

**CONTRACT FOR THE PROVISION
OF TERMINAL SERVICES**

between

"NAME"

"address"

(hereinafter referred individually as to the **"Line"** or the **"User"**)

and

"Terminal Darsena Toscana S.r.l."

Loc. Darsena Toscana, Porto Industriale

57123 Livorno

Italy

(hereinafter referred as to **"TDT"** or the **"Terminal Operator"**)

Issued on:



This Terminal Services Contract (hereinafter referred to as the "**Contract**") between the following Parties:

TERMINAL DARSENA TOSCANA S.r.l. a socio unico, a company duly incorporated and existing under the laws of Italy and having its registered office at v.le Mogadiscio 23, Livorno, and represented by Marco Mignogna in his capacity of General Manager (hereinafter referred to as "TDT" or the "Terminal Operator"),

and

XXXXXXXXXX a company duly incorporated and existing under the laws of XXXX and having its registered office at XXXX, XXXX, XXXX, and represented by XXXXXXXX, (hereinafter referred to as the "Line" or the "User"),

The Terminal Operator and the User may be hereinafter individually named as a "**Party**" and collectively named as the "**Parties**".

WHEREAS

- A.** Terminal Operator operates and manages the Terminal as defined below in Article 2.
 - B.** The User wishes to avail of the Terminal Services and facilities of the Terminal Operator, for loading/discharging operations and related services falling under and/or covered by a bill of lading issued or to be issued by the User, at the terms and conditions set forth in this Contract.
 - C.** Terminal Operator agrees to provide Terminal Services to the User at the terms and conditions stated in this Contract.
 - D.** The Parties have fully discussed and agreed all the terms and conditions of this Contract.
- All the above being stated, it is hereby agreed as follows.

1. SCOPE AND STRUCTURE OF THE AGREEMENT

- 1.1. This Contract shall apply to and govern the provisions of Terminal Services by Terminal Operator which operates and manages the Terminal.
- 1.2. This Contract is intended to govern and settle any matter and/or issue between the Parties and shall be applicable to all legal relationships between the Terminal Operator and the User whether in contract, tort or otherwise. This Contract will either apply by reason of the User's express acceptance hereof, or will be implied from the entry of any Container into the Terminal, the submission of any documentation which refers to the landing of the Cargo and/or Containers at the Terminal and the use of berth for the loading or discharging operations.
- 1.3. All Terminal Services shall be performed by the Terminal Operator in accordance with the normal working practice of the Terminal Operator better described in Appendix III.
- 1.4. Recitals above and Appendixes (I, II and III) form an integral and substantial part of this Contract.



2. DEFINITIONS

- a) **"Party"** means either User or Terminal Operator as defined in this Contract;
- b) **"Terminal Operator"** means Terminal Darsena Toscana S.r.l.s.u. which performs Terminal Services, its management and personnel, as well as its servants, agents or subcontractors;
- c) **"User"** means [REDACTED] whenever is Owner, Charterer, Disponent Owner of the Ship or Contracting Carrier;
- d) **"Terminal Services"** means any operation or service specified or referred to herein and provided or performed by the Terminal Operator in connection with receiving or delivering or loading or discharging of Cargo or Containers, as defined in Article 4 of the Contract;
- e) **"Terminal"** means the facilities of Terminal Operator at the port in which it manages and operates the Terminal, including land, berths and premises (used by Terminal Operator to render services to User), but excluding port waters, which are excluded from the Terminal and over which Terminal Operator has neither powers nor liabilities;
- f) **"Cargo"** means any Cargo, merchandise, articles and things of any description, containerized or not (including any packaging within which said Cargo, merchandise, articles and things may be contained) which are, have been or are to be carried on a vessel or handled by the Terminal Operator;
- g) **"Container"** or **"ISO-Container"**: means any freight container in accordance with the standard ISO 668:1995 or other relevant ISO-standards with designation 1AAA (length 40', height 9'6"), 1AA (length 40', height 8'6"), 1A (length 40', height 8'), 1CC (length 20', height 8'6"), 1C (length 20', height 8'), 1EEE (length 45', height 9'6") and 1EE (length 45', height 8'6") and standard ISO 6346:1995 with designation LNR1 (45' RH PW 32 or 33 pallets);
- h) **"Contract"** means the present agreement for the provision of Terminal Services;
- i) **"OOG-Container"**: means any ISO-Container loaded with OOG (Out of Gauge) Cargo like "open top", "platform" and "platform based", provided that
 - (i) such OOG-Container can be handled by an overheight frame attached to a standard spreader and
 - (ii) the over height of the Cargo does not exceed 2,00m and the over length of the Cargo does not exceed 1,90 m and the over width of the Cargo does not exceed 0,25 m;
- j) **"Non-Standard Container"**: means any Container not included in the definition of the item g) above;
- k) **"Uncontainerised Cargo"** means uncontainerised Cargo accepted for carriage on a Containership which requires special lifting facilities and / or special ground transportation;
- l) **"Hazardous Cargo"** means articles of any kind classified by the International Maritime Organisation as Hazardous;
- m) **"Project Cargo"** means any not containerized Cargo.
- n) **"Container Moves"** means any Container loaded or unloaded provided that where such Container is restowed or shifted via the quay such Container loading or unloading shall count as two Container Moves;
- o) **"Ship"** means a Containership or a Ro-Ro Ship or a Con-Ro Ship of which the User is the Owner, Charterer, Disponent Owner or Contracting Carrier;



- p) "**Containership**" means a cellular Containership for the carriage of Containers, of which the User is the Owner, Charterer or Disponent Owner;
- q) "**Ro-Ro Ship**" means a Ship intended for the carriage of Containers (on ro-ro basis), vehicles and Uncontainerized Cargo, of which the User is the Owner, Charterer or Disponent Owner;
- r) "**Con-Ro Ship**" means a Ship intended for the carriage of Containers (on lo-lo and ro-ro basis), vehicles and Uncontainerized Cargo, of which User is the Owner, Charterer or Disponent Owner;
- s) "**Tariff(s)**" means the rate(s) to be charged by the Terminal Operator in consideration for the Container Terminal Services as set out in this Contract, including Appendix I;
- t) "**Transshipment Container**" means Containers which are handled or to be handled from a Containership to another Containership (cell first vessel to cell 2nd vessel);
- u) "**MTO**" means "Multimodal Transport Operator".
- v) "**Status Change**" means any change of information related to a Container or OOG-Container or Uncontainerized Cargo altering the handling or storage modalities planned for such Container or OOG-Container or Uncontainerized Cargo based on the information previously given;
- w) "**TEU**" means a twenty-foot equivalent unit;
- x) "**Move**" means any transfer of a Container or hatch cover from a Containership to the quay, or vice-versa or between two stowage positions within the same bay of a Containership or to another bay on the same Containership without being landed on the quay, it being specified that the transfer between stowage positions in separate bays is considered two (2) Moves;

3. GENERAL DESCRIPTION OF SERVICES

- 3.1. Upon request of the User and consistently with berth availability, the Terminal Operator shall provide the User with Terminal Services in an efficient and prudent manner and in accordance with the applicable rules in force in the port where the Terminal is located. It is understood that except where expressly mentioned otherwise, this Contract applies to all activities at the Terminal, including but not limited to the receipt and delivery of Containers, ro/ro and Cargo at Off Dock/Land Side Depots managed by the Terminal Operator.
- 3.2. The Parties acknowledge and agree that the terms and conditions of this Contract have been agreed upon between the Parties on the basis (i) of the lines, services and the prospected volumes that the User intends to bring at the Terminal which are better described in Appendix I; (ii) the Ships the User shall call at the Terminal which are better described in Appendix I; (iii) the Tariffs which are better described in Appendix II; (iv) the contractual limitations/ceiling amounts on damages according to Articles 6.
- 3.3. Irrespective of whether the User is carrier, owner, disponent owner, charterer or whatever, the terms and conditions of this Contract shall be effective, where applicable and compatible.
- 3.4. In order to allow the Terminal Operator an efficient planning of its activity, User shall notify in writing to the Terminal Operator as soon as possible (with prior notice within 90 days) of any modification (i) in the services/lines calling at the Terminal, including but not limited to addition/cancellation of lines/services in the Port of Livorno, timetable, frequency or any increasing/decreasing of volumes and (ii) in the Ships used for such lines and services.



- 3.5. The Parties agree and undertake that in case of substantial modification in the lines/services, volumes and or Ships employed by the User, the Parties shall meet and evaluate bona fide the implications of this modifications to services and Tariff agreed. At the expiry of the 30th day, since the beginning of negotiation, the Terminal Operator will be entitled not to accept new lines or services of the User sending a formal written notice.
- 3.6. The Terminal Operator is specialized in maritime Cargo security and an active participant in several programs to ensure the safe and efficient movement of Cargo through its port.
- 3.7. The Parties acknowledge and agree that the Tariff applied by the Terminal Operator to the User are preferential than those disclosed and filed upon the local Port Authority. The preferential Tariff has been agreed on the basis of (i) the prospected volumes, better described on Appendix I; (ii) the contractual limitations/ceiling amounts on damages according to Articles 6.
- 3.8. In order to perform the Terminal Services for User, Terminal Operator shall provide:
- (a) The use of a suitable berth for operating the Ship in common with Ships used, chartered or owned by third parties. Priority use of berth may be available only upon special agreement concluded with the Terminal Operator. The scope of activities, risks and liabilities of Terminal Operator shall commence only upon the Ship's safe mooring at such berth. For the purpose of this Contract, "suitable berth" means a berth having adequate cranes and equipment to operate the Ship. The berthing and un-berthing time is granted to the Ships only for the time required to perform loading and discharging operations. Use of the berth for any other reasons as may be required by the User is not permitted unless previously and specifically agreed with the Terminal Operator. The Terminal Operator reserves the right to vacate the berth at Ship's expenses after completion of loading and discharging operations.
 - (b) The availability of sufficient handling area for Containers and Cargo to be loaded or unloaded as indicated by User.
 - (c) A sufficient care for and control over the equipment of User, provided that they are duly reported and enlisted in accordance with the operational procedures of the Terminal Operator, and the supply of adequate equipment and manning for the handling of Cargo and Containers within the Terminal area.
 - (d) The documentation as specified in Appendix III.
 - (e) That all equipment employed at the Terminal for the provisions of Terminal Services is technically compatible with Ship and User equipment, provided that the latter is compliant with ISO-standards.
- 3.9. User shall pay – or shall cause to be paid – the Rates to be determined in accordance with Article 12 below for the idle time on the account of the following causes:
- (a) Ship's arrival after commencement of ordered shifts.
 - (b) Any incident beyond the control of the Terminal Operator on board the User's Ship hindering operations.
 - (c) Waiting for Cargo and orders, unless caused by Terminal Operator's fault/negligence to be proved by the User.
 - (d) Any delay vacating the berth after completion of the Vessel's operations, including any waiting time due to technical-nautical services.
- 3.10. The Terminal Operator shall permit the User to load and unload Ship's stores, to allow equipment alongside the Ship to accomplish this and to further allow minor repairs on the Ship, in accordance with the Terminal Operator safety regulations and provided that Terminal and/or Ship operations are not interfered.
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- 3.11. Any orders, instructions and requests received by the Terminal Operator from User's personnel, servants, agents or subcontractors (including Ship's Master, local Agents, or MTO), with respect to the provisions of Terminal Services and connected operations and activities, shall be considered as orders, instructions and requests of User. User acknowledges and agrees that Terminal Operator shall presume that User's personnel, servants, agents and subcontractors are entitled to act on behalf of the User. As a consequence, thereof, Terminal Operator shall not be liable for any damage caused to User, and shall be paid by User for all the activities rendered, by relying upon the power of representation of the above mentioned subjects.
- 3.12. For the purpose of carrying out its activities, the Terminal Operator shall take into consideration only the information contained in documents sent by User provided that such information is relevant for the single activity to be carried out. When User sends updated version of a document, the Terminal Operator will take into consideration only the last version received, provided that it was received on time for the performance of the activity it refers to and that the document was sent in accordance with procedures mutually agreed beforehand.
- 3.13. The Terminal Operator shall be entitled to refuse to receive a Container from or deliver a Container to any vehicle at the Terminal Container, or otherwise to suspend the services, if:
- (a) such Container is not upon delivery secure, in a good state of repair and suitable for its purposes;
 - (b) such Container is not properly and safely sealed;
 - (c) in respect of a Container carrying hazardous Cargo, such container is not fully and correctly labelled; or
 - (d) there are applicable statutory bans on its export;
 - (e) the Terminal Operator has not been supplied with the information or documentation in respect of such Container;
 - (f) truck drivers have not presented to the Terminal Operator, if so requested, either a current EU driving licence or a valid identification document.

4. OPERATIONS

- 4.1. The Terminal Operator provides the following Terminal Services as better described and defined in Appendix III in accordance with the rules and procedures described in the same Appendix III and the User shall pay the Rates in accordance with Article 12.
- a. Receipt and Delivery, Storage of full or empty Containers;
 - b. Loading and Unloading of Containers and all type of Cargo into or out of User's Ship;
 - c. Loading and Unloading of Containers into or out of Ro-Ro and Ro-Con Vessel;
 - d. Transhipment of Containers and all type of Cargo;
 - e. Shifting of Containers and all type of Cargo on board and via shore;
 - f. Movement of Containers, full or empty, within the same bay of a Containership;
 - g. Restow of containers;
 - h. Container Visual Inspection (including checking on the presence of the seal);
 - i. Refrigerated Containers. For reefer units under refrigeration at the Terminal, User shall pay the Rates in accordance with Article 12 below. This Rates shall cover the cost of furnishing electric outlets and power consumed and the services of attaching detaching, monitoring (including monitoring temperature and ventilation) and



reporting as described in Appendix III. The set point temperature should always be communicated in writing by the User;

- j. Hazardous Cargo Handling and Storage. In case of hazardous Cargo handling User shall provide all the needed instructions to ensure a correct and safe handling complying with the applying safety rules. Terminal Operator shall not be liable for unfit handling in case of lack of pertinent and complete instructions by User. In case of lack of suitable instructions, User shall be liable for any damage suffered by the Terminal Operator deriving from the unfit handling of hazardous Cargo, unless due/caused by Terminal Operator's fault/negligence to be proved by the User;
 - k. Non-Standard Containers Handling and Storage. For handling of overheight, overwidth or other Non-Standard Containers, involving the use of special spreader or equipment, User shall pay the Rates in accordance with Article 12 below;
 - l. Uncontainerized Cargo Handling and Storage. For loading/discharging and receiving/delivering of Uncontainerized Cargo, User shall pay the Rates mutually agreed between the User and the Terminal Operator;
 - m. Rolling Vehicles: in order to accept/deliver regularly rolling vehicles, these must be in condition to be safely driven or towed on board and with minimum fuel included. The chassis number will be verified only if reachable.
 - n. Tallying, measuring of Cargo, stickering and reporting and administration
 - o. Reporting and administration;
 - p. Weighing of Container and/or unit and all type of Cargo only if expressly requested in writing by the User and on the basis of the special Tariff pointed in the Appendix II and III. Lacking any written request by User, weighing is intended out of standard services rendered by Terminal and the weight indicated in the Loading List shall be presumed as being correct by the Terminal Operator. According to the most recent modification on SOLAS Convention 1974 (MSC.1/Circ.1475) as implemented by national laws, the weight indicated by the User in the Loading List will have to bear a VGM status in order to be loaded by the Terminal. The Terminal Operator reserves the right to check the weight of any Container or Cargo at the expense of the User.
 - q. Other ancillary and accessory services as indicated in Appendix II and III;
- 4.2. Time of Loading and Unloading Operations.
- 4.2.1 (a) Unloading and/or loading operations shall commence at the agreed start operation's time and can be carried out according to the shift periods of the Terminal Operator.
 - (b) Holidays, non-working days and Overtime periods are listed in the Appendix III.
 - 4.2.2 An overtime premium, in accordance with Article 12 below, shall apply on all handling Rates for work carried out during the overtime periods on Saturdays and pre-holidays as well as during the overtime periods on Sundays and holidays.
 - 4.2.3 In cases where other Ships are scheduled to arrive or are already waiting for operations at the berth occupied by it, Terminal Operator cannot permit a Ship to lie idle. In such cases, the Ship must either work in overtime or vacate the berth at User's discretion.
- 4.3. Stripping of Container
- 4.3.1. If the Terminal Operator 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 User and the Terminal Operator shall not be responsible or liable in any way



for any deterioration of the contents of the Container or for the contamination to other Cargo by reason of such deterioration.

- 4.3.2. The User shall ensure compliance with the rules and regulations of Customs for opening and unpacking of any Container.

4.4. Unsound Cargo

4.4.1. When Cargo is exceptionally difficult to work due to unsoundness of the Cargo, bad or collapsed stowage, damage to the Cargo, the Ship or Container or other matter creating exceptionally difficult working conditions, then the Terminal Operator shall decide whether or not to perform, provide or continue to perform the services described herein.

4.4.2. No liability shall attach to the Terminal Operator if it elects not to perform or continue to perform the services described herein.

4.4.3 All extra costs charges and expenses incurred by the Terminal Operator shall be repaid by the User.

4.5. Extra Moves /Shifting/ Status Changes

The Terminal Operator shall apply the Rates to be determined in accordance with Article 12 for Containers subject to extra moves/shifting/status changes.

- 4.6. The Rates applicable under Article 4.1.e, 4.1.f, 4.1.g and 4.5. shall be paid by the User if such movements have been necessitated (i) as a result of a request of the User; (ii) as a result of incorrect/missing instructions or information issued by the User; (iii) as a result of a change in the instructions/information previously transmitted by the User in accordance with the requirements as specified in Appendix III; (iv) as a result of other causes attributable to User acts or default and/or to the nature or conditions of the Cargo; (v) as a result of a request of the competent authority for Cargo inspection; (vi) as a result of safety issues or changes in the level of security.

- 4.7. For sake of clarity, User shall always pay extra moves under Article 4.5. above resulting from change of destination of the Container and/or change of connecting Ship and/or change of Container status and/or missing or corrected/incorrect information and/or change of instructions/information issued by the User with respect to the instructions/information previously transmitted by the same according to Appendix III.

4.8. Free Storage

4.8.1. All the Containers received or discharged onto the Terminal Container shall be permitted to remain on the Terminal free of charge for a free period (if any) according to the Appendix II;

4.8.2. All the Containers remaining on the Terminal after expiry of the free period (if any) shall be subject to a charge for storage according to the Rates set in the Appendix II.

4.9. Longstanding Cargo

Cargo (whether containerized or not) remaining in the Terminal after the expiring of the temporary Customs detention term ("*termine per la temporanea custodia*"), according to the Customs law currently into force, hereinafter the "Long-standing Cargo", may be considered as being of the status of "unclaimed/abandoned" by the relevant competent customs authority and Terminal Operator shall move the Longstanding Cargo to the "Warehouse A4". The User shall continue to remain fully responsible to comply with any requirement arising from relevant competent Customs authority either directly or indirectly, including, but not limited to the payment upon demand of any additional expenses that may be incurred by any party when complying with these requirements.



- 4.9.1 The Terminal Operator shall charge storage costs accrued to the User along with any administrative charges and/or costs arising from the long standing Cargo.
- 4.9.2 The User shall cooperate with Terminal Operator, making its utmost effort, to find a solution to release or move the Container elsewhere in order to stop cost accruing and mitigate Terminal Operator's prejudice.
- 4.9.3 In no cases Terminal Operator shall be liable for destruction and/or wasting of the Cargo.

4.10. Storage of User's equipment

- 4.10.1 User acknowledges and accepts that empty Containers are delivered on random basis. In case a numerical delivery is required, the User shall give notice to the Terminal Operator well in advance following the operational procedures specified in Appendix III. After an internal assessment, the T.O. shall either confirm or reject. and The User shall bear possible yard moves in accordance with Article 12 below.

4.11. Other services

- 4.11.1 Unless otherwise specified in this Contract, all activities/services other than those specified in this Articles 4 may be performed, upon the User's request, by the Terminal Operator, at its sole discretion, and shall be subject to the payment by the User of the Tariff filed by the Terminal Operator before Port Authority or of the Tariff to be agreed between the Parties from time to time in accordance with Article 4.11.2 below.
- 4.11.2 For services to be performed by Terminal Operator upon request of User for which no Rates has been agreed by the Parties, Terminal Operator shall provide the said services for User at cost plus 15 % on labour costs, or the Rates published at the Port Authority, whichever the lower.

- 4.12. Terminal Operator shall reserve the right, subject to a communication in writing, to move at its sole discretion empty Containers to its off-dock and/or land side depot. Rules on liabilities provided for in Article 6 below always apply.

5. WORKING TIME

- 5.1. The Terminal Services may be performed or provided during the normal working hours of the Terminal Operator, according to Appendix III;
- 5.2. Additional charges may be levied for the Terminal Services performed outside normal working hours and/or at the weekends or bank holidays, and such other applicable restrictions or conditions, according to Appendix II and III.

6. LIABILITIES

- 6.1. It is mutually agreed by the Parties that Terminal Operator will always act and provide all the services set forth in this Contract as servant/agent for the User. As a consequence hereof and regardless of the document representing the transport being issued (whatever it is, bill of lading, sea waybill, multimodal bill of lading etc.), Terminal Operator shall be intended as beneficiary of the User's bill of lading general terms and condition. Hence any liability for loss, damage and/or delay shall be subject to User's bill of lading, User's general condition of contract and/or Hague Visby Rules (or COGSA in case of carriage from/to USA), including but not limited to any benefits, limitations and exclusions in favour of the User, regardless of any different law applied by any Court to the User, unless more favourable.
- 6.2. The User shall include in the bill of lading and/or in any document representing the carriage a provision (better known as Himalaya Clause) to the effect that every subcontractor shall have the benefit of all the exceptions and limitations therein benefiting



User and Terminal Operator as subcontractor hereby accepts such benefit. The User shall be liable towards Terminal Operator for any failure to properly implement this provision.

- 6.3. The Terminal Operator's servants and agents shall be entitled to the benefit of all the provisions herein which exclude or restrict liability of any kind. The Terminal Operator in undertaking Terminal Services does so on its own behalf and as agent for all its servants and agents.
- 6.4. Notwithstanding with any other provision, the User agrees that the Terminal Operator shall only be liable under these terms and conditions. Any claim, either in contract, tort or otherwise, against the Terminal Operator shall be subject to a deductible of Euro 400 in any event and for any occurrence. Any request for compensation against Terminal Operator shall not exceed the maximum amount of:
 - 6.4.1 For loss of and/or damage to the Ship, its gear and other equipment: Euro 10.250.000 (ten million and two hundred and fifty thousand) per occurrence;
 - 6.4.2 For loss of and/or damage to Dry Container:
 - (a) 20' Dry Container: Euro 2.000 (two thousand) per unit;
 - (b) 40' Dry Container: Euro 3.000 (three thousand) per unit;
 - (c) 40'/45' HC Container: Euro 3.500 (three thousand five hundred) per unit.
 - 6.4.3 For loss of and/or damage to O/T, F/R, P/F:
 - (a) 20' Container: Euro 3.500 (three thousand five hundred) per unit;
 - (b) 40' Container: Euro 5.000 (five thousand) per unit.
 - 6.4.4 For loss of and/or damage to reefer and other special Container:
 - (a) 20' Container: Euro 12.000 (twelve thousand) per unit;
 - (b) 40' Container: Euro 14.000 (fourteen thousand) per unit.

For loss of and/ or damage to any kind of Container below, depreciated values shall be considered at an annual rate of 7 (seven) per cent starting from the date of manufacturing of the Container.

 - 6.4.5 For loss of and/or damage to Chassis/Rolltrailers including accessories: Euro 7.000 (seven thousand) per unit.
 - 6.4.6 For loss of and/or damage to Cargo and Uncontainerized (conventional) Cargo: Euro 65.000 (sixtyfivethousand) per occurrence regardless of the number of Containers and/or the quantity of Uncontainerized Cargo involved in the occurrence.
 - 6.4.7 For death or personal injury claims: Euro 1.500.000 (one million and five hundred thousand) per occurrence regardless of the number of people involved in the occurrence.
 - 6.4.8 For sake of clarity, the contractual limitations/ceiling amounts on damages in favour of the Terminal Operator have been agreed and expressly negotiated by the Parties together with the Tariff. The amounts indicated in Article 6 are the maximum payable by the Terminal Operator in case of losses or damages and hence, in case of losses or damages, Terminal Operator shall pay only the amounts of the losses or damages to be determined taking into account the effective value of Containers, Cargo or equipment at the place and time at which they were in the custody of the Terminal Operator. In no case the compensation shall exceed the contractual limitations on damages set forth herein, including cost of cleaning and wasting.- 6.5. The User shall always act in good faith and refrain from challenging, either in court or out of Court, the application of any of the contractual limitations/ceiling amounts on damages.



- 6.6. With respect to injury, damage or loss as provided for in this Article 6, the User shall never claim against the Terminal Operator (and consequently the Terminal Operator shall never be charged) for loss of profit, loss of hire, off hire reimbursement, demurrages, any idle time, bunker consumption and/or in general with any consequential damage or whatsoever sum paid uselessly, nor with damage resulting from any latent defect or from normal wear or tear or inherent vice. For sake of clarity and so to better specify the extent of the present provision, the User shall never claim against the Terminal Operator (and consequently the Terminal Operator shall never be charged) for any indirect damage or loss including, but not limited to, loss of chance, loss of use, increasing or decreasing of any price, floating of the market, aesthetic damages, costs accrued in other terminals at other ports, loss of opportunity or loss of reputation, however caused.
- 6.7. The Parties agree and understand that in case Container(s) is (are) loaded on the Ship by mistake, the liabilities of the Terminal Operator are limited to pay, at market Rates, the costs (including terminal handling charge) for the returning by sea of such Container(s) at the Terminal. The User shall never claim for the Terminal Operator (and consequently the Terminal Operator shall never be charged) with any other cost or damage, especially any indirect loss, in case Container(s) is (are) loaded on the Ship by mistake. Any damage to the Cargo will however be settled as per Article 6.
- 6.8. Notwithstanding anything to the contrary provided for in these Contract, the Parties expressly agree as follows:
- 6.8.1 Terminal Operator shall not assume any liability with respect to Containers loaded, unloaded, shifted, transported, and handled at the Terminal and to their good order and conditions, with respect to any liability under the provisions of Art. 14.2 of D.P.R. 4 June 1997, no. 448, implementing the International Convention for Safe Containers (CSC), adopted in Geneva on 2 December 1972.
- 6.8.2 User shall hold Terminal Operator harmless and free from any request, claim, liability or action of third parties, including workers and employees of Terminal Operator, arising from breakage, loss of tightness and reliability of Containers, and any whatsoever issues connected to the container framework, which fail to comply with the provisions of D.P.R. 4 June 1997, no. 448 and/or of the CSC, unless Terminal Operator's fault and/or negligence is involved to be proved by User.
- 6.8.3 With respect to injury, damage or loss as provided for in this Article 6, Terminal Operator shall in any event be presumed exempt from any liability for injury, loss and damage arising in connection with Containers which, under the provisions of D.P.R. 4 June 1997, no. 448 and/or of the CSC, are considered to be defective and/or bear an expired or invalid Safety Approval Plate, unless Terminal Operator's fault and/or negligence is involved to be proved by User.
- 6.9. The User shall indemnify and hold harmless Terminal Operator against all possible claims by any third parties, including Users' servants, for the amounts exceeding the contractual limitations/ceiling amounts on damages under this Article 6. The Parties agree and understand that any claim within the object and activities falling under the present Contract and/or arising from Terminal Services shall be settled according to Article 6, regardless of whoever is claiming for it.
- 6.10. The Terminal Operator shall in any event be freed and discharged from liability for any claim, either in contract, tort or otherwise, unless suit is brought within the deadline provided by Brussels Convention 1924/Hague Visby Rules or, in case of carriage from/to USA, by the COGSA and in this respect time shall be deemed to be of the essence. Any damage and/or loss to any Container, Cargo, Ship and equipment on board thereof must be notified to the Terminal Operator immediately and in any case before such Ship leaves the berth; for damage and/or loss reported after the event and/or after the Ship has left the berth, a presumption shall operate which excludes liability of Terminal Operator.



- 6.11. Notwithstanding any provisions contained in this Contract, it is agreed that the liability of Terminal Operator in respect of Cargo intended to be, being or having been handled on a conventional (Uncontainerized) basis shall be governed by the provisions of this Article 6.

7. DISPOSAL OF WASTE ORIGINATING FROM LEAKING CONTAINERS OR FROM CARGO OR UNCONTAINERISED CARGO

- 7.1. In case it accepts to receive leaking Containers or Cargo/Uncontainerized Cargo generating waste, the Terminal Operator shall provide the disposal of such waste in compliance with the relevant rules imposed by Italian Law or by the competent Public Authorities. It is understood that all the costs and expenses incurred by the Terminal Operator in connection with the above activities, shall be reimbursed by the User unless the leaking has been caused by the Terminal Operator. The above includes anyway the right of Terminal Operator to have the Containers or Cargo/Uncontainerized Cargo immediately removed from the Terminal at the expense of the User. The Terminal Operator will provide all supporting documents/invoices of the costs and expenses incurred to the User and the payment will be arranged within the next 30 days.

8. RIGHTS GRANTED - ISPS CODE

- 8.1. The rights and obligations of either Party are subject to any license, approval and authorization which may be required by any competent authority.
- 8.2. The User acknowledges and agrees that operations provided for in this Contract fall within the scope of application of Regulation EC/725/2004 (or any subsequent amendment of it), as implemented by competent Italian authorities and by the Terminal Operator (for the purpose of this Article 8.2, the "ISPS Code"). The User declares that, prior to the signature of this Contract, it has had full knowledge of existing rules and procedures applicable to the Terminal and to the Port Facility. The User shall therefore fully abide by all terms and conditions regarding security as covered by this provision, and shall be liable vis-a-vis the Terminal Operator for any breach of the above undertaking.
- 8.3. Without derogating from the User's undertakings as per this Article 8, the Terminal Operator implement all necessary measures to comply with international and domestic rules and regulations relating to security, including ISPS Code and AEO Standards. In addition, the Terminal Operator confirms to be an ISPS certified facility and that it shall maintain such status for the duration of this Contract. The Terminal Operator shall be entitled to charge the User an ISPS levy.
- 8.4. Each Party shall be responsible for its own compliance with the above security measures and shall defend, indemnify and hold the other Party harmless from and against any loss, damage, cost, expense, fine, claim, demand or sanction to be suffered or which may be imposed by any authority or third party due to or related to default, negligence and/or non fulfilment of the above security measures by such Party.
- 8.5. In the event that, as a result of a change in good industry practise or the applicable laws or an order by the Port Authority, the Terminal Operator deems it necessary to change security measures in order to comply with its obligations at Article 8 and such change results in an increase in the cost of provision of such security measures, the Terminal Operator may recover such additional costs from all the Customers (including, for the avoidance of doubt, the User) to whom the Terminal Operator provides services and/or facilities at the Terminal Container.

9. FORCE MAJEURE

- 9.1 Definition of Force Majeure:
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No liability shall attach to either Party if any of its obligations pursuant to this Contract cannot be performed due to "Force Majeure". In this Contract, "Force Majeure" means any event or circumstance or combination of events or circumstances whenever occurring which in each case:

- a) is outside the control of the affected Party, and
- b) could not be avoided, prevented, overcome or mitigated with reasonable foresight, prudence and diligence, and
- c) actually prevents performance of a Party's obligations under this Contract.

9.2 Force Majeure Events:

The following are examples of Force Majeure events, within but not limited to the above definition:

- a) Acts of God;
- b) Nuclear explosion, radioactive or chemical contamination or ionizing radiation;
- c) Meteorites;
- d) Epidemic, plague or quarantine;
- e) Blockade or closure of the Port required by the Government for public order reasons;
- f) Curfews in or lawful restrictions on travel within Port;
- g) War (whether declared or not), invasion, embargo, revolution, military coup, or armed conflict, in each case in "each country of the Parties";
- h) Sabotage or criminal damage to the Terminal/User;
- i) Riot, civil commotion, insurrection or terrorism, in each case in "each country of the Parties";
- j) Earthquake;
- k) Extreme weather conditions including storm, lightning strike, high winds (whether or not forecast) and sharper peaks, according to the Beaufort system e.g., resulting in wind-blown Containers, infestation or other physical disaster;
- l) Breakdown, malfunction or suspension of the E-Systems howsoever caused;
- m) Floods;
- n) Acts of piracy.

- 9.3 Each Party shall bear their respective costs and shall not be required to pay to the other Party any costs arising out of the Force Majeure events.



10 APPLICABLE LAW AND JURISDICTION

- 10.1 The Contract between Terminal Operator and User for the provision of Terminal Services is construed and shall be governed by Italian Law.
- 10.2 All disputes arising out of the present Terminal Contract, shall be referred to and finally settled by an arbitral tribunal consisting of a sole arbitrator, according to the International Arbitration Rules of the Chamber of National and International Commerce of Milan. The place of arbitration shall be Milan. In case Terminal Operator and/or the User are sued by a third party before a Court, the Court itself shall have jurisdiction to decide also on any claim/complaint/demand/joiner between the Parties, notwithstanding the above.

11 BANKRUPTCY

- 11.1 In the event that either party makes an assignment for the benefit of their creditors or shall become bankrupt or insolvent or shall become subject to any legislative enactment relating to liquidation or winding-up either voluntary or compulsory (except for the purpose of amalgamation or reconstruction), the other party may terminate the contract and provision of Terminal Services.

12 RATES/TARIFF

- 12.1 The User shall pay the Rates for Terminal Services as per Appendix II. The Rates agreed in Appendix II shall be valid and effective throughout the whole duration of the present agreement. Upon termination, the Rates filed by the Terminal Operator before the Port Authority competent for the Port shall apply.

13 CONDITIONS OF PAYMENT

- 13.1 User shall pay invoices issued by Terminal Operator within thirty (30) days from the date of invoice issuance.
- 13.2 Interests for late payment shall accrue in accordance with the provisions of Decreto Legislativo of October 9, 2002, no. 231 implementing Directive no. 2000/35/CE.
- 13.2.1 The Terminal Operator will advise the User of the intention to charge penalty interests, whereupon if the User effects payment within 3 working days of such an advice, without prejudice to its rights, the Terminal Operator shall waive such penalty interests.
- 13.3 In the event of non-payment of invoices by User within the term set out in Article 13.1, and without prejudice to claim for interests, Terminal Operator may consider the following actions:
- 13.3.1 Terminal Operator shall be entitled at its sole discretion either to reduce payment terms or to request a cash payment in advance for each and every subsequent Ship arriving at their quay equal to the estimated billing for the port call.
- 13.3.2 Terminal Operator shall have a lien on any Container, gear, equipment belonging to User up to the outstanding amount and as long as the amount has not been paid in principal and interests.
- 13.4 In case of disputed amounts of an invoice, the following shall be applicable:
- 13.4.1 In the event that the User disputes an amount on an invoice issued by the Terminal Operator and, on condition that such complaint is notified to the Terminal Operator within the term of payment, the User may deduct the disputed amount from the total invoice by paying the remaining amount straight after clarification.
- 13.4.2 Following the expiration of the term of payment, User shall settle the invoice in full. This will not restrict right of User to dispute the invoice.
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13.5 User shall not be entitled to compensate and/or cut down any outstanding amount due to Terminal Operator with whatsoever alleged claim or damage. In general no compensation between debts and credits is possible without being mutually agreed in written.

14 DURATION AND TERMINATION

- 14.1 This Terminal Contract in its entirety will come into force as from _____ and will be in effect for an indefinite period of time unless the contract is terminated earlier under the provisions of article 3.4, excluding rates validity as per Appendix II.
- 14.2 Either Party has the right to terminate this Terminal Contract at any time subject to at least 3 months written notice sent by registered letter or any other equivalent means.
- 14.3 Either Party may terminate this contract with immediate effect by providing written notice at any time after the occurrence of any of the following:
- assignment for the benefit of creditors, liquidation, reorganization or bankruptcy of any of the Parties as per Article 11;
 - a Force Majeure events continuing for more than 90 consecutive days;
 - the breach of any undertakings or obligations by the other Party, which is not remedied within 45 days following the other Party's receipt of the notice on the aforementioned breach.
- 14.4 Notwithstanding any termination of this Contract the Terminal Operator shall continue to be responsible for the completion of any Terminal Services which the Terminal Operator is performing or handling on the effective date of such termination.
- 14.5 Upon termination of this Contract, any Terminal Container Services shall be charged according to the Tariff/Rates filed before Port Authority.

15 PORT TERMINAL RULES

- 15.1 The User and Terminal Operator:
- agree to comply with the Port Terminal Rules; and
 - acknowledge that in case of any inconsistency between the terms of this Contract and the Port Terminal Rules, the Port Terminal Rules shall apply.
- 15.2 The User agrees to pay any charges levied by the Port Authority relating to the commodities or the provision of the services. In addition, to the extent that the Terminal Operator has any liability to pay those charges, the User agrees to indemnify the Terminal operator against that liability unless the User specifically agrees to pay those charges on the Terminal Operator's behalf.

16 ELECTRONIC DATA INTERCHANGE

- 16.1 The Parties to this Contract will set up an electronic Data-link based on the message structures as developed by the officially recognised User Development Groups (e.g. SMDG) and based on UN-EDIFACT standard. Parties will adhere to the terms and conditions and the SMDG-Interchange EDI understanding.

17 ARCHIVING OF DOCUMENTS

- 17.1 The Terminal Operator will archive all documentation related to the individual Ships' call for a period of some 12 months counted from the date of call. The User acknowledges that possible enquiries are to be performed within this time.

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18 OTHER PROVISIONS/MISCELLANEA

- 18.1 Neither the Terminal Operator nor the User may sell, assign or transfer all or any part of its rights or obligations hereunder to any third party, firm or corporation without prior written consent of the other Party.
- 18.2 Any waiver hereto of any right or interest hereunder shall be strictly limited to its terms and shall not be deemed as a waiver or precedent for waiver of any subsequent default or breach of any other right or interest.
- 18.3 The Terminal Operator may employ subcontractors to perform any or all of its obligations, but at all times Terminal Operator shall remain fully responsible towards User for the performances of its obligations under these Contract.
- 18.4 In case of damage to crane, pier, quay or whatsoever assets belonging or in use to the Terminal Operator the User, if requested by the Terminal Operator, will use its best effort to provide a letter of undertaking/guarantee from a primary P&I Club before the Ship sail off the port. If the letter of undertaking/guarantee will not be released, the User immediately provides Terminal Operator with a corresponding form of guarantee.
- 18.5 This Contract does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between User and Terminal Operator.
- 18.6 For the purpose of the Contract all records of Terminal Operator in so far as they are strictly related to the Terminal Services shall be made available to the User or their nominated representative.
- 18.7 The Terminal Operator shall never be liable for wrong delivery of the Container except in case of gross negligence in document check.
- 18.8 The User shall make its best efforts to provide Terminal Operator with data logger/downloading report in case of any claim involving reefer Container and/or set point temperature and/or plug in issues.
- 18.9 Neither Party shall knowingly use or permit the use of any information obtained during their relationship to the disadvantage of the other Party for the profit of its own or any third Party's interest.
- 18.10 The Parties declare that they have full knowledge of the exact content of all the Articles of this Contract, fully and freely negotiated, and they specifically approve the content of the whole Contract.

[date]

Terminal Darsena Toscana S.r.l.s.u.

Name: Marco Mignogna

Position: General Manager

The Line

Name:

Position:

Pursuant to Article 1341 paragraph 2 of the Italian Civil Code the undersigned declares to have read and specifically approves the following clauses: **3.5.** (right of Terminal Operator not to accept new lines or services); **3.7.** (reasons for preferential Tariff); **3.9.** (idle time); **3.13.** (right to refuse to receive or deliver a Container); **4.4.** (unsound cargo); **4.8.** (charge for storage); **4.9.** (rules on liabilities of the User and of Terminal Operator for Long-standing Cargo); **4.11.** (cost for other services); **4.12.** (rules on liabilities of Terminal Operator for move of empty container to its off dock and/or land side depot); **6.1.** (Terminal Operator acting as servant for the User); **6.2.** obligation of User to include in Bill of Lading a provision to the effect that every subcontractor shall have the benefit of all provisions therein benefiting User); **6.3.** (Terminal Operator's servants and agents); **6.4. and its sub clauses from 6.4.1 to 6.4.9.** (contractual limitations on damages); **6.6.** (with respect to injury, damage or loss as provided for in Article 6, Terminal Operator shall never be liable for any loss of profit, indirect damage, and/or for consequential damage, nor for damage resulting from any latent defect or from normal wear or tear or inherent vice); **6.7.** (contractual limitations of Terminal Operator in case Container(s) is (are) loaded on the Ship by mistake); **6.8.1 and 6.8.2.** (Terminal Operator shall in any event be presumed exempt from any liability for injury, loss and damage arising in connection with Containers which, under the provisions of D.P.R. June 1997, no. 448 and/or of the CSC, are considered to be defective and/or bear an expired or invalid Safety Approval Plate); **6.9.** (obligation of User to indemnify Terminal Operator against all possible claims which might exceed contractual limitations on damages under Article 6); **6.10** (time limit for notifying claim for indemnity; time limit for notifying damage and/or loss to any Ship and equipment onboard; for damage and/or loss reported after the event and/or after the Ship has left the berth, a presumption shall operate which excludes liability of Terminal Operator); **6.11.** (rules on liabilities of the Terminal Operator in respect of conventional-Uncontainerized Cargo); **7.1** (disposal of waste originating from leaking Containers or Cargo/Uncontainerized Cargo); **8.3. and 8.5.**(ISPS surcharge); **9.2.** (examples of Force Majeure) **10.2.** (arbitration); **13.3.1** (right of Terminal Operator to ask to User cash payment in advance for the services in the event of non payment of invoices by User); **13.3.2** (right of Terminal Operator to enforce right of retention on Containers, gears equipment belonging to User in the event of non payment of invoices by User); **13.5.** (no compensation between debts and credits without being mutually agreed); **14.5.** (public tariff upon termination); **18.3.** (subcontractors); **18.4.** (obligation of User to release a guarantee); **18.7.** (liability for document check).

LINE

Name:**Position:**

APPENDIX

Appendix I: Description of Services / Volumes;

Appendix II: Tariffs;

Appendix III: Reporting and Documentation / Operational Guide

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