in accordance with the provisions of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof.
- 13.2 The reference shall be to one arbitrator mutually agreed upon between the parties. In the event that parties cannot agree upon the sole arbitrator within a period of 30 days from the date when one of the parties gives notice to the other party of its intention to refer the dispute to arbitration, the sole arbitrator shall be appointed in the manner set out in the Arbitration and Conciliation Act, 1996.
- 13.3 Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 13.4 The parties shall use every reasonable endeavour to resolve disputes between them in the shortest possible time consistent with the proper presentation to the expert or arbitration tribunal of their submissions and evidence. The parties will in particular seek, in the absence of any reasonable excuse, to make such submissions and present such evidence within a period of thirty days from the commencement of the proceedings. In the event of unreasonable delay by either party, the expert or the arbitration tribunal shall be entitled to make an award even if that party has failed to make or complete its submissions.

## **E . INVOICING AND PAYMENT**

- 1. Before arrival of any vessel or containers at the Port, and commencement of any services by GPPL, the Customer shall deposit an interest free advance deposit to

cover all the charges that are chargeable under each shipment, with GPPL. GPPL shall adjust against the advance deposit all the invoices raised by GPPL. The level of advance deposit will be reviewed periodically by GPPL based on the Customer throughput at the Port, and the level of advance deposit will be accordingly decided by GPPL. Any disputed invoice shall be dealt with separately independent of the advance deposit. All such deposit payments shall be subject to statutory deductions on account of income tax, provided however that income tax shall not be deducted by the Customer where GPPL furnishes adequate proof of exemption from income tax as per rules applicable.

2. All sums payable by the Customer as set out in the invoices raised by GPPL shall be recovered immediately from the advance deposit amount mentioned in Clause E1 above. In the event of any invoice is unpaid for whatsoever reasons, without prejudice to any other rights which GPPL shall have under this Agreement or at law, the Customer shall pay GPPL interest whether before or after judgment, at a rate equal to 18% per annum in the currency of the invoice, on the unpaid amount, from the date of invoice until the date of actual payment received by GPPL.
3. GPPL shall, without undue delay, submit an invoice covering each call at the Port of a Container Ship of the Customer, which shall include details and amount charged for the services provided by GPPL to the Customer during each port call. GPPL shall submit invoices in relation to any services provided or disbursements incurred, which are not related to a particular port call of a Container Ship at intervals determined by it.
4. All disbursements incurred by GPPL on behalf of the Customer shall be paid in the same currencies as those in which they were incurred.
5. If any tax and/or public tariff adjustment (including but not limited to consumption tax, value-added tax and/or goods and services tax) during the Term becomes applicable to or is imposed on the provision of the Container Terminal Services, the Customer shall, in addition to the rates and tariffs, also pay to GPPL for an amount equal to such tax or adjustment.
6. GPPL may agree to collect some or all of amounts due from the Customer from other persons on behalf of the Customer, provided always that by such agreement GPPL shall not in any way prejudice the liability of the Customer for such amounts.

#### **F. EDI SYSTEM**

1. This Section F shall apply (without prejudice to the other Sections in these Terms of Business) only where GPPL has agreed in writing with the Customer for the partial or exclusive transmission and interchange of Messages between the parties by means of an EDI System.

2. Upon such agreement, the Customer and GPPL shall become subscribers to the Intermediary Service and shall exchange all identification details and similar information to enable each party to effectively utilise the Intermediary Service.
3. **Application**
  - 3.1 Until such time as the parties mutually agree that the EDI System may be used exclusively, it is agreed that the EDI System shall be operated in parallel with an accepted manual system. In case of inconsistencies, any Message transmitted through the EDI System shall prevail.
  - 3.2 GPPL shall determine and monitor the progress of the development, implementation and priority of the EDI System.
  - 3.3 All Message Transmissions must properly identify the sender and recipient and comply in all respects with the User Manuals and such of the Intermediary Service standard conditions as may be applicable from time to time.
  - 3.4 If the sender issuing a Message Transmission requires a confirmatory receipt and does not receive the same, the original Message should be re-transmitted until a receipt is received.
  - 3.5 The Intermediary Service mailbox receiving date and time of the Message (or of the first or original Message in case of repeated transmission of the same Message) shall be treated as the receiving date and time of the Message by the recipient.
4. **Message Data Log**
  - 4.1 The parties shall maintain (without modification) a Message Data Log including details of times of transmission and examination of the Intermediary Service mailbox. Data contained in the message Data Log shall be retained by way of record for a period of not less than twelve (12) months.
  - 4.2 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.
  - 4.3 Each of the parties shall be responsible for making such arrangements as may be necessary for the data contained in its Message Data Log to be prepared and maintained as a correct record of each Message Transmission and Message Retrieval.
5. The parties acknowledge that in the event of any complete or partial breakdown or failure of the EDI System and/or the Intermediary Service, they will take all necessary

steps to ensure the continued transmission and receipt of relevant messages, notices and information by alternative and/or additional means such that the operation of the Contract is not adversely affected.

6. GPPL reserves the right to amend the User Manuals from time to time, such amendment to be notified to the Customer at which time the amendment shall become immediately operative.

## 7. **Security of Messages**

7.1 Each of the parties shall:

- (a) take reasonable care in so far as it is within its power to do so to ensure that Messages are secure and that unauthorised access to its EDI System, Message Data Log and the Intermediary Service system is prevented;
- (b) ensure that Messages containing confidential information as designated by the sender of the Message are maintained by the recipient in confidence and are not disclosed to any person not otherwise authorised or used by the recipient outside the terms imposed by the sender. Any authorised disclosure to a third party shall be made only after getting a prior written approval of GPPL;
- (c) apply special protection, where permissible, by encryption or by other agreed means, to those Messages which the parties agree should be so protected. Unless the parties otherwise agree, the recipient of a Message so protected shall use at least the same level of protection for any further transmission of such Message.

## 8. **Integrity of Messages**

- 8.1 The parties accept the integrity of all Messages and agree to accord these the same status as would be applicable to notices or information sent other than by electronic means, unless such Messages can be shown to have been corrupted as a result of technical failure on the part of any machine, system or transmission by the Customer.
- 8.2 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.
- 8.3 The sender is responsible and shall use its best endeavours to ensure that Messages are complete and correct. Notwithstanding the foregoing, the

recipient must immediately inform the sender if it is, or should in all the circumstances, be reasonably obvious to the recipient that the transmission of such Message is incomplete, incorrect or otherwise deficient and in no event shall any of the parties be liable under this Clause F8.3 for the consequences of any such deficiency.

- 8.4 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.

## 9. **Limitation on Liability**

- (a) Without prejudice to the provisions of Clause D8 of these Terms of Business, none of the parties shall be responsible for any direct, indirect or consequential loss or damage suffered by the other party or any third party howsoever arising solely as a consequence of the use of the EDI System, whether caused by the parties or otherwise, including but not limited to the use or misuse of the User Manuals, the interruption or failure of the Intermediary Service, the EDI System, machines or transmission lines contributory thereto, or any other failures whether or not attributable to human error.

## 10. **Termination**

- 10.1 The use of the EDI System by the parties may be terminated (without prejudice to the continuing application of the remaining clauses of these Terms of Business) by one party giving to the other not less than three (3) months notice or otherwise automatically upon termination of the Contract between the parties, whereupon the transmission of any message, notice or information between the parties shall revert to the existing manual or other agreed system.

- 10.2 Notwithstanding the termination of the use of the EDI System for any reason:-

- (a) Each of the parties shall complete and/or implement any action required by any Message sent prior to such termination; and
- (b) The rights and obligations of each of the parties as to the maintenance of a Message Data Log and the Security of Messages shall continue after such termination and the termination of the Contract.