

GENERAL CONDITIONS

FOR SERVICES AND FACILITIES

DEFINITIONS AND INTERPRETATION

1. Definitions

1.1 Each of the following expressions and their grammatical variations used in the Contract shall have the following meaning unless the context of the Contract requires otherwise:

1.1.1 “**Application**” means the application for the Services/Facilities, made by or for the Customer to ESCO in writing or by any other mode required or accepted by ESCO and granted by ESCO.

1.1.2 “**Claim**” means any loss, damage, cost, expense and/or liability incurred due to any circumstances, including but not limited to any property or environmental damage, death or personal injury, economic or consequential loss, or legal obligations and all related legal costs.

1.1.3 “**Conditions**” means these General Conditions and “**Condition**” means each one of them.

1.1.4 “**Container**” means a receptacle 6.1 metres or more in length equipped with corner castings to facilitate handling by mechanical equipment.

1.1.5 “**Contract**” means the contract constituted by the Application including the Conditions and any other document expressly agreed between the Parties as forming part of such contract.

1.1.6 “**Contract Period**” means the period of the Contract from the commencement date until the expiry date both stipulated in the Application or in the absence of such stipulation:

- (a) until the complete performance of the Contract; or
- (b) until the termination of the Contract in accordance with the provisions of the Contract,

whichever shall be earlier.

1.1.7 “**Contract Sum**” means all or any sums payable by or for the Customer to ESCO under the Contract or at law in accordance (where applicable) with the rate stipulated in the Contract or in the absence of such stipulation, in accordance with the rate stipulated in the

ESCO Price List, and shall include without limitation any and all interest due on the same.

1.1.8 “**Customer**” means the person whose Application has been granted by ESCO or the successors and permitted assigns of such person.

1.1.9 “**Customer's Representative**” means any one or more persons authorised by the Customer and approved by ESCO under **Condition 13.1**

1.1.10 “**Dangerous Goods**” means cargo falling into any of the classes of dangerous goods set out in the International Maritime Dangerous Goods Code and any empty receptacles previously used for the carriage of such goods unless already rendered safe.

1.1.11 “**Delivery/Shipment Note**” means the document issued by in respect of the Goods pursuant to **Condition 7.4.1(c)** or its duplicate issued by ESCO (The Contractor) pursuant to **Condition**.

1.1.12 “**Facilities**” means all or any part of the facilities described as such in the Application¹ or any facilities provided by ESCO, whether for use in themselves or for use in connection with the provision of the Services.

1.1.13 “**Force Majeure**” means any of the following events:

- (a) acts of God or other natural disaster, epidemic or pandemic;
- (b) terrorist attack, riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) any law or action taken by a government or public authority, including but not limited to imposition of an export or import restriction, quota or prohibition;
- (d) any fire, explosion, nuclear reaction, shortage of power, fuel, transport or materials necessary for the performance of the Contract, abnormally high prices, obstruction of access to any Terminal, or accident including but not limited to the breaking adrift of any vessel from any Terminal;
- (e) any labour or trade dispute, strikes, industrial action, lockouts or sabotage;

- (f) any defect, inherent vice or natural property of the Goods and/or change in quality of the Goods or its packaging, containers or means of transport, and damage caused by other goods, delay in delivery of the Goods to or from any Terminal on the part of any person other than ESCO, its employees or agents, failure in or delayed arrival of packing materials, containers or means of transport used in respect of the Goods or a third party's interference with the Services/Facilities; and/or
- (g) any other circumstances the occurrence or extent of which ESCO could not reasonably have controlled, foreseen, avoided, prevented or forestalled.
- 1.1.14 **“Goods”** means all or any part of any property of any kind whatsoever brought into any ESCO Terminal by the Customer or for the Customer for the purposes of the Contract including any Container.
- 1.1.15 **“Goods Handling”** means all or any of the following services and facilities provided by ESCO which are the subject of the Application²:
- (a) shifting Goods between any Vessel and any ESCO Terminal;
 - (b) shifting Goods from place to place within any ESCO Terminal;
 - (c) shifting Containers from place to place within any Vessel;
 - (d) shifting Containers from any ESCO Terminal to another ESCO Terminal;
 - (e) loading or unloading Dangerous Goods in containerised or breakbulk form;
 - (f) lashing/unlashing Goods;
 - (g) stuffing/unstuffing Goods;
 - (h) stowage planning of any Vessel;
 - (i) storing Goods in any ESCO Terminal;
 - (j) storing Goods classified by ESCO as Valuable Articles;
 - (k) delivery of any Container; and
- (l) pre-trip inspection of any Container.
- 1.1.16 **“Party”** means ESCO or the Customer.
- 1.1.17 **“ESCO”** means **Eastern Sea Leam Chabang Terminal Co.,Ltd.** and the party designated and/or defined as such in the Application, its successors and assigns.
- 1.1.18 **“ESCO Price List”** means the document titled as such and listing charges payable to ESCO from time to time for the use of the Services/Facilities, the current edition of which has been made available to the Customer (and which the Customer hereby acknowledges as having read and agreed to).
- 1.1.19 **“ESCO Terminal”** means all or any part of any land, place, structure or building in which the Services/Facilities shall be provided by ESCO irrespective of whether or not such land, place, structure, or building shall be owned, operated, managed or controlled by ESCO including any berth, jetty or wharf.
- 1.1.20 **“Reefer Services”** means all or any of the following services and facilities provided by ESCO which are the subject of the Application³:
- (a) connecting or disconnecting any refrigerated Container to or from power plugs in any reefer yard forming part of a ESCO Terminal;
 - (b) supplying electricity to any refrigerated Container and monitoring the temperature within the Container;
 - (c) repairing the reefer machinery of any refrigerated Container; and
 - (d) pre-trip inspection of any refrigerated Container.
- 1.1.21 **“Services”** means any service described as such in the Application and/or any operation, work or services performed or provided by ESCO in connection with Goods or a Vessel, including without limitation:
- (a) Goods Handling;
 - (b) berthing or unberthing of any Vessel;
 - (c) shifting or hauling of Vessel;

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| <p>(d) repair of any Container;</p> <p>(e) surveyor inspection of any Goods and their contents to ascertain the nature and extent of any loss or damage of the same;</p> <p>(f) ship supplies to any Vessel;</p> <p>(g) supply of fresh water via pipeline to any Vessel;</p> <p>(h) distribution of power supply to any Vessel;</p> <p>(i) fumigation of any Goods;</p> <p>(j) supply of mechanical equipment and manpower for the lifting and moving of any Goods;</p> <p>(k) Reefer Services; and</p> <p>(l) Warehousing.</p> | <p>1.2.1 Where the context so admits or requires, words denoting the singular include the plural and vice versa, and words denoting any gender include all genders.</p> <p>1.2.2 Unless expressly provided otherwise in the Contract:</p> <p>(a) these Conditions shall prevail in the event of any contradiction or inconsistency between any Condition and any other provision of the Contract; or</p> <p>(b) in the event of any other contradiction or inconsistency between any provision of the Contract (except the Conditions) and any other provision of the Contract, the provision with a later date shall prevail.</p> <p>1.2.3 All agreements and undertakings on the part of either Party which comprise more than one person or entity shall be joint and several.</p> <p>1.2.4 All applications, notices, consents and all other communication under the Contract to be made or given to ESCO shall be made or given in writing or in a mode acceptable by ESCO</p> |
| <p>1.1.22 “Services/Facilities” means the Services and/or the Facilities, as the case may be.</p> | <p>1.2.5 Reference in the Contract to any statute includes a reference to such statute in force from time to time and any regulations or orders made under such statute.</p> |
| <p>1.1.23 “Valuable Articles” means any article of extraordinary value.</p> | <p>1.2.6 If the whole or any part of any provision of the Contract shall be or become illegal, invalid or unenforceable for any reason whatsoever, such whole or part of such provision shall be deemed to be deleted from the Contract Provided that if any such deletion substantially affects or alters the commercial basis of the Contract, the Parties shall negotiate in good faith to amend the provisions of the Contract where necessary or desirable in the circumstances.</p> |
| <p>1.1.24 “Vessel” means the vessel in respect of which any Service/Facilities is provided or to be provided under the Contract.</p> | <p>1.2.7 The headings in the Contract are for convenience only and shall not affect its interpretation.</p> |
| <p>1.1.25 “Warehousing” means all or any of the following services or facilities provided by ESCO and which are the subject of the Application⁴:</p> <p>(a) provision of space, either open or covered, for the storage, loading, unloading, stuffing, unstuffing, repair, fumigation or inspection of any Goods;</p> <p>(b) distribution of any Goods;</p> <p>(c) quality testing of any Goods;</p> <p>(d) survey of any Goods;</p> <p>(e) repacking of any Goods; and</p> <p>(f) re-labelling of any Goods.</p> | <p>2. CONTRACT</p> <p>2.1 <u>The Contract</u></p> <p>2.1.1 ESCO shall provide and the Customer shall accept the Services/Facilities during the Contract Period in consideration of the payment of the Contract Sum, all in accordance with the terms and conditions of the Contract.</p> |

1.2 Interpretation

- 2.1.2 Any undertaking by ESCO under the Contract to do any act may be carried out by its authorised employees, agents or contractors, and all protection from liability afforded to ESCO by the Contract in respect of such acts or omissions shall also be afforded to such persons [to which end ESCO contracts on the Contract on its own behalf and as agent for and trustee for the benefit of its employees and contractors].
- 2.2 Early termination
- 2.2.1 Notwithstanding the other provisions of the Contract, ESCO may terminate the Contract forthwith at any time without any claim or charge by the Customer if ESCO deems it necessary to do so for the protection of its legal, commercial and/or financial position.
3. **FACILITIES**
- Unless expressly provided otherwise in the Contract, ESCO allocate the Facilities in its absolute discretion.
4. **INFORMATION RELATING TO GOODS**
- 4.1 General
- 4.1.1 The Customer shall on or before the delivery of any Goods to ESCO furnish all information required by ESCO in respect of the Goods, including but not limited to information necessary for the safe, proper and efficient handling of the Goods.
- 4.1.2 ESCO shall be entitled, at any time, to inspect, weigh and/or test the Goods and do any acts necessary for this purpose. Costs arising therefrom, as determined by ESCO, shall be borne by the Customer if the inspection, weighing and/or testing:
- (a) shows that the information provided in respect of the Goods is incomplete and/or inaccurate;
 - (b) is requested by the Customer and/or any competent authority; or
 - (c) is conducted by ESCO to comply with any law or regulation or IMO requirement.
- 4.1.3 ESCO may accept delivery of the Goods notwithstanding ESCO's knowledge of any incorrect or incomplete information relating to the Goods and in that event:
- (a) the Customer shall bear the risk and expense of any necessary or desirable measures carried out by ESCO in respect of the Goods arising from such incorrect or incomplete information and indemnify ESCO against all Claims made by ESCO, its employees or agents, or any third party arising from such measures; and
 - (b) ESCO shall not be liable for any Claim arising from ESCO's acceptance of delivery of the Goods.
- 4.1.4 ESCO shall be entitled to refuse to accept delivery of the Goods or refuse to provide any Services/Facilities in respect thereof, without responsibility for any loss or any liability, consequential or otherwise, if in the opinion of ESCO:
- (a) the Goods do not conform with the information provided by the Customer under **Condition 4.1.1**;
 - (b) the Goods are delivered in an apparently damaged or defective condition; or
 - (c) the provision of such Services/ Facilities may lead to a Claim against ESCO, its employees or agents.
- 4.1.5 ESCO shall be entitled to require payment from the Customer of any cost or expense incurred by ESCO in respect of the Services /Facilities provided prior to ESCO's refusal to accept delivery of the Goods pursuant to **Condition 4.1.4**.
- 4.1.6 The Customer shall be liable to ESCO for and shall indemnify ESCO against all Claims suffered by or made against ESCO, its employees or agents arising from any incorrect or incomplete description, statement, indication, information, notice, direction or instruction made or given by the Customer to ESCO, in addition to the costs payable by the Customer under **Condition 4.1.2**.
- 4.2 For duties, taxes and charges
- 4.2.1 For Goods subject (or that may be subject) to duties, taxes or other charges by the competent authorities, the Customer shall, reasonably in advance, provide to ESCO all information required of ESCO by such authorities in respect of such Goods.
- 4.2.2 The Customer shall be liable for and indemnify ESCO against any Claim, penalties, taxes or duties suffered or payable by ESCO arising from any delay in or complete or partial failure to provide the required information and/or documents.
- 4.3 The Customer shall not deposit any arms, explosives or Dangerous Goods with ESCO unless ESCO has provided written agreement to the same.

5. TRANSPORTATION, PACKING MATERIALS AND CONTAINERS

5.1 Standards

The Customer shall ensure at all times that the means of transportation, packing materials and containers and their accessories used in the delivery of the Goods to ESCO shall be in a sound, clean, tight and staunch condition, fit for use in respect of the Goods and in compliance with the requirements of the competent authorities. ESCO will not be liable for any Claim arising from such standards not being met and the Customer shall indemnify ESCO against such Claim.

5.2 Inspection

ESCO shall be entitled at any time on, before or after accepting delivery of the Goods, to open, weigh, measure, test or examine such means of transportation, packing materials and containers for the purposes of inspection.

5.3 Refusal to accept delivery

If in the opinion of ESCO, such means of transportation, packing materials or containers are not as that described in **Condition 5.1**, ESCO is entitled to refuse to accept delivery of the Goods and/or remove or require immediate removal of the Goods at the risk and expense of the Customer.

6. GENERAL CONDITION ON ARRIVAL

6.1 Acceptance of delivery does not proof of condition

Any acceptance of delivery of the Goods by ESCO shall be without prejudice to **Condition 5** and shall not constitute proof that the Goods were delivered in a good and undamaged condition or that the means of transportation, packing materials or containers used in respect thereof conformed with the requirements of **Condition 5**.

6.2 Notice of damage, defect or deterioration

ESCO shall, as soon as practicable, notify the Customer of any damage or defect of the Goods or of such means of transportation, materials or containers which is apparent at the time of delivery thereof but the Customer shall not make any Claim against ESCO, its employees or agents by reason of the fact that it has not been so notified.

6.3 Remedial measures

ESCO shall be entitled, at the expense of the Customer, to do all things deemed by ESCO to be necessary to remedy such damage or defect or to prevent or reduce further damage, defect or deterioration in the condition of the Goods or of such means of transportation, materials or containers and to arrange for a report to be made on the condition of the Goods or of such means, materials or containers without being liable for any Claim arising from doing such things and the Customer shall indemnify ESCO, its employees and agents against such Claim.

7. DELIVERY OR RE-DELIVERY

7.1 Point of delivery to ESCO

The Goods shall be deemed to have been delivered to ESCO at the Facilities immediately after the Goods have been unloaded from a Vessel or a vehicle at the Facilities or any ESCO Terminal, as the case may be.

7.2 Point of re-delivery to Customer

The Goods shall be deemed to have been re-delivered to the Customer from the Facilities or any ESCO Terminal, immediately after such Goods are loaded onto or into the Vessel or vehicle at the Facilities or any ESCO terminal.

7.3 Time and date to be notified

7.3.1 The Customer shall agree with ESCO [30 days prior to] the time and date when the Goods shall be delivered to ESCO or re-delivered to the Customer.

7.3.2 If the Goods shall not be delivered or taken re-delivery of at the times and dates agreed under **Condition 7.3.1**:

(a) the Customer shall be liable for any Claim suffered by ESCO, its employees and agents arising therefrom and indemnify ESCO, its employees and agents against such Claim; and

(b) in the case of delivery of the Goods, ESCO shall no longer be required to make available the Facilities pursuant to the Contract or in the case of re-delivery of the Goods, ESCO shall be entitled to remove the Goods forthwith from the Facilities at the risk and expense of the Customer.

7.3.3 Time shall be of the essence for the purposes of this **Condition 7.3** and the Customer shall not be entitled to any notice of such failure.

7.4 Re-delivery requirements

7.4.1 Subject to **Conditions 18.1 and 18.2**, ESCO shall re-deliver the Goods to the Customer:

- (a) if so instructed by the Customer;
- (b) against the presentation of a receipt in a form approved by ESCO and duly signed and stamped by the Customer; or
- (c) against the surrender of a Delivery/Shipment Note (if any) issued in respect of such Goods,

Provided that the Customer shall have performed and observed the provisions of the Contract and of any other contract made between ESCO and the Customer in respect of other goods at any ESCO Terminal, up to the date of such re-delivery.

7.4.2 ESCO shall be entitled but not obliged:

- (a) to demand from any person purporting to be entitled or authorised to take re-delivery of the Goods, satisfactory proof of the person's identity and of such entitlement and authority; and
- (b) to satisfy itself that the signature and stamp appearing on the instructions, receipts and the Delivery/Shipment Note are correct and valid as at the date of re-delivery.

7.4.3 In the event that a Delivery/Shipment Note has been issued in respect of the Goods and the re-delivery of a part of the Goods by ESCO to the Customer such re-delivery shall be recorded in the Delivery/Shipment Note surrendered pursuant to **Condition 7.4.1(c)** and ESCO may then at its absolute discretion either:

- (a) return the Delivery/Shipment Note to the Customer; or
- (b) issue a fresh Delivery/Shipment Note to the Customer in respect of the remaining part of the Goods.

7.4.4 In the event of any partial or total loss or destruction of the Goods due to any cause whatsoever, the date of commencement of such loss or destruction shall be deemed to be the date of re-delivery of the Goods by ESCO to the Customer.

7.5 Discharge from liability

7.5.1 ESCO shall be discharged from all liability in respect of the Goods by re-delivery thereof to the Customer or other person presenting a bill of lading, Delivery/Shipment Note or letter of authorisation as the case may be, relating

thereto and shall not be bound to make any enquiry whatsoever as to the legal entitlement or otherwise of the Customer or such person to the Goods.

7.5.2 ESCO shall be discharged from all liability for wrongful delivery of the Goods where the carrying vessel advises ESCO that it is unable to discharge the Goods therefrom by marks.

7.5.3 ESCO shall not be bound to make any enquiry as to the correctness, proper authentication or otherwise of any endorsement appearing or purporting to have been made on any of the aforesaid bill of lading, Delivery/Shipment Note or letter of authorisation.

8. MOVEMENT OF GOODS

8.1 By ESCO

ESCO shall be entitled to move the Goods from the Facilities to any other part of any ESCO Terminal or to another ESCO Terminal from time to time.

8.2 Storage of Goods

ESCO may store the Goods in the open if deemed appropriate and suitable by ESCO.

9. SPECIFIC MEASURES

9.1 Fixtures, fittings and measures

Notwithstanding the other provisions of the Contract, ESCO shall be entitled immediately, and at the risk and expense of the Customer, to install or modify any fixture or fitting to the Facilities and take every measure reasonably deemed by ESCO to be necessary (including the cessation of the provision of the Services/Facilities or the removal or disposal of Goods) as required by any Government or public authority, and/or in order to prevent or reduce any damage (to property and the environment, personal injury or death) and/or to prevent or reduce the risk of any Claim or potential Claim against ESCO. Such fixture or fitting shall be the property of ESCO.

9.2 Notification to Customer

ESCO shall as soon as possible, notify the Customer of such installation, modification and measures but any failure by ESCO to notify the Customer shall not entitle the Customer to make any Claim against ESCO in respect thereof.

10. INSPECTION AND WORKS

- ESCO is entitled to conduct any inspection of or any works to the Facilities which is required, in ESCO's opinion, due to or pursuant to any law effective during the Contract Period, at the risk and expense of the Customer. The Contract Sum remains payable in the event of such inspection/works even if the Customer is deprived of the use of the Services/Facilities. ESCO is entitled to do all acts necessary for such inspection or works to take place and the Customer shall not make any claim arising therefrom save where there has been wilful intent or recklessness on the part of ESCO.
- 11. WORKING HOURS**
- The Services/Facilities shall be provided by ESCO during the normal working hours stipulated by ESCO. ESCO may, at its discretion, provide the Services/Facilities outside the normal working hours, and any costs arising therefrom shall be paid by the Customer.
- 12. REMOVAL OF VESSELS**
- The Customer shall ensure that the Vessel shall be removed from the ESCO Terminal immediately upon completion of the discharge/loading of the Goods or at any time as deemed necessary by ESCO.
- 13. CUSTOMER'S REPRESENTATIVE**
- 13.1** ESCO's approval
- ESCO may grant approval for any one or more persons authorised by the Customer to deal with ESCO, its employees and agents for the purposes of the Contract. All acts or omissions by such authorised person shall be deemed to be acts or omissions of the Customer.
- 13.2** Customer's responsibility
- 13.2.1** The Customer shall ensure that only the Customer itself or the Customer's Representative shall deal with ESCO for the purposes of the Contract. Notwithstanding the provisions of this **Condition 13.2**, the Customer remains responsible for the due observance of and compliance with the Contract.
- 13.2.2** Any undertaking by the Customer under the Contract shall be deemed to include an obligation to ensure that the same shall be carried out by the Customer's Representative.
- 13.3** Liability and indemnity for Customer's Representative
- ESCO shall not be liable for any Claim suffered by any person due to any cause whatsoever arising from the act or omission of any Customer's Representative or any other person ostensibly or apparently engaged or authorised by the Customer to deal with ESCO and the Customer shall absolve ESCO, its employees and agents in respect of such Claim and shall indemnify ESCO, its employees and agents in respect of such Claim.
- 14. ACCESS TO AND PRESENCE AT ESCO TERMINALS**
- Except with the written permission of the ESCO [evidenced by any permanent or temporary pass or permit issued by ESCO subject to such terms and conditions as may be imposed by ESCO], all persons or property shall only enter or exit any ESCO Terminal through entrances or exits or means designated by ESCO for that purpose. ESCO has the right to deny entry/exit to any ESCO Terminal and any part thereof or revoke permission for the same, and to require the Customer to remove any person or property accordingly at any time.
- 15. ENVIRONMENT**
- The Customer shall not cause or permit any waste matter to be discharged in any manner onto any ESCO Terminal and no Vessel shall emit smoke, soot, ash, grit or oil beyond levels deemed as reasonable by ESCO at any ESCO Terminal.
- 16. PAYMENT FOR SERVICES OR FACILITIES**
- 16.1** Charges and other sums
- In consideration of the provision of the Services/Facilities by ESCO, the Customer shall pay to all charges and other sums which shall be imposed by ESCO under the ESCO Price List or under the Contract or at law.
- 16.2** Conditions of payment
- Except as expressly agreed otherwise between the Parties:
- (a) The Contract Sum shall be:
- (i) payable without demand and without deduction not later than the date for payment stipulated in the ESCO Price List or under the Contract, as the case may be; and
- (ii) recoverable against the Goods and any other property delivered by the Customer to ESCO under any other contract made between ESCO and the Customer.

- (b) ESCO may at any time and from time to time require the Customer to open and maintain for the duration of the Contract Period an account with ESCO subject to the terms and conditions provided in the ESCO Price List.
- (c) The Customer shall furnish security for a sum and of a form approved by ESCO for the prompt and proper performance and observance by the Customer of the Contract (including without limitation the obligation to pay the Contract Sum).
- (d) The sums due from the Customer or any of its related corporations to ESCO or any of its related corporations may be deducted from any sum due from ESCO to the Customer or any of its related corporations, including sums due pursuant to the Contract or otherwise. Each Party shall procure that its related corporations comply with the terms of this Condition 16.2(d).
- (e) Notwithstanding the period for payment stipulated pursuant to paragraph (a)(i) above:
- (i) if the Customer is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (ii) if the value of the assets of the Customer is less than its liabilities (taking into account contingent and prospective liabilities);
- (iii) if a moratorium is declared in respect of any indebtedness of the Customer;
- (iv) if any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer [other than a solvent reorganisation of the Customer];
- (B) a composition or arrangement with any creditor of the Customer, or an assignment for the benefit of creditors generally of the Customer or a class of such creditors;
- (C) the appointment of a liquidator, receiver, trustee, judicial manager, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of the Customer or any of its assets; or
- (D) enforcement of any mortgage, charge, pledge, lien or other security interest (or any other agreement or arrangement having a similar effect) over any assets of the Customer (including the Goods), or any analogous procedure or step is taken in any jurisdiction; or
- (v) if the Customer ceases or threatens to cease to carry on the whole or any substantial part of its core business as at the date of the Application;
- (vi) if the Customer shall fail to perform or observe any term or condition of the Contract
- the Contract Sum shall become immediately due and payable and ESCO shall be entitled to take all necessary steps to mitigate its risks and losses, including without limitation such steps to suspend its provision of Services/Facilities to the Customer.
- (f) Without prejudice to the generality of **paragraph (e)** above, if due to any reason whatsoever (except the default of ESCO) the Customer shall not pay the Contract Sum on or before the due date for payment referred to in **paragraphs (a)(i), (d)** and/or **(d)** above:
- (i) ESCO shall be entitled to engage the services of any person(s) to recover such sum from the Customer, at the Customer's cost; and

- (ii) Notwithstanding **sub-paragraph (i)** above, the Customer shall in addition to the Contract Sum and the costs described in **sub-paragraph (i)** above (if any), pay to ESCO interest on such sums [at the rate of [1%] per month or such other rate as may be notified to the Customer] and the costs at the rate equivalent to the rate stipulated in the ESCO Price List or in the Contract (as the case may be), which interest shall be payable on a day to day basis from the date immediately after the due date for payment to the date of actual payment of such sums, the costs and interest thereon or to the date of expiry or sooner termination of the Contract, whichever is earlier.

- (g) Time shall be of the essence for the purposes of this General Condition.

17. THIRD PARTY CHARGES AND SUMS ON GOODS

17.1 Goods to be free of third party charges or sums

- 17.1.1 The Customer shall ensure that the Goods are delivered to ESCO free of any charges or sums due to third parties including any freight, port charges, taxes, duties, contributions, fines and any other costs.

- 17.1.2 ESCO shall be entitled to refuse to take delivery of any Goods in respect of which ESCO is not satisfied that all such charges and sums have been paid.

- 17.1.3 ESCO shall not be liable for nor be obliged to recover any such unpaid charges or sums or other charges or sums which have been overpaid or mistakenly paid by the Customer to any third party.

17.2 Cost of professional services

If ESCO, in its absolute discretion, deems it necessary to seek professional services or to commence legal proceedings or to take other legal measures in relation to such unpaid charges or sums payable to the third parties, all costs and expenses incurred by ESCO in respect of such services, proceedings and measures shall be borne by the Customer.

17.3 Customer's liability

Notwithstanding that ESCO may have taken delivery of the Goods, the Customer shall be liable for such unpaid charges and sums and shall indemnify ESCO, its employees and

agents against any Claims against ESCO, its employees or agents arising in respect of such unpaid charges and sums, regardless of the location of the Goods at that point in time.

18. RIGHTS OVER GOODS AND VESSELS

18.1 Right of lien and retention

- 18.1.1 ESCO shall have the right of lien and retention over all property (including the Goods) and all sums (including any sums collected by ESCO from third parties on behalf of the Customer) and all documents which ESCO shall now or hereafter hold of or for the Customer or which is now or hereafter due to the Customer, to secure the payment of the Contract Sum and the discharge of all liabilities of the Customer to ESCO under the Contract or at law.

- 18.1.2 In the exercise of ESCO's right of lien and retention, ESCO shall be entitled to seize and detain such property, sums and documents until the sums due from the Customer to ESCO are fully paid.

- 18.1.3 ESCO's lien shall have priority over all other liens and claims in respect of such property, sums and documents.

18.2 Power to dispose of Goods remaining in custody

- 18.2.1 If the Goods are not removed from the Facilities within the period stipulated by ESCO under the Contract or if the Customer fails to pay to ESCO the Contract Sum for any reason, ESCO may dispose of the Goods by sale or in such other manner as it thinks fit Provided that in the case of a hazard or an emergency or if the Goods are of a perishable nature ESCO may direct or effect their removal or disposal immediately or within such shorter period as ESCO deems fit.

- 18.2.2 ESCO shall render the surplus proceeds of sale (after deducting payments of the any and all sums due to ESCO, including the Contract Sum, and any other sums due to third parties payable by ESCO in relation to the Goods and/or the Customer whether under the Contract or any other contract or at law), if any, to the Customer and any other person entitled thereto on demand, and, in case no such demand is made within one year from the date of the sale of such property the surplus shall be paid to the account of ESCO, whereupon all rights to the same by such person shall be extinguished. If the proceeds of sale of the Goods by ESCO pursuant to this condition is insufficient to satisfy in full any claim of ESCO under the Contract, under any other contract made between ESCO and the Customer or at law, ESCO shall be entitled to recover the

- balance from the Customer as a debt in any court of competent jurisdiction.
- 18.3** Power to distrain for non-payment of Contract Sum
- 18.3.1** If the Customer fails to pay the Contract Sum in accordance with the Contract, ESCO may, in addition to any other remedy, distrain or arrest the Vessel in respect of which such Contract Sum is payable and the tackle, apparel or furniture belonging thereto or any part thereof, and detain the same until the amount so due is paid.
- 18.3.2** In case any part of the Contract Sum or of the costs of the distress or arrest, or of the keeping of the Vessel, tackle, apparel or furniture, remains unpaid for a period of not less than 14 days after any such distress or arrest has been so made, ESCO may cause the Vessel or other thing so distrained or arrested to be sold, and with the proceeds of the sale may satisfy those charges, other sums and costs, including the costs of sale remaining unpaid, rendering the surplus, if any, to the master or owner of the Vessel on demand.
- 19. TRANSFER OF RIGHT OR INTEREST IN GOODS**
- 19.1** ESCO not bound
- 19.1.1** ESCO shall not be obliged to recognise nor be bound by any transfer of ownership or the right to delivery or possession or other right or interest in respect of the Goods.
- 19.1.2** The Customer shall be liable for all Claims arising from any refusal of ESCO to recognise or to be bound by the intended transfer of ownership or other interest in the Goods and shall indemnify ESCO, its employees and agents in respect of such Claims.
- 19.2** Disputes
- 19.2.1** If there shall be any dispute between ESCO and the Customer or between ESCO and any third party relating to the ownership of or other right, title or interest in the Goods or if the Goods shall be attached, detained or seized by a third party in any way, shall be entitled to detain the Goods until the dispute is resolved by the competent court or otherwise settled.
- 19.2.2** ESCO shall be entitled:
- (a) to seek any legal and other professional services or to commence any legal proceedings or to take any measure which it deems necessary to protect its interest in such dispute,
- attachment, detention or seizure or to resolve such dispute, in which event the risk and expense of such services, proceedings and measure shall be borne by the Customer; and
- (b) notwithstanding Condition 7, to retain the Goods and such other goods forming part of the Goods at the risk and expense of the Customer until the resolution or settlement of such dispute to ESCO's satisfaction.
- 19.3** Responsibility of Customer
- Notwithstanding the transfer of any right or interest in the Goods, until and unless ESCO shall have agreed to recognise and be bound by such transfer, the Customer shall continue to perform and observe the conditions of the Contract (including the obligation to pay the Contract Sum and all Claims) even insofar as they relate to any Services/Facilities provided after the transfer.
- 19.4** When transferee deemed to be Customer
- Upon ESCO's recognition and contract to be bound by the transfer, the transferee shall be deemed to be the Customer for the purposes of the Contract and shall also be jointly and severally liable with its predecessor in title for the performance and observance of the Contract as described.
- 20. REMOVAL OF GOODS**
- Notwithstanding the other provisions of the Contract, ESCO may require the Customer to remove any Goods at any time by giving fourteen days' prior notice or shorter notice (as determined by ESCO) for perishable Goods. The Customer shall remove all Goods from the Facilities upon expiry or termination of the Contract.
- 20.1** No liability
- ESCO shall not be liable for any Claim arising from the removal, disposal, destruction and intermediate storage of the Goods and the Customer shall indemnify ESCO, its employees and agents against such Claims.
- 21. OPERATING REQUIREMENTS AND ESCO RULES**
- The Customer shall comply, and shall ensure that its employees, subcontractors and agents comply, with ESCO's operating requirements set out in port circulars available to the Customer (which the Customer hereby

acknowledges as having read and agreed to) or hereafter notified to the Customer, as well as all rules, conditions, policies and directions set by ESCO in respect of the ESCO Terminals and activities therein.

22. FORCE MAJEURE

Affecting performance or observance by ESCO, ESCO shall be released from performing or observing its obligations under the Contract if such performance or observance shall be prevented by any Force Majeure.

23. LIABILITY AND INDEMNITY

23.1 Extent of liability

23.1.1 EXCEPT WHERE EXPRESSLY AGREED OTHERWISE BETWEEN THE PARTIES:

(a) ESCO SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM:

- (i) FORCE MAJEURE;
- (ii) ANY DELAY OR ERROR IN THE DELIVERY OF THE GOODS TO ESCO OR RE-DELIVERY OF THE GOODS TO THE CUSTOMER;

OR

- (iii) ANY OTHER CAUSE UNLESS IT IS FIRST PROVEN BY THE CUSTOMER THAT SUCH CLAIM HAS ARISEN FROM THE GROSS NEGLIGENCE OR THE WILFUL ACT OF ESCO.

(b) IN THE EVENT OF ANY CLAIM AGAINST ESCO, SHALL NOT BE LIABLE FOR:

- (i) ANY SUM EXCEEDING [(USD and under the Agreement between ESCO and the Customer amount)] IN AGGREGATE PER INCIDENT OR SERIES OF INCIDENTS; OR

- (ii) ANY DAMAGE TO OR LOSS OF GOODS IN A SUM EXCEEDING:

(A) [USD and under the Agreement between ESCO and the Customer]IN THE CASE OF A VESSEL;

(B) [USD and under the Agreement between ESCO and the Customer][IN THE CASE OF

A CONTAINER OF UP TO 6.1 METRES IN LENGTH;

(C) [USD and under the Agreement between ESCO and the Customer] IN THE CASE OF A CONTAINER EXCEEDING 6.1 METRES IN LENGTH;

(D) [USD and under the Agreement between ESCO and the Customer] PER PACKAGE OR UNIT OF SUCH GOODS; OR

(E) THE REASONABLE COST OF REPAIRS [AS AGREED BETWEEN SURVEYOR(S) APPOINTED BY ESCO AND THE CUSTOMER],

WHICHEVER IS LESS; OR

- (iii) ANY LOSS OF PROFIT, CONSEQUENTIAL LOSS OR ANY INDIRECT LOSS OR DAMAGE.

23.1.2 ESCO SHALL NOT BE LIABLE FOR ANY CLAIM ARISING BEFORE DELIVERY OF THE GOODS TO ESCO (The Contractor) OR AFTER RE-DELIVERY OF THE GOODS TO THE CUSTOMER.

23.1.3 THE LIMITATION OF LIABILITY GRANTED UNDER THIS [GENERAL] CONDITION 23 SHALL RELATE TO THE WHOLE OF ANY LOSSES AND DAMAGES WHICH MAY ARISE UPON ANY ONE INCIDENT OR SERIES OF INCIDENTS, ALTHOUGH SUCH LOSSES OR DAMAGES 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 CONTAINED IN SUCH WRITTEN LAW.

23.1.4 THE CLAIM WILL BE VOID IF THE CUSTOMER SHALL NOT HAVE NOTIFIED ESCO) THEREOF IN WRITING:

- (a) [OF DAMAGE ALLEGED TO HAVE BEEN CAUSED TO A VESSEL OR ANY GOODS, AND TO PERMIT INSPECTION THEREOF, PRIOR TO SUCH VESSEL OR GOODS LEAVING

THE FACILITIES OR THE ESCO (The Contractor) TERMINALS;]

- (b) WITHIN ONE WEEK AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM; OR
- (c) WITHIN ONE WEEK AFTER THE RE-DELIVERY OF THE GOODS TO THE CUSTOMER,

WHICHEVER IS EARLIEST.

SUCH NOTIFIED CLAIM WILL BECOME VOID IF NO LEGAL PROCEEDINGS IN RESPECT THEREOF ARE COMMENCED WITHIN 6 MONTHS AFTER THE DATE OF NOTICE.

- 23.1.5** WHERE A CONTAINER, PALLET OR SIMILAR ARTICLE IS USED TO CONSOLIDATE GOODS, NOTWITHSTANDING THAT THE PACKAGES OR OTHER SHIPPING UNITS HAVE BEEN SEPARATELY ENUMERATED IN THE BILL OF LADING AS HAVING BEEN PACKED OR CONSOLIDATED IN SUCH CONTAINER, PALLET OR ARTICLE, THE RESULTANT CONSOLIDATION SHALL BE DEEMED AND SHALL COUNT AS ONE PACKAGE OR SHIPPING UNIT.⁵

23.2 Personal liability

NOTWITHSTANDING THE OTHER PROVISIONS OF THE CONTRACT, NO MATTER OR THING DONE AND NO CONTRACT OF ANY KIND ENTERED INTO BY ESCO AND NO MATTER OR THING DONE BY ANY EMPLOYEE OR AGENT OF ESCO OR ANY OTHER PERSON WHOMSOEVER ACTING UNDER THE DIRECTION OF ESCO SHALL, IF THE MATTER OR THING WAS DONE OR THE CONTRACT WAS ENTERED INTO BONA FIDE FOR THE PURPOSE OF PROVIDING THE SERVICES/FACILITIES, SUBJECT ANY SUCH PERSON PERSONALLY TO ANY ACTION, LIABILITY, CLAIM OR DEMAND WHATSOEVER IN RESPECT THEREOF.

23.3 Reasonableness [Non-Exc laudable Liability]

THE CUSTOMER EXPRESSLY ACKNOWLEDGES THAT GENERAL CONDITION 23 SATISFIES THE REQUIREMENTS OF REASONABLENESS UNDER THAI LAW RELATING TO THE EFFECTIVENESS OF CONTRACTUAL PROVISIONS THAT SEEK TO EXCLUDE OR

LIMIT LIABILITY. OR [NOTHING IN THE CONTRACT SHALL EXCLUDE OR IN ANY WAY LIMIT ESCO'S LIABILITY FOR FRAUD, OR FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR ANY OTHER LIABILITY TO THE EXTENT THE SAME MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW].

24. DAMAGE TO ESCO TERMINAL OR OTHER ESCO PROPERTY

If any damage is caused to any ESCO Terminal or other property arising out of the provision of the Services/Facilities, ESCO may in its discretion carry out such repairs or replacements as it thinks necessary, in which event the cost of such repairs or replacements, together with all interests, expenses and legal fees that may be incurred in the collection of such costs,⁶ shall be borne by the Customer.

25. CUMULATIVE RIGHTS AND REMEDIES

ESCO's rights and remedies under the Contract are cumulative and shall not prejudice any other rights or remedies of ESCO contained in the Contract or at law.

26. INSURANCE

The Customer shall effect adequate insurance of the Goods for so long as they remain at any ESCO Terminal, except where expressly agreed otherwise between ESCO and the Customer.

27. COMPLIANCE WITH LAW

The Parties shall comply with all laws, rules and regulations affecting the Contract. The Customer shall obtain all requisite permissions, approvals and consents from the competent authorities and indemnify ESCO against any fines, penalties, losses, costs or expenses incurred by ESCO in respect of any non-compliance with such laws, rules and regulations.

28. ASSIGNMENT OF CONTRACT

Save as expressly permitted by the Contract, the rights and obligations of the Customer shall not be assigned to or shared in any way with any person without ESCO's prior written consent.

29. CONFIDENTIALITY

29.1 No Party shall disclose to any other person any information related to the Contract without the prior consent of the other Party.

29.2 Notwithstanding **General Condition 29.1**, either Party may disclose information related to the Contract to:

- (a) such Party's agents or contractors who have a need to know the same provided that such agents and contractors are first subject to the same confidentiality restrictions contained herein;
- (b) any other person pursuant to a legal requirement to disclose or pursuant to any judicial authority which requires disclosure; or
- (c) any other person to the extent that such information shall already be known to such Party not due to a breach of this **General Condition 29** or is already a matter of public knowledge through no fault of the disclosing Party.

30. NO GRANT OF INTELLECTUAL PROPERTY RIGHT

No express or implied intellectual property right or licence belonging to either Party is hereby granted to the other Party.

31. COMMUNICATION

31.1 Other forms of writing

Where the Contract requires any notice or information to be in writing, that requirement is also met by electronic mail or letter ("**Data Message**").

31.2 Acknowledgement of receipt

Except where expressly agreed otherwise, ESCO, its employee or agent is deemed to have received a Data Message when it acknowledges receipt by any communication in writing by ESCO, its employee or agent sufficient to indicate to the sender that the Data Message has been received.

31.3 Service

31.3.1 Subject to **Conditions 31.1** to **31.2** (inclusive), any notice to be given by either Party under the Contract shall be deemed to be received by the other Party if sent by:

- (a) hand or local urgent mail or express mail or other fast postal service, or

(b) registered post,

to the registered or representative office of the recipient, or by telex, facsimile or other electronic media, followed immediately by a posted confirmation copy.

31.3.2 Notwithstanding the provisions of **General Condition 31.3.1**, ESCO may in its absolute discretion where ESCO considers appropriate or conducive to efficiency or expediency, choose to give any notice to the Customer required under the Contract, by writing addressed to users of the Services/Facilities generally or by posting a copy of such notice at [the site office of any ESCO Terminal.

32. CONSENT OR WAIVER

No consent or express or implied waiver by ESCO to or of any breach of any General Condition or any covenant or duty of the Customer shall be construed as a consent or waiver by ESCO to or of any other breach of the same or any other General Condition, covenant or duty by the Customer and shall not prejudice in any way the rights, powers and remedies of ESCO contained in the Contract or at law.

33. ARBITRATION

If and to the extent that amicable settlement of any dispute arising hereunder or in connection with the Contract may not be possible, such dispute shall be referred to and finally resolved by arbitration in Thailand in accordance with the [Arbitration Rules of Thai Arbitration Institute ("**TAI**") for the time being in force, which rules are deemed to be incorporated by reference into this clause. The tribunal shall consist of:

(a) three (3) arbitrators to be appointed ;

33.1.2 The language of the arbitration shall be Thai or English.

When and so far as it may be necessary that any award, instrument or order issued by the arbitrators or any appeal therefrom should be served on the Customer in any proceedings to be taken for the enforcement of the Contract, the Customer hereby agrees and consents that the service of such award, instrument or order on the Customer in accordance with **General Condition 31.3**, shall be in all

respects as operative and effective as if the same were its office.

34. SURVIVAL OF OBLIGATIONS

Notwithstanding the complete performance of the Contract or the termination of the Contract insofar as it relates to the Customer, the terms and conditions of the Contract shall remain in full force and effect between the ESCO and the Customer insofar as such terms and conditions shall remain unfulfilled or relevant.

35. STAMP DUTY

The Customer shall bear the costs of and incidental to the stamping of all documents evidencing the Contract and the duplicate thereof.

36. GOVERNING LAW

36.1 The Contract will be governed by, and construed in all respects in accordance with, the laws of Thailand.

36.2 The Customer hereby irrevocably agrees for the benefit of ESCO that the courts of [insert relevant jurisdiction] shall have exclusive jurisdiction over any dispute arising under, out of or in connection with the Contract (including any question regarding its existence, validity or termination), save that nothing in this **General Condition 36.2** shall limit the right of ESCO to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

Appendix of General condition

Container entry / depart regulation of Eastern Sea Laem Chabang Terminal Co., Ltd. (B3 terminal and ICD Ladkrabang gate2)

Delivery note / wharf receipt

1) The Weight of the container that appears on the EIR is the estimated weight only and cannot refer to anyone. All weight must be verified under IMO policy.

2) Container Lashing And Cargo Lashing It is the customer strictly responsibility to adhere to the "International Maritime Organization" container and cargo standards. IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units (CTU Code) The Company is not obliged to check whether the bond has complied with the CTU Code and is not responsible. If the containers and goods are bonded. Damage caused by not complying with the CTU Code.

3) Please check the condition of the container or cargo before departing .Accept EIR means that the receiver shall acknowledges that the cargo or container has been properly inspected and in good condition, except for the damage specified in the EIR .The liability of Eastern Sea Laem Chabang Terminal Co., Ltd. (B3) shall not in no case exceed a financial limit of maximum compensation set out hereunder:

For damage to 20' container (including contents):
USD 21,600

For damage to 40' container (including contents):
USD 32,400

For damage to High Cube / 45' container (including contents): USD 32,400

For damage to reefer / tank container (including contents) : USD 32,400

4) The packer must check the condition of the container before loading. Company will not be responsible for any damage due to inadequate container.

5) The person who sign received container or cargoes must be authorized from vessel owner shipping line or agent either expressly or implicitly. Signed in the EIR, the company considers the driver to be the authorized personnel from the vessel owner, shipping line or agent.

6) For more information, please contact 0-3300-5678 Laem Chabang Head Office

Shipping / Warehousing regulation and limitation of Liability of Eastern Sea Laem Chabang Terminal Co., Ltd. (B3 terminal and ICD Ladkrabang gate2)

1) Please check cargo before entry / depart company. Signing a document (Delivery Note / Wharf Receipt) The Company will consider the Recipient / dispatcher acknowledge that the product is in good condition and is in good condition before receiving / delivering the product. Except for the specified damage list only. If you sign up to receive your order in full and in good condition, do not damage. We will not be liable for any loss or damage after receiving the goods.

2) The person signing the consignment of cargo must be authorized personnel or vessel owner shipping line or agent, either expressly or implicitly, including the departing officer, the truck driver who signed this Delivery Note / Wharf Receipt. The company considers the departing officer and the truck driver to be authorized personnel or vessel owner shipping line or agent.

3) It is the duty of the person under clause 2 to check the number and condition of goods prior to receipt / delivery. In the event that LCL / CFS is lost or damaged during the occupancy of the Company, the Company shall be liable for damages under actual but not more than 50,000 baht per loss or damage for the cargo.

4) If the cargo is found lost or damaged, upon receipt / delivery of goods, the person under Clause 2 shall notify the company immediately and must submit a claim within 15 days from the date of receipt / delivery along proof of evidence that the product was lost or damaged during the Company's possession. If the 15-day period has expired, the Company will not be liable for any loss or damage.

5) The owner or delegate agent of the cargo as specified in this Delivery Note / Wharf Receipt and / or Document has checked and received the cargo completely. In the case of subsequent inspection, it was found that the cargo was not their belonging. Despite by negligence, it is consent to responsible for all damages and expenses incurred by the company or its owners. And will return the cargo to the company or the owner without exception.

Remarks: Without prejudice of any extent permitted by law, in the event that the payer fails to pay Eastern Sea Laem Chabang Terminal Co., Ltd (ESCO) whether in full or in part of any amount due and payable hereunder, the payer shall, to the extent permitted by law, pay interest on such amount from and including the due date to the date of actual payment at 15 % per annum as an overdue interest without any demand of the notice by ESCO thereafter.