



PSA HALIFAX LIMITED PARTNERSHIP

PSA HALIFAX FAIRVIEW COVE INC.

(hereinafter referred to as “PSA”)

**TERMS OF BUSINESS
AND GENERAL CONDITIONS**

FOR SERVICES AND FACILITIES

APRIL 2022

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 PSA in writing or by any other mode required or accepted by PSA and granted by PSA.

1.1.2 “**Blocked Party**”: Any individual, entity, or vessel that is: (a) listed on the U.S. List of Specially Designated Nationals and Blocked Persons (“SDN List”), the EU Consolidated Sanctions List, or the UK Sanctions List; (b) owned 50% or more or otherwise controlled, directly or indirectly, by one or more persons who are listed on the foregoing lists; or (c) owned or controlled by a government that is subject to U.S. property-blocking sanctions.

1.1.3 “**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.

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

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

1.1.6 “**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.

1.1.7 “**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.

1.1.8 “**Contract Sum**” means all or any sums payable by or for the Customer to PSA 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 PSA Halifax LP published Schedule of Rates and Charges, and shall include without limitation any and all interest due on the same.

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

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

1.1.11 “**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.

1.1.12 “**Delivery/Shipment Note**” means the document issued by PSA in respect of the Goods pursuant to **Condition 7.4.1(c)** or its duplicate issued by PSA pursuant to **Condition 7.4.3**.

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

1.1.14 “**Force Majeure**” shall be defined as any event not caused by PSA's fault and which prevents, complicates or delays the performance of PSA's obligations, including but not limited to any of the following events:

- (a) acts of God, storm, fierce gusts of wind, flood, lightning, fog, or other natural disaster, epidemic or pandemic;
- (b) terrorist attack, riots, (civil)war, threat of or preparation for war, armed conflict, mobilization, invasion, occupation, revolution, rebellion, hostilities, terrorism, piracy, 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 PSA Terminal, or accident including but not limited to the breaking adrift of any vessel from any PSA Terminal;
- (e) any labour or trade dispute, shortage of personnel, strikes, industrial action, lockouts or sabotage, illegal activities of third parties;
- (f) any external cause (including but not limited to: a virus, worm, DDoS attack, hacking, phishing, and similar events) that disrupts PSA's information

- technology infrastructure, systems, services, applications and databases;
- (g) 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 PSA Terminal on the part of any person other than PSA, 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
- (h) any other circumstances the occurrence or extent of which PSA could not reasonably have controlled, foreseen, avoided, prevented or forestalled.
- 1.1.15** **“Goods”** means all or any part of any property of any kind whatsoever brought into any PSA Terminal by the Customer or for the Customer for the purposes of the Contract including any Container.
- 1.1.16** **“Goods Handling”** means all or any of the following services and facilities provided by PSA which are the subject of the Application:
- (a) shifting Goods between any Vessel and any PSA Terminal;
 - (b) shifting Goods from place to place within any PSA Terminal;
 - (c) shifting Containers from place to place within any Vessel;
 - (d) shifting Containers from any PSA Terminal to another PSA 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 PSA Terminal;
 - (j) storing Goods classified by PSA as Valuable Articles;
 - (k) delivery of any Container; and
 - (l) pre-trip inspection of any Container.
- 1.1.17** **“IMO”** means the International Maritime Organisation.
- 1.1.18** **Party** means PSA or the Customer.
- 1.1.19** **“PSA”** means PSA Halifax LP, the party designated and/or defined as such in the Application, its successors and assigns.
- 1.1.20** **“PSA Halifax LP Schedule of Rates and Charges”** means the document titled as such and listing charges payable to PSA 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).
- 1.1.21** **“PSA Terminal”** means all or any part of any land, place, structure or building in which the Services/Facilities shall be provided by PSA irrespective of whether or not such land, place, structure, or building shall be owned, operated, managed or controlled by PSA, including any berth, jetty or wharf.
- 1.1.22** **“Reefer Services”** means all or any of the following services and facilities provided by PSA which are the subject of the Application:
- (a) connecting or disconnecting any temperature-controlled Container to or from power plugs in any container yard forming part of a PSA Terminal;
 - (b) supplying electricity to any temperature-controlled Container and monitoring the temperature within the Container;
 - (c) repairing the reefer machinery of any temperature-controlled Container; and
 - (d) pre-trip inspection of any temperature-controlled Container.
- 1.1.23** **“Sanctions and Export Controls”**: U.S., EU, UK, and any other applicable sanctions and export control laws, regulations, orders, directives, designations, licenses, or decisions, including without limitation sanctions laws and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control (“OFAC”), the U.S. Export Control Reform Act, the U.S. Export Administration Regulations, the U.S. Arms Export Control Act, and the U.S. International Traffic in Arms Regulations; the EU, the European Commission, and competent authorities in EU Member States (as listed in EU sanctions regulations); the UK Office of Financial Sanctions Implementation (“OFSI”), and the UK Export Control Joint Unit (“ECJU”).
- 1.1.24** **“Sectorally Sanctioned Party”**: Any individual, entity, or vessel that is: (a) listed on the U.S. Sectoral Sanctions Identifications List, designated under a directive issued pursuant to Executive Order 14024, or otherwise specifically designated under the U.S. sanctions with respect to Russia, other than for full property-blocking sanctions; (b) subject to EU or UK sectoral sanctions targeting Russia; or (c) owned 50% or more or otherwise controlled, directly or indirectly, by one or more such individuals or entities.
- 1.1.25**
- 1.1.26** **“Services”** means any service described as such in the Application and/or any operation, work or services performed or provided by PSA 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;
 - (d) repair of any Container;

- (e) surveyor inspection of any Goods and their contents to ascertain the nature and extent of any loss or damage of the same;
 - (f) ship supplies to any Vessel;
 - (g) supply of fresh water via pipeline to any Vessel;
 - (h) distribution of power supply to any Vessel;
 - (i) fumigation of any Goods;
 - (j) supply of mechanical equipment and manpower for the lifting and moving of any Goods;
 - (k) Reefer & Vehicle Services; and
 - (l) Warehousing.
- 1.1.27** “**Services/Facilities**” means the Services and/or the Facilities, as the case may be.
- 1.1.28** “**Valuable Articles**” means any article of extraordinary value.
- 1.1.29** “**Vehicle**” means the transport including road and rail transport, except vessel, in respect of which any Service/Facilities are provided or to be provided under the Contract.
- 1.1.30** “**Vessel**” means the vessel in respect of which any Service/Facilities is provided or to be provided under the Contract.
- 1.1.31** “**Warehousing**” means all or any of the following Services or Facilities provided by PSA and which are the subject of the Application:
- (a) provision of space, either open or covered, for the storage, loading, unloading, stuffing, unstuffing, repair, fumigation or inspection of any Goods;
 - (b) distribution of any Goods;
 - (c) quality testing of any Goods;
 - (d) survey of any Goods;
 - (e) repacking of any Goods; and
 - (f) re-labelling of any Goods.
- 1.2** Interpretation
- 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.
- 1.2.2** Unless expressly provided otherwise in the Contract:
- (a) these Conditions shall prevail in the event of any contradiction or inconsistency between any Condition and any other provision of the Contract; or
 - (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.
- 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.
- 1.2.4** All applications, notices, consents and all other communication under the Contract to be made or given to PSA shall be made or given in writing or in a mode acceptable by PSA.
- 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.
- 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.
- 1.2.7** The headings in the Contract are for convenience only and shall not affect its interpretation.
- 2. CONTRACT**
- 2.1** The Contract
- 2.1.1** PSA 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.
- 2.1.2** Any undertaking by PSA 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 PSA by the Contract in respect of such acts or omissions shall also be afforded to such persons to which end PSA 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, PSA may terminate the Contract forthwith at any time without any claim or charge by the Customer if PSA deems it necessary to do so for the protection of its legal, commercial and/or financial position.

2.3 Hardship

2.3.1 In case of exceptional circumstances not within the control of PSA, which alter the relative rights and obligations of PSA and/or the Customer to the detriment of PSA by excessively increasing the contractual obligations of PSA (including but not limited to increases of the cost of labour, energy and/or materials), the parties, upon the request of PSA, will in mutual consultation seek to adjust the conditions that apply between them in order to re-establish the initial contractual equilibrium while protecting their respective interests.

2.3.2 In case the Parties do not reach an agreement with respect to the restoration of the balance of their respective interests within thirty (30) days following the date of PSA's request, PSA will have the right, at its sole discretion, to terminate the agreement to which these Conditions apply by registered letter without any liability. If, at the time of the termination, PSA has partially performed its obligations, the Customer will pay the pro rata amount of the total price.

3. FACILITIES

Unless expressly provided otherwise in the Contract, PSA shall 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 PSA, furnish all information required by PSA 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 PSA 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 PSA, 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 PSA to comply with any law or regulation or IMO requirement.

4.1.3 PSA may accept delivery of the Goods notwithstanding PSA'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 PSA in respect of the Goods arising from such incorrect or incomplete information and indemnify PSA against all Claims made by PSA, its employees or agents, or any third party arising from such measures; and
- (b) PSA shall not be liable for any Claim arising from PSA's acceptance of delivery of the Goods.

4.1.4 PSA 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 PSA:

- (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, in the opinion of PSA in its sole discretion, lead to or is reasonably likely to lead to, a Claim against PSA, its employees or agents.

4.1.5 PSA shall be entitled to require payment from the Customer of any cost or expense incurred by PSA in respect of the Services /Facilities provided prior to PSA's refusal to accept delivery of the Goods pursuant to **Condition 4.1.4**.

4.1.6 The Customer shall be liable to PSA for and shall indemnify PSA against all Claims suffered by or made against PSA, 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 PSA, 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 PSA all information required of PSA by such authorities in respect of such Goods.

4.2.2 The Customer shall be liable for and indemnify PSA against any Claim, penalties, taxes or duties suffered or payable by PSA 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 PSA unless PSA has provided written agreement to the same.

which does not already have verified gross mass,

4.4 Container Mass

4.4.1 The Customer will ensure that PSA is informed satisfactorily in time of the verified gross mass ('VGM') as determined in the International Convention for the Safety of Life at Sea, as amended, and its implementing provisions (collectively, "SOLAS") of any full container that the Customer wants PSA to load onto any vessel, or, if such information is not available from the shipper, the lack thereof. PSA will be entitled to fully rely on the VGM information as provided by the Customer without having to carry out any independent verification or investigation. The Customer will ensure that the gross mass has been verified, and that the relevant information provided to PSA, is in full compliance with all appropriate regulations, including in particular with "SOLAS". The Customer will provide this information promptly and sufficiently in advance at all times, but in any case no later than the arrival of the container at the terminal of PSA.

4.4.2 PSA will only accept the VGM received from its Customer. Notwithstanding anything else in these Conditions, PSA is entitled in its absolute discretion to rely on and accept:

- (a) for the loading of any container on a ship, any shipping document received by the Customer and communicated to PSA through Electronic Data Interchange ("EDI") or any other means which provides a prima facie indication of the verified gross mass of the container; and
- (b) or the unloading of any transshipment container from a ship, any shipping document received by the prior carrier and communicated to PSA through EDI or any other means which provides a prima facie indication of the verified gross mass of such container as fully complying with the SOLAS requirements regarding verified gross mass and as having been signed by a duly authorised person.

4.4.3 PSA is entitled to:

- (a) not load onto a ship any container which does not satisfy the SOLAS requirements, including any container (i) in respect of which no declared verified gross mass has been provided in accordance with clause 4.4.1 and 4.4.2; or (ii) of which the verified gross mass exceeds the maximum permitted gross mass indicated on the container's Safety Approval Plate under the International Convention for Safe Containers 1972, as amended ("CSC"); and
- (b) not discharge or allow the discharge from a ship any transshipment container

if a container is not loaded in accordance with clause 4.4.3, PSA may in its sole discretion choose to (i) determine the manner and place of storage of the container; and/or (ii) instruct the Customer to provide for the return of the container to the tendering shipper; and/or (iii) provide for such return itself, at the expense of the Customer. Any additional expenses associated with the container not being loaded (including but not limited to storage, demurrage, handling or the return of the container to the tendering shipper, as the case may be) will never be borne by PSA and the Customer will pay an appropriate compensation to PSA in this respect. Any additional expenses resulting from the Customer not providing the required information timely (in accordance with clause 14.1), including but not limited to the cost of additional shifting, will never be borne by PSA and the Customer will pay an appropriate compensation to PSA in this respect.

4.4.4 If (i) a container has been delivered to PSA in respect of which no declared verified gross mass has been provided in accordance with clause 4.4.1 and 4.4.2, or (ii) PSA has reason to believe that such verified gross mass is incorrect, or (iii) the Customer so requests, PSA has the right (but for the avoidance of doubt not the obligation), in its discretion, to determine the verified gross mass itself by weighing the container in accordance with the SOLAS requirements. Also, if PSA carries out stuffing and/or stripping of a container for the Customer, PSA has the right (but for the avoidance of doubt not the obligation), in its discretion to determine the verified gross mass itself, either by (i) weighing the container itself or by (ii) weighing every package which is not individual, original sealed and having the accurate mass clearly and permanently marked on its surface, both in accordance with the SOLAS requirements. If there is any discrepancy between the verified gross mass of the container obtained prior to delivery to the terminal and the verified gross mass determined by PSA itself, the latter will be taken as prevailing and definitive. Further, if the verified gross mass of the container declared by the shipper or determined by PSA itself exceeds the maximum permitted gross mass indicated on the container's Safety Approval Plate under the CSC, PSA may in its discretion strip and restuff the container so that it complies with the

4.4.5 In the event that calibrated and certified weighing is possible on the terminal of PSA and the Customer requests PSA to weigh a container, PSA can never guarantee that the weighing will be done in time for a cut-off for loading as the capacity of weighing is limited and the weighing is done on an exceptional basis and subject to availability of resources. All extra costs resulting from the fact that no VGM is available as mentioned before will be invoiced to the Customer.

4.4.6 If PSA loads a container onto a truck, PSA can never be held liable for additional expenses and/or fines associated with the (excess) weight of the container/truck combination. Any such additional expenses and/or fines will never be borne by PSA and the Customer will pay an appropriate compensation to PSA for any such additional expenses and/or fines incurred by it and/or for determining the weight of the container/truck combination.

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 PSA 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. Without limiting the foregoing and subject to **Condition 4.3**, the Customer shall ensure that at all times the means of transportation, packing materials and containers and their accessories used in the delivery of any Dangerous Goods shall be in full compliance with all requirements set forth in the International Maritime Dangerous Goods Code and the Canadian Transportation of Dangerous Goods Regulations. PSA will not be liable for any Claim arising from such standards not being met and the Customer shall indemnify PSA against such Claim.

5.2 Inspection

PSA 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 PSA, such means of transportation, packing materials or containers are not as that described in **Condition 5.1**, PSA 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 not proof of condition

Any acceptance of delivery of the Goods by PSA 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

PSA 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 PSA, its employees or agents by reason of the fact that it has not been so notified.

6.3 Remedial measures

PSA shall be entitled, at the expense of the Customer, to do all things deemed by PSA 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 PSA, its employees and agents against such Claim.

6.4 Statutory Authorities

The Customer shall be entirely responsible for formalities and procedures prescribed by Canada Border Services Agency, Transport Canada, Revenue Canada or other statutory, Government, Provincial or Municipal Government department locally. PSA shall not be liable for any acts or omissions of any of the foregoing bodies or any losses, claims or delays resulting from those acts or omissions including without limitation in respect of damaged Goods and Goods not satisfactorily stuffed by the Customer.

6.5 Seals

Unless otherwise agreed in writing, PSA shall not be responsible for checking seals or seal numbers and shall not be required by the Customer to carry out any seal check or to note seal numbers on any document at any time whatsoever. Where seal numbers are noted for whatever reason by PSA then no representation is made by PSA as to the accuracy of the number noted or to the condition of the seal.

7. DELIVERY OR RE-DELIVERY

7.1 Point of delivery to PSA

The Goods shall be deemed to have been delivered to PSA at the Facilities immediately after the Goods have been unloaded from a Vessel or a Vehicle at the Facilities or any PSA 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 PSA Terminal, immediately after such

- Goods are loaded onto or into the Vessel or Vehicle or re-delivery accepted by the Customer whether expressly or by conduct at the Facilities or any PSA Terminal.
- 7.3** Time and date to be notified
- 7.3.1** The Customer shall agree with PSA three days prior to the time and date when the Goods shall be delivered to PSA 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 PSA, its employees and agents arising therefrom and indemnify PSA, its employees and agents against such Claim; and
- (b) in the case of delivery of the Goods, PSA shall no longer be required to make available the Facilities pursuant to the Contract or in the case of re-delivery of the Goods, PSA 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**, PSA shall re-deliver the Goods to the Customer:
- (a) if so instructed by the Customer;
- (b) against the presentation of an electronic release or of a receipt in a form approved by PSA and duly received electronically or 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 PSA and the Customer in respect of other goods at any PSA Terminal, up to the date of such re-delivery.
- 7.4.2** PSA 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)
- (c) 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 or electronic release has been issued in respect of the Goods and the re-delivery of a part of the Goods by PSA to the Customer such re-delivery shall be recorded in the Delivery/Shipment Note surrendered pursuant to **Condition 7.4.1** and PSA 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 PSA to the Customer.
- 7.5** Discharge from liability
- 7.5.1** PSA 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** PSA shall be discharged from all liability for wrongful delivery of the Goods where the carrying vessel advises PSA that it is unable to discharge the Goods therefrom by marks.
- 7.5.3** PSA 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 PSA
- PSA shall be entitled to move the Goods from the Facilities to any other part of any PSA Terminal or to another PSA Terminal from time to time.
- 8.2** Storage of Goods
- PSA may store the Goods in the open if deemed appropriate and suitable by PSA.
- 9. SPECIFIC MEASURES**

9.1 Fixtures, fittings and measures

Notwithstanding the other provisions of the Contract, PSA 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 PSA 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 PSA. Such fixture or fitting shall be the property of PSA.

9.2 Notification to Customer

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

10. **INSPECTION AND WORKS**

PSA is entitled to conduct any inspection of or any works to the Facilities which is required, in PSA'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. PSA 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 PSA.

11. **WORKING HOURS**

The Services/Facilities shall be provided by PSA during the normal working hours stipulated by PSA. PSA 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 PSA Terminal immediately upon completion of the discharge/loading of the Goods or at any time as deemed necessary by PSA.

13. **CUSTOMER'S REPRESENTATIVE**

13.1 PSA's approval

PSA may grant approval for any one or more persons authorised by the Customer to deal with PSA, 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 PSA 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

PSA 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 PSA and the Customer shall absolve PSA, its employees and agents in respect of such Claim and shall indemnify PSA, its employees and agents in respect of such Claim.

14. **ACCESS TO AND PRESENCE AT PSA TERMINALS**

Except with the written permission of PSA, or as evidenced by any permanent or temporary pass or permit issued by Transport Canada, subject to such terms and conditions as may be imposed by PSA, all persons or property shall only enter or exit any PSA Terminal through entrances or exits or means designated by PSA for that purpose. PSA has the right to deny entry/exit to any PSA 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 PSA Terminal and no Vessel shall emit smoke, soot, ash, grit or oil beyond levels deemed as reasonable by PSA at any PSA Terminal.

16. **PAYMENT FOR SERVICES OR FACILITIES**

16.1 Charges and other sums

In consideration of the provision of the Services/Facilities by PSA, the Customer shall pay to PSA all charges and other sums which shall be imposed by PSA under the PSA Halifax LP published Schedule of Rates and Charges 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 PSA Halifax LP published Schedule of Rates and Charges or under the Contract, as the case may be; and
 - (ii) recoverable against the Goods and any other property delivered by the Customer to PSA under any other contract made between PSA and the Customer.
- (b) PSA 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 PSA subject to the terms and conditions provided in the PSA Halifax LP published Schedule of Rates and Charges.
- (c) Any complaint in relation to invoices, in order to be valid, must be notified in detail by registered letter within five working days after receipt of the invoice. No cause, such as e.g. filing a complaint, exempts the Customer of its payment obligation.
- (d) The Customer shall furnish security for a sum and of a form approved by PSA for the prompt and proper performance and observance by the Customer of the Contract (including without limitation the obligation to pay the Contract Sum).
- (e) The sums due from the Customer or any of its related corporations to PSA or any of its related corporations may be deducted from any sum due from PSA 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(e)**.
- (f) Notwithstanding the period for payment stipulated pursuant to **Condition (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 PSA 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.

- (g) Without prejudice to the generality of **paragraph (f)** above, if due to any reason whatsoever (except the default of PSA) the Customer fails to pay the Contract Sum on or before the due date for payment referred to in **paragraphs (a)(i), (d)** and/or **(f)** above:
- (i) PSA 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 PSA 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 PSA Halifax LP published Schedule of Rates and Charges 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.
- (h) In case of default of payment (due date + 1 month) or deterioration of the Customer's financial situation, PSA may at it's choice, (i) suspend the services or (ii) shorten the payment term agreed between Parties or (iii) request a guarantee before delivering any further service as a security for the payment of invoices. The aforementioned guarantee can, at PSA's option, take the form of an advance, a security by the parent company or a third party, an (un)conditional and irrevocable bank guarantee, and/or the payment of a deposit on PSA's account. If the Customer fails to deposit or pay this guarantee, PSA may terminate or suspend the Agreement in accordance with article 2 of these Conditions.
- (i) Time shall be of the essence for the purposes of this General Condition.
- 16.3** Goods to be free of third party charges or sums
- 16.3.1** The Customer shall ensure that the Goods are delivered to PSA free of any charges or sums due to third parties including any freight, port charges, taxes, duties, contributions, fines and any other costs.
- 16.3.2** PSA shall be entitled to refuse to take delivery of any Goods in respect of which PSA is not satisfied that all such charges and sums have been paid.
- 16.3.3** PSA 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.
- 16.4** Cost of professional services
- If PSA, 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 PSA in respect of such services, proceedings and measures shall be borne by the Customer.
- 16.5** Customer's liability
- Notwithstanding that PSA may have taken delivery of the Goods, the Customer shall be liable for such unpaid charges and sums and shall indemnify PSA, its employees and agents against any Claims against PSA, 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.
- 17. RIGHTS OVER CONTAINERS, GOODS AND VESSELS**
- 17.1** Right of lien and retention
- 17.1.1** PSA shall have the right of lien and retention over all property (including Containers and Goods) and all sums (including any sums collected by PSA from third parties on behalf of the Customer) and regardless of whether these amounts pertain directly to the goods and/or containers withheld) and all documents which PSA shall now or hereafter hold of or for the Customer or which is now or hereafter due to the Customer (collectively, the "Collateral"), to secure the payment of the Contract Sum and the discharge of all liabilities of the Customer to PSA under the Contract or at law.
- 17.1.2** In the exercise of PSA's right of lien and retention, PSA shall be entitled to seize and detain the Collateral until the Contract Sum and all other liabilities of the Customer to PSA under the Contract or at law are fully paid.
- 17.1.3** In addition to PSA's right of lien and retention, the Customer hereby grants in favour of PSA a security interest in all of its right title and interest in and to the Collateral as security for the payment of the Contract Sum and all other liabilities of the Customer to PSA.
- 17.1.4** PSA's lien and the security interest referred to in Condition 17.1.3 above, shall each have priority over all other liens and claims in respect of the Collateral and Customer hereby postpones and subordinates all liens, claims and security in and to the Collateral (the "Customer Liens") to PSA's lien and to PSA's security interest and, to the fullest extent permitted by law, Customer hereby assigns

and sets over to PSA all Customer Liens which, for greater certainty shall include all liens arising pursuant to the Canada Shipping Act, Maritime Liability Act, and all other applicable legislation.

17.2 Power to dispose or otherwise deal with Containers and Goods remaining in custody

17.2.1 If the Collateral or any part thereof is not removed from the Facilities within the period stipulated by PSA under the Contract or if the Customer fails to pay to PSA the Contract Sum when due for any reason, PSA may dispose of the Goods by sale or in such other manner as it thinks fit in accordance with the requirements of applicable laws, Provided that in the case of a hazard or an emergency or if the Collateral or any part thereof is of a perishable nature PSA may direct or effect their removal or disposal immediately or within such shorter period as PSA deems fit in accordance with the requirements of applicable laws.

17.2.2 PSA shall render the surplus proceeds of sale (after deducting payments of the any and all sums due to PSA, including the Contract Sum, and any other sums due to third parties payable by PSA in relation to the Collateral 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 PSA, whereupon all rights to the same by such person shall be extinguished. If the proceeds of sale of the Goods by PSA pursuant to this condition is insufficient to satisfy in full any claim of PSA under the Contract, under any other contract made between PSA and the Customer or at law, PSA shall be entitled to recover the balance from the Customer as a debt in any court of competent jurisdiction.

17.2.3 PSA expressly reserves all rights, powers and remedies available to it at law or in equity including, without limitation under or pursuant to the Personal Property Security Act (Nova Scotia), the Warehouseman's Lien Act (Nova Scotia) or any other applicable legislation and in addition to the remedies set forth therein or otherwise in this Contract, PSA may exercise one or more of the following rights, powers and remedies, which rights, powers and remedies are cumulative:

- (a) to appoint by instrument in writing any person or persons to be a receiver of all or any portion of the Collateral;
- (b) to apply to a court of competent jurisdiction for the appointment of a receiver for all or any portion of the Collateral; and
- (c) to retain the Collateral in satisfaction of the Contract Price and all other liabilities and obligations of the Customer to PSA under the Contract or at law.

17.2.4 To the extent permitted by law, the Customer waives all rights to receive any notice from PSA or copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of PSA's right of lien under these Conditions.

17.3 Power to distraint for non-payment of Contract Sum

17.3.1 If the Customer fails to pay the Contract Sum in accordance with the Contract, PSA may, in addition to any other remedy, available at law or equity, distraint 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.

17.3.2 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, PSA 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.

17.3.3 PSA expressly reserves all rights, powers and remedies available to it at law or in equity including, without limitation under or pursuant to the *Canada Shipping Act*, the *Marine Liability Act*, the *Federal Courts Act* (Nova Scotia), or any other applicable legislation.

18. TRANSFER OF RIGHT OR INTEREST IN GOODS

18.1 PSA not bound

18.1.1 PSA 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.

18.1.2 The Customer shall be liable for all Claims arising from any refusal of PSA to recognise or to be bound by the intended transfer of ownership or other interest in the Goods and shall indemnify PSA, its employees and agents in respect of such Claims.

18.2 Disputes

18.2.1 If there shall be any dispute between PSA and the Customer or between PSA 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, PSA shall be entitled to detain the Goods until the dispute is resolved by the competent court or otherwise settled.

18.2.2 PSA 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 PSA's satisfaction

18.3 Responsibility of Customer

Notwithstanding the transfer of any right or interest in the Goods, until and unless PSA 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.

18.4 When transferee deemed to be Customer

Upon PSA'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.

19. REMOVAL OF GOODS

Notwithstanding the other provisions of the Contract, PSA may require the Customer to remove any Goods at any time by giving fourteen days' prior notice or shorter notice (as determined by PSA) for perishable Goods. The Customer shall remove all Goods from the Facilities upon expiry or termination of the Contract.

19.1 No liability

PSA shall not be liable for any Claim arising from the removal, disposal, destruction and intermediate storage of the Goods and the Customer shall indemnify PSA, its employees and agents against such Claims.

20. OPERATING REQUIREMENTS AND PSA RULES

The Customer shall comply, and shall ensure that its employees, subcontractors and agents comply, with PSA'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 PSA in respect of the PSA Terminals and activities therein.

21. FORCE MAJEURE

21.1 Affecting performance or observance by PSA

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

- 21.2** If PSA relies on third parties for the execution of its obligations, the provisions mentioned in clause 21.1 are also applicable if the Force Majeure event occurs to any of these third parties.

22. LIABILITY AND INDEMNITY

22.1 Extent of liability

22.1.1 **EXCEPT WHERE EXPRESSLY AGREED OTHERWISE BETWEEN THE PARTIES:**

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

- (i) **FORCE MAJEURE;**
- (ii) **ANY DELAY OR ERROR IN THE DELIVERY OF THE GOODS TO PSA 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 PSA.**

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

- (i) **ANY SUM LESS THAN**
 - (A) IN THE EVENT OF LOSS OF OR DAMAGE TO ANY CONTAINER: CA\$700.00;**
 - (B) IN THE EVENT OF LOSS OF OR DAMAGE TO ANY CARGO: CA\$ 350.00.**

- (ii) **ANY SUM EXCEEDING CA\$100,000 IN AGGREGATE PER INCIDENT OR SERIES OF INCIDENTS; OR**

- (iii) **ANY DAMAGE TO OR LOSS OF GOODS IN A SUM EXCEEDING:**
 - (A) CA\$50,000 IN THE CASE OF A VESSEL;**

(B) CA\$1,500 IN THE CASE OF A CONTAINER;

(C) IN ALL OTHER CASES CA\$175.00 PER TON OF PACKAGE OR UNIT WEIGHT OF SUCH GOODS; OR

(D) THE REASONABLE COST OF REPAIRS AS AGREED BETWEEN SURVEYOR(S) APPOINTED BY PSA AND THE CUSTOMER,

WHICHEVER IS LESS; OR

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

22.1.2 PSA SHALL NOT BE LIABLE FOR ANY CLAIM ARISING BEFORE DELIVERY OF THE GOODS TO PSA OR AFTER RE-DELIVERY OF THE GOODS TO THE CUSTOMER.

22.1.3 THE LIMITATION OF LIABILITY GRANTED UNDER THIS GENERAL CONDITION 22 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.

22.1.4 THE CLAIM WILL BE VOID IF THE CUSTOMER HAS NOT NOTIFIED PSA 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 PSA 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.

22.1.5 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.

22.2 Personal liability

NOTWITHSTANDING THE OTHER PROVISIONS OF THE CONTRACT, NO MATTER OR THING DONE AND NO CONTRACT OF ANY KIND ENTERED INTO BY PSA AND NO MATTER OR THING DONE BY ANY EMPLOYEE OR AGENT OF PSA OR ANY OTHER PERSON WHOMSOEVER ACTING UNDER THE DIRECTION OF PSA 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.

22.3 Reasonableness of Limitation/Non-Excludable Liability

THE CUSTOMER EXPRESSLY ACKNOWLEDGES THAT GENERAL CONDITION 23 SATISFIES THE REQUIREMENTS OF REASONABLENESS NOTING THAT NOTHING IN THE CONTRACT SHALL EXCLUDE OR IN ANY WAY LIMIT PSA'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.

23. DAMAGE TO PSA TERMINAL OR OTHER PSA PROPERTY

If any damage is caused to any PSA Terminal or other property arising out of the provision of the Services/Facilities, PSA 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, shall be borne by the Customer.

24. CUMULATIVE RIGHTS AND REMEDIES

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

25. INSURANCE

The Customer shall effect adequate insurance of the Goods for so long as they remain at any PSA Terminal, except where expressly agreed otherwise between PSA and the Customer. Customer shall, at PSA's request, furnish proof of such insurance.

26. PERSONAL DATA PROTECTION

26.1 Parties recognize and accept that if a party processes personal data as defined in Regulation EU 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "GDPR") relating to any of the other party's directors, employees, independent contractors or agents of the other party, it shall do so in strict adherence to the GDPR.

26.2 Furthermore, both Parties warrant and undertake that they will duly observe all relevant obligations imposed upon it by applicable data protection laws, regulations and best practices in this respect, whereby the GDPR shall be considered the lowest standard.

26.3 Any such processing activities will be limited to the performance of the services or delivering the goods under the agreement to which these Conditions apply, or as specifically authorized by PSA in writing. In this respect, Customer expressly represents and warrants that: (i) it shall take suitable technical and organizational measures to protect and secure personal data. More specifically, Customer shall protect personal data against destruction, whether inattentive or deliberate, loss, forgery, unauthorized disclosure or access and against any form of unlawful processing. Customer shall provide PSA with a description of the security measures taken; (ii) the systems used by Customer for automatic processing of, inter alia, personal data are in accordance with the requirements for consultation and updates of the personal data by the subject as defined in the applicable data protection law(s) and, more in particular, the GDPR; (iii) in case personal data is processed by Customer, such processing shall be done in accordance with the provisions of the agreement to which these Conditions apply. Customer confirms that the processing of such personal data by Customer shall be fully in accordance with the applicable data protection laws in the countries where personal data is being processed; and (iv) it shall restrict data access to persons requiring such access to perform the tasks

allotted to them by Customer in performance of the agreement to which these Conditions apply. Customer shall explicitly inform its staff, and any persons working under its control, of the provisions of the applicable data protection laws on privacy protection in relation to the processing of personal data.

26.4 The disclosure by Customer of personal data to third parties, by whatever means, shall be prohibited, except where it is imposed by, or by virtue of, the law, or in case the prior written and informed approval has been obtained from PSA. Customer shall ensure that all its staff and persons authorized to process personal data have committed themselves to obligations of confidentiality no less onerous than those set out in Clause 6, or are under an appropriate statutory obligation of confidentiality.

26.5 Customer shall, unless and to the extent prohibited by applicable law, give PSA written notice as soon as possible upon becoming aware of any breach of this article or of any applicable data protection law, and in no event later than twenty-four (24) hours after the occurrence of such event. Customer shall take all steps necessary to investigate and prevent its recurrence. PSA, at its sole discretion, shall determine (in accordance with applicable data protection law) whether and when to notify any data subjects or data protection authorities regarding a breach. In such case, PSA may, without prejudice to its other rights and remedies, immediately suspend the transfer of any personal data to Customer, require Customer to immediately return all personal data at no cost to PSA and perform a root cause analysis of the breach and its direct and indirect consequences. Customer shall, at its own initiative but in close consultation with PSA, take any and all appropriate measures in order to minimize the impact such a breach may have upon PSA.

26.6 Customer acknowledges that the obligations of this article are essential and that any violation thereof could seriously harm PSA's interests and reputation, and may moreover have a significant (financial) impact on PSA and its subsidiaries and affiliates. Therefore, Customer shall be liable for any damages attributable to any failure on its part to comply with the provisions of this article and/or applicable law (including in particular the GDPR), irrespective of the limitations of liability set forth in the agreement to which these Conditions apply.

The PSA Group Data Policy and the PSA Group Data Governance Standards concerning the processing of or the access to any data of PSA by the Customer, apply to and form an integral part of these General Conditions and any agreement between PSA and the Customer.

27. IT SECURITY, DATA PROTECTION AND CONFIDENTIALITY

27.1 The following information ("PSA Data"): (i) the existence, subject matter and content of any agreement, offer or other document to which these Conditions are applicable and (ii) any information (in whichever form; whether about

- PSA or about any other subject) that is obtained by the Customer as a result of these Conditions and of any agreement, offer or other document to which these Conditions apply, will be considered confidential.
- 27.2** The Customer will treat the PSA Data referred to in clause 27.1 as confidential and will not disclose this information or any part of it without the explicit prior written consent of PSA. The Customer will procure that its affiliated companies and it's as well as it's affiliated companies' directors, employees, officers and will comply with this obligation.
- 27.3** The following actions will not constitute a breach of the obligation set out in clause 27.2: (i) the disclosure by the Customer in the event of a judicial and/or arbitral procedure initiated by one party against the other, to the extent that disclosure is strictly necessary for the procedure, and (ii) disclosure if and to the extent that it is strictly necessary for the Customer to comply with its legal or regulatory obligations. In the latter case, the Customer will consult with PSA, in so far as reasonably possible, prior to complying with this obligation.
- 27.4** Customer explicitly acknowledges that PSA reserves any and all rights regarding the data collected and / or generated during the execution of any agreement, offer or document to which these Conditions apply.
- 27.5** Parties agree that all intellectual property rights regarding PSA Data or other data, obtained by Customer from PSA during the Project, remain with PSA, and that all intellectual property rights regarding the confidential information or other data, obtained by PSA, either from the Customer or otherwise under the provision of services and/or the delivery of goods to which these Conditions apply, remain with or become the sole property of PSA.
- 27.6** It is explicitly forbidden for the Customer to exploit PSA's Data commercially.
- 27.7** Furthermore, Customer undertakes to:
- 27.7.1** handle and use all PSA Data and digital services, to which it has access, responsibly and in compliance with all applicable laws and regulations, in a manner consistent with the highest level of ethics and integrity;
- 27.7.2** take all measures that a reasonable and prudent entity would take to ensure that all PSA's Data is protected at all times from unauthorized access or use by a third party or misuse, damage or destruction by any person;
- 27.7.3** provide protective measures for PSA's Data that are no less rigorous than accepted industry standards, such as but not limited to GIT security standards and commensurate with the consequences and probability of unauthorized access to, or use, misuse or loss of, the customer data: and
- 27.7.4** without limiting clauses 27.7.1, 27.7.2 or 27.7.3, comply with all security regulations or procedures or directions as are specified in the agreement to which these Conditions apply or given by PSA from time to time regarding any aspect of security of, or access to, PSA's Data, material or premises.
- 27.8** If Customer becomes aware of any actual or suspected:
- 27.8.1** action taken through the use of computer networks that result in an actual or potentially adverse effect on Customer's information system and/or PSA Data residing on that system ("**Cyber Incident**"); or
- 27.8.2** any other unauthorized access or use by a third party or misuse, damage or destruction by any person ("**Other Incident**"), Customer must: (i) notify PSA in writing immediately (and no longer than 12 hours after becoming aware of the Cyber Incident or Other Incident); and (ii) comply with any directions, considered by the industry as reasonable, issued by PSA in connection with the Cyber Incident or Other Incident, including in relation to: (iii) obtaining evidence about how, when and by whom PSA's information system and/or the customer data has or may have been compromised, providing it to PSA on request, and preserving and protecting that evidence for a period or up to 12 months; (iv) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and (v) preserving and protecting PSA Data (including as necessary reverting to any backup or alternative site or taking other action to recover customer data).
- 28. 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 PSA against any fines, penalties, losses, costs or expenses incurred by PSA in respect of any non-compliance with such laws, rules and regulations.
- 29. 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 PSA's prior written consent.
- 30. CHANGE OF CONTROL**
- 30.1** If:
- 30.1.1** the Customer or any party controlling the Customer is or has been involved in any mergers & acquisitions activity with a third party (i.e. (i) the Customer or any party controlling the Customer merges or enters
- 30.1.2** the Customer or any party controlling the Customer is or has been involved in any partnership, consortium, liner conference or strategic alliance with a third party, or any other transaction with a third party of which the purpose and/or the consequence is the pooling of resources and/or the integration of operations
- then:
- 30.1.3** the terms of these Conditions and/or of any agreement to which these Conditions apply will not in any way be invoked or applied to the benefit of such third party without the prior written consent of PSA; and
- 30.1.4** the terms of these Conditions and/or of any agreement to which these Conditions apply, will prevail over any conflicting terms and/or conditions agreed by such third party
- 31. CAPACITY OF THE PARTIES**
- The relationship between the parties will in no event be considered a partnership, a joint venture or any other association between the parties, nor will one party be considered the agent or employee of the other.
- 32. CONFIDENTIALITY**
- 32.1** No Party shall disclose to any other person any information related to the Contract without the prior consent of the other Party.
- 32.2** Notwithstanding **General Condition 31.1**, 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.
- 33. 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.
- 34. COMMUNICATION**
- 34.1** Other forms of writing ("Data Message").
- Where the Contract requires any notice or information to be in writing, that requirement is also met by electronic mail or Forecast_Tideworks data available as part of PSA Halifax Terminal Operating System.
- 34.2** Acknowledgement of receipt
- Except where expressly agreed otherwise, PSA, its employee or agent is deemed to have received a Data Message when it acknowledges receipt by any communication in writing by PSA, its employee or agent sufficient to indicate to the sender that the Data Message has been received.
- 34.3** Service
- 34.3.1** Subject to **Conditions 33.1 to 33.2** (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.
- 34.3.2** Notwithstanding the provisions of **General Condition 33.3.1**, PSA may in its absolute discretion where PSA 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 PSA Terminal facility or online at the FORECAST home page.

35. CONSENT OR WAIVER

No consent or express or implied waiver by PSA 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 PSA 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 PSA contained in the Contract or at law.

36. 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

35.1.1 The tribunal shall consist of:

(a) three (3) arbitrators to be appointed pursuant to Article 11(3)(a) of the UNCITRAL Model Law on International Commercial Arbitration as set out in the First Schedule to the IAA; or

(b) where the IAA does not apply, three (3) arbitrators, one (1) to be appointed by each Party and the third arbitrator to be appointed by the President for the time being of the SIAC.

35.1.2 The language of the arbitration shall be English.]

35.2 Notification of award

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 30.3**, shall be in all respects as operative and effective as if the same were its office.

37. 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 PSA and the Customer insofar as such terms and conditions shall remain unfulfilled or relevant.

38. STAMP DUTY

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

39. AMENDMENT

PSA reserves the right to change these Conditions unilaterally at all times in accordance with any changes in its commercial policy and the economic and legal necessities. The new Conditions will enter into force immediately upon being notified to the Customer. Changes will apply to offers already made and agreements already concluded.

40. OFFERS

All offers made by PSA are noncommittal, unless explicitly indicated otherwise. PSA is only bound by an order after such order has been confirmed in writing by PSA.

41. REPRESENTATIONS AND WARRANTIES

41.1 The Customer represents and warrants that (i) it is a corporation duly incorporated and validly existing under the laws of its country of incorporation and has full power, authority and legal right to carry on its business and to enter into any agreement, offer or other document to which these Conditions are applicable and (ii) any provision of services and/or delivery of goods to which these Conditions are applicable does not and will not conflict with any law, regulation, judgement, order, authorisation, agreement or obligation applicable to it or with any agreement to which it is a party (such as exclusivity commitments).

41.2 The Customer acknowledges that by entering into its agreement with PSA, it has not relied on any express or implied representation, warranty or other assurance (except those specifically set out in writing in the agreement) made by or on behalf of PSA before the entering into of the agreement.

41.3 The Customer represents and warrants that:

- (a) It is not a Blocked Party;
- (b) It will not procure services from PSA for or on behalf of an entity, individual, or vessel that is a Blocked Party, for the avoidance of doubt including without limitation vessel owners, operators, managers, and charterers, and services relating to the transport from, to, or through the Halifax Port of goods to or from a Blocked Party;
- (c) It will not procure from PSA services in support of the exportation or reexportation to, or importation from, Russia, Belarus, or the Crimea, Luhansk People's Republic ("LNR"), or Donetsk People's Republic ("DNR") regions of any goods if the underlying export, reexport, or import would be in violation of Sanctions and Export Controls;

- (d) It has informed PSA as to whether it is a Sectorally Sanctioned Party and whether it will procure services from PSA for or on behalf of an entity, individual, or vessel that is a Sectorally Sanctioned Party; and
 - (e) It will comply at all times with Sanctions and Export Controls, and will not take any action that causes PSA to violate or become exposed to adverse consequences under Sanctions and Export Controls, in case whereof it will hold PSA harmless for any liability whatsoever.
- 41.4** PSA may suspend its services with immediate effect and without liability if, in PSA's sole discretion, Customer breaches any of the foregoing representations and warranties or PSA's continued performance of this Agreement may breach or expose PSA to adverse consequences under Sanctions and Export Controls.

42. GOVERNING LAW

42.1 The Contract will be governed by, and construed in all respects in accordance with, the laws of Nova Scotia.

42.2 The Customer hereby irrevocably agrees for the benefit of PSA that the courts of Nova Scotia 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 41.2** shall limit the right of PSA 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.

43. SEVERABILITY

43.1 In the event that any words, phrase, clause, sentence or other provision of the Contract shall violate any applicable statute, ordinance or rule of law in any jurisdiction in which it is used, such provision shall be ineffective to the extent of such violation without invalidating any other provision of the Contract.