

**PENANG PORT SDN BHD**  
**TERMS AND CONDITIONS OF BUSINESS**

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## PREAMBLE

### Conditions of Business Offer

- A. Penang Port Sdn Bhd (“PPSB”) is authorised and licensed by Penang Port Commission (“PPC”) to provide, manage, operate and maintain adequate and efficient services and facilities to all Port Users (as herein defined below) at Port of Penang at competitive prices.
- B. This Terms and Conditions of Business (“BTC”) shall be read, taken and construed as part of the contract or agreement entered with PPSB and govern any transaction for the usage of the Port Services and/or Facilities (as herein defined below) offered and provided by PPSB to the Port User.
- C. The Port User is deemed to accept PPSB’s offer for the Port Services and/or Facilities:
  - (a) upon giving notification to PPSB on its intention to use Port Services and/or Facilities at the Port (as herein defined below); or
  - (b) upon the Port User entering into any business or transaction with PPSB whether by agreement or otherwise.

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## PART I

### TERMS OF BUSINESS OFFER

#### 1.0 Standing Offer

- 1.1 This BTC as notified in PPSB's website (which can be downloaded) or through hard copy distributed by PPSB to the Port User or by any manner deemed appropriate by PPSB, shall constitute a standing offer upon which PPSB makes its Port Services and/or Facilities available to the Port User (hereinafter known as "**Standing Offer**").
- 1.2 The Standing Offer shall be deemed to be accepted either upon:
- (a) receipt of notification or application by the Port User to PPSB of the intention to use and/or engage any of the Port Services and/or Facilities at the Port as provided or made available by PPSB; or
  - (b) the Port User entering into any Business (as herein defined below) or transaction with PPSB whether by agreement or otherwise.
- 1.3 For the avoidance of doubt, PPSB shall have the right to decline the Port User's request for the Port Services and/or Facilities or any part thereof by providing a written notice to the Port User but without any obligation to assign any reasons whatsoever.

#### 2.0 Definition and Interpretation

- 2.1 The following words and expressions shall have the meaning ascribed to them below except where the context otherwise requires in this BTC:
- 2.1.1 "**Act**" means Penang Port Commission Act 1955 and Ports (Privatisation) Act 1990 including but not limited to, the rules, regulations and by-laws made and enacted thereunder, including any amendments made thereto.
  - 2.1.2 "**agent**" means unlicensed agents, shipping agents, representatives, brokers, freight forwarders, hauliers, persons acting in their capacities as total logistics providers, direct and indirect subcontractors and their respective servants, agents and/or representatives.
  - 2.1.3 "**Applicable Law**" means all laws, rules, regulations, by-laws, guidelines, codes of practice, standard operating procedures, directions by the Appropriate Authority, and international conventions ratified and adopted by Malaysia which are applicable to the Port, Port Services and/or Facilities, and port activities in general, including any amendments thereto.
  - 2.1.4 "**Appropriate Authority**" means any one or more of the following:
    - i. Free Zone Authority,

- ii. any Malaysian governmental agency, office, department, authority or municipality at federal or state level;
  - iii. any court of law, minister or any government-appointed commission or delegate;
  - iv. any provider of public utilities or related services whether or not government owned or controlled; or
  - v. any other governing authorities.
- 2.1.5 **"Business"** means any business transaction in relation to operating, managing, maintaining and providing Port Services and/or Facilities.
- 2.1.6 **"Cash Account Holder"** means the Port User as the main person designated and authorized to transact business on behalf of an account which money transactions are recorded.
- 2.1.7 **"cargo"** or **"cargoes"** means livestock, minerals, wares, vehicles and merchandise of every description whether containerized or otherwise for direct delivery, storage within the port premise or for transshipment in whole or in part thereof, and includes any passenger luggage and effects.
- 2.1.8 **"container"** or **"containers"** means any box or article of transport equipment (including tanks, flats and reefers) having a permanent character and being specially designed for the transportation of cargo by one or more modes of transport, without intermediate reloading, and fitted with devices permitting its ready handling particularly its transfer from one mode of transport to another.
- 2.1.9 **"Credit Account Holder"** means the Port User as the main person accountable and responsible to hold the credit account and be responsible for the debt, for paying account balances and able to make changes to the account.
- 2.1.10 **"Customs"** means the Royal Malaysian Customs Department, the governmental agency authorised to (i) collect any tax and duty; (ii) issue compound; and (iii) detain any import and export containers and/or cargoes.
- 2.1.11 **"Dangerous Goods"** means all cargoes defined as dangerous or hazardous by any statute, statutory instrument or order, any regulation or recommendation made by the Government of Malaysia or the Appropriate Authority or by any Applicable Law relating to the handling, storage or carriage of cargo; likewise all cargo which although not so defined, are known to have properties likely to endanger life or property.
- 2.1.12 **"dock"** means basins, locks, entrances, keel-blocks, slipways, quays, warehouses and other works and things appertaining to any dock.

- 2.1.13 **“Event of Force Majeure”** means any one or more of the following:
- i. act of God, act of war, civil war, hostilities or act of terrorists;
  - ii. fire, lightning, explosion, including any water or chemicals or measures used in extinguishing any fire;
  - iii. radiation, contamination or combustion which has caused pollution to the air, water and soil due to any radioactivity, leakage, chemical waste or other hazardous properties not caused by PPSB;
  - iv. vermin, white ants or other rodents, pests and insects;
  - v. act or omission of the Appropriate Authority;
  - vi. natural catastrophes including but not limited to earthquake, floods, subsidence, exceptionally inclement weather, endemic, epidemic or pandemic; or
  - vii. any industrial action or any action taken pursuant to such industrial action, including (without prejudice to the generality of the foregoing) strikes, lockouts, stoppages and restraints of labour, combination of scarcity of labour, labour bans, overtime and work bans and limitations, demarcation disputes, go-slow and work to rule not caused by PPSB.
- 2.1.14 **“Free Zone Area”** means an area declared to be a free commercial zone or a free industrial zone in accordance with Section 3(1) of the Free Zone Act 1990.
- 2.1.15 **“Free Zone Authority”** means an authority appointed in accordance with Section 3(2) of the Free Zone Act 1990.
- 2.1.16 **“goods”** means the cargo or the contents of any container.
- 2.1.17 **“Gross Registered Tonnages”** or **“GRT”** means the volume of space within the hull and enclosed space above the deck of a merchant ship which are available for cargoes, stores, fuel, passengers and crew measured in cubic capacity.
- 2.1.18 **“ISPS”** means the International Ship and Port Facility Security Code which amended Safety of Life at Sea (**“SOLAS”**) Convention (1974/1988) and became mandatorily applicable on 1<sup>st</sup> July 2004 on the following:
- i. ship engaged on international voyages;
  - ii. passenger of the ship including high-speed craft of 500 gross tonnage and above;
  - iii. cargo ship including high-speed craft of 500 gross tonnage and above;
  - iv. mobile offshore drilling units; and

- v. PPSB's facilities serving such ship engaged on international voyages.
- 2.1.25 **"Ledger Account Holder"** means the accounting records in respect of the charges incurred by the Port User under the Port User's name relating to the Port Services and/or Charges.
- 2.1.26 **"master"** means every person, except Pilot having for the time being the command or in-charge of any vessel.
- 2.1.27 **"operator"** means any person who directly or indirectly enters into any arrangement, contract or agreement with PPSB in relation to the transport, storage or distribution of cargoes or containers including break-bulk, liquid bulk and dry bulk cargo or any matter connected therewith and includes without limitation exporters, importers, consignors and consignees thereof and includes, if appropriate, a person who is a shipping line.
- 2.1.28 **"owner"** means when used in relation to:
- i. goods include any consignor, consignee, shipper or agent for the sale, custody, shipping or landing of such goods;
  - ii. container includes any person who is in a lawful and/or legal possession of the container with power to lease or sell the container; or
  - iii. vessel includes any part owner, charterer, consignee or mortgagee in possession of the vessel.
- 2.1.29 **"PPC"** means Penang Port Commission as a corporate body established and incorporated under Penang Port Commission Act 1955.
- 2.1.30 **"Pilotage District"** means an area within the Port and approaches to the port as defined in Section 2 of Penang Port Commission Act 1955.
- 2.1.31 **"passenger"** means any person who travels in or on any vessel, ship or any floating craft and whose name appears in the passenger list of the vessel, ship or floating craft.
- 2.1.32 **"person"** or **"persons"** means corporations whether aggregate or sole.
- 2.1.33 **"Pilot"** or **"Pilots"** means a person employed by PPSB and licensed by PPC pursuant Section 70CA (1) of Penang Port Commission Act 1955.
- 2.1.34 **"Port"** means the Port of Penang within the limits declared under Section 6 of Merchant Shipping Ordinance 1952.

- 2.1.35 **"Port Facility Security Officer"** means an appointed and qualified PPSB officer, designated to facilitate the requirements of the ISPS code, for the development, implementation, revision and maintenance of the port facility security assessment and plan in liaison with the Ship's Security Officers ("**SSO**"), Company Security Officers ("**CSO**") and the Port Area Security Officer ("**PASO**") as appointed by PPSB.
- 2.1.36 **"port premise"** means all or any part of any land, place, structure or building (including but not limited to the container and cargo terminals) in which the Port Services and/or Facilities are provided by PPSB.
- 2.1.37 **"PPSB"** or **"Port Operator"** means Penang Port Sdn Bhd (Registration No.199301028806 (283544-D)) a company incorporated in Malaysia, whereby it has been licensed by PPC to provide the Port Services and/or Facilities, including but not limited to its capacity as the Terminal Manager, Port Facility Security Officer and manager for the port premise.
- 2.1.38 **"Port User"** means the customer, operator, vendor, supplier, importer, exporter, lessee, sub-lessee, tenant, contractor, multimodal transport operator, forwarding agent, freight agent, shipping agent, shipper, owner, part owner, master, charterer, or mortgagee in possession of the vessel including any other third party or persons and their respective representatives, who are engaged in or using any of the Port Services and/or Facilities or having transaction with PPSB in any manner whatsoever.
- 2.1.39 **"Port Services and/or Facilities"** means the port services and/or facilities provided by PPSB in accordance with Clause 4.1.
- 2.1.40 **"Rates"** or **"Tariff"** means dues and charges applicable for the Port Services and/or Facilities as set out in **Schedule A**, which may be revised from time to time.
- 2.1.41 **"Restricted Areas"** means any areas identified by the Appropriate Authority and PPSB to be restricted, within the requirements of Protected Areas and Protected Places Ordinance 1959 (Revised Act 1959), to any unauthorised persons including the Port User, their personnel, invitees, vessel's crew and passengers.
- 2.1.42 **"shipping line"** means any person (including without limitation whether barge operator, shipping companies, ship owners, charterers, consortiums, conference and brokers, including its alliance and affiliates) having any interest in a vessel and may include a person who is an operator.
- 2.1.43 **"Terminal Manager"** means the respective terminal head as may be appointed by PPSB to operate and manage any particular terminal in the Port including his assistant and any other officer acting under or within his authority.
- 2.1.44 **"tanker"** means a merchant vessel designed to transport edible or non-edible liquids or gases in bulk and include such vessels as oil tanker, chemical tankers and gas carriers.

- 2.1.45 **“unprotected cargo”** means where they relate to:
- i. cargo that is packed, stuffed or stowed either in or on a flat rack, u-rack, platform, or placed in an open-side or open-top container or in a container where the bottom is not sufficiently secured;
  - ii. bulk or break bulk or ‘Out of Gauge’ cargo; and
  - iii. in both containerized, bulk and break-bulk cargo, the packing, stuffing or storage is such that the cargo is exposed in such a manner that it will result in their loss in weight, value or quality or in their damage.
- 2.1.46 **“vehicle”** means all kinds of carriage, transport and conveyance excluding any floating craft or craft used or intended to be used into and out of the port premise.
- 2.1.47 **“vessel”** means every description of watercraft, non-displacement crafts capable of being used as a means of transportation on water, barges, lighters and any mechanically propelled ship or boat or any seagoing or inland water craft including any floating objects used in navigation for the carriage of goods or passenger.
- 2.1.48 **“Verified Gross Mass”** or **“VGM”** means the weight of the cargo including dunnage and bracing plus the tare weight of the container carrying this cargo.
- 2.1.49 **“warehouse”** means premises used for warehousing services.
- 2.1.50 **“warehousing services”** means the service of providing space, either open or covered, for the storage, loading, unloading, stuffing, unstuffing of the cargo and/or the container within the Port or port premise.
- 2.1.51 **“wharf”** means any quay, pier, jetty, ramp, landing place, any berthing stations and any wall and building adjoining the foreshore, seabed or river bed at any terminal within the Port which is operated, managed and maintained by PPSB.
- 2.2 In this BTC where the context so admits:
- 2.2.1 words importing the masculine gender shall be deemed to include the feminine and neuter genders;
  - 2.2.2 words importing the singular number shall include the plural and vice versa;
  - 2.2.3 words applicable to natural persons include any body of person, company, corporation, firm or partnership incorporated or unincorporated;
  - 2.2.4 words referring to more than one person shall be construed as a reference to such persons of any of them;



- 2.2.5 headings are for convenience only and shall not affect the interpretation and construction hereof;
- 2.2.6 reference to any party or any other document or agreement shall include its successors-in-title or permitted assigns;
- 2.2.7 any reference to an "amendment" includes any variation, deletion or addition and "amend" and "amended" shall be construed accordingly;
- 2.2.8 any reference to "law" includes any act, constitution, decree, judgment, legislation, order, ordinance, code, regulation, statute, treaty, by-law or other legislative measure, including any amendment, supplemental, revision or replacement thereto from time to time in force in Malaysia; and
- 2.2.9 any reference to "pay" or its cognate expressions includes payment made in cash or by way of bank draft (drawn on a bank licensed to carry on banking business under the provisions of the Financial Services Act 2013 [Act 758] and Islamic Financial Services Act 2013 [Act 759] or effected through inter-bank transfers to the account of the payee giving the payee immediate access to available funds.

### **3.0 Construction and Savings**

- 3.1 In the construction of this BTC, no condition nor any clause or paragraph of any condition shall be taken to derogate from the generality of any other condition clause or paragraph. If the whole or any part of any provision of this BTC is or becomes illegal, invalid or unenforceable for any reason whatsoever (including by reason of any statutory provision or by reason of any decision of any court or any other body or authority having jurisdiction over PPSB and the Port User or the Business), the said provision shall be deemed to be deleted from this BTC and shall not affect any other paragraph which shall remain valid, applicable and enforceable throughout.
- 3.2 All Business conducted by PPSB is subject to the exclusions and limitations of liability set out in Part V and VI. The liability of the Port User and PPSB under this BTC shall be deemed to operate in addition to and in no way derogate from any liability which would have arisen by contract, in tort, by statute or otherwise on the part of the Port User or PPSB.

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## PART II

### PORT SERVICES AND/OR FACILITIES

#### 4.0 Port Services and/or Facilities

4.1 PPSB may provide the following Port Services and/or Facilities to the Port User in accordance with the BTC, including but not limited to:

4.1.1 Any services and/or facilities in relation to the vessels.

4.1.2 Marine services: pilotage and towage.

4.1.3 Any services and/or facilities in relation to the cargo and the container.

4.1.4 Hire of equipment at the port premises.

4.1.5 Terminal services and facilities, which may include any of the following:

- (a) Storage
- (b) Repairing the container
- (c) Inspection of the cargo and/or the container
- (d) Transporting supplies to the vessel
- (e) Supplying fresh water to the vessel
- (f) Supplying power to the vessel
- (g) Fumigating the cargo
- (h) Supplying mechanical equipment and manpower
- (i) Any other services and facilities to be determined by PPSB from time to time

4.1.6 Anchorage area for temporary anchoring and long term anchoring (Lay Up).

#### 5.0 ISPS Code Compliance

5.1 The Port is an ISPS Code Compliance Port and any Port User is required to be fully aware of all the necessary ISPS Code requirements prior to entering into the port area.

5.2 PPSB is not responsible in the event:

5.2.1 Any vessel which has berthed at port that do not comply with ISPS Code are not allowed to berth at the Port and any such vessel detained at PPSB for not having a valid certificate may be detained at the Port until it gets a valid certificate.

5.2.2 Any vessel which calls at any part of the Port but has failed to comply with the ISPS Code, although they may hold a valid International Ship Security Certificate, such vessel may be subject to additional security requirements at a subsequent port of call, leading to delay and possibly denial of port entry.

## 6.0 Berthing

### 6.1 Application for Berthing

- (a) Any Port User who intends to call at the Port shall, as early as possible and in any case not less than **forty eight (48) hours** prior to the Estimated Time of Arrival (“ETA”), provide adequate notice in writing to PPSB of the expected time and date of arrival and supply information relating to such vessel as he may reasonably require. The Port User who supplies such information shall ensure that it is reliable and accurate.
- (b) PPSB shall not be responsible for changes in berthing schedules and delays of the vessel or other vessel arising from inaccurate information provided by the Port User and PPSB shall not be liable for any damage whatsoever resulting therefrom, and the Port User may be penalized in accordance with the Applicable Law and this BTC.
- (c) Notwithstanding the above, PPSB shall have the right to reject any berthing application without assigning any reasons thereto and shall not be liable for any costs and expenses incurred by the Port User due to the said rejection.

### 6.2 Allotment of Berth

- (a) No vessel shall be allocated a berth or berthed or unberthed alongside the Port’s wharf without approval of PPSB.
- (b) The allotment of berth shall be at the discretion of PPSB whereby it has the right to change, vary and amend the order of berthing if PPSB considers it is advisable and reasonable to do so from time to time.
- (c) Notwithstanding the above, PPSB is not responsible in the event where vessel could not be berthed at any of the Port’s wharf and PPSB shall not be liable for any costs and expenses incurred by the Port User due to the said unberthing.

### 6.3 Vessels Berthing, Unberthing Alongside and Anchoring

- (a) The master shall at all material time be and remain in command of his vessel whilst manoeuvring or while laying alongside the wharf or in the port premise and shall take all necessary steps to preserve the vessel’s safety and security at his own risk, cost and expense.
- (b) The master shall ensure and maintain at all material time, that the vessel:
  - i. will be navigated and manoeuvred safely and in compliance with all Applicable Law prevailing and in accordance with PPSB’s operating procedures and safety requirements;
  - ii. will not ground while manoeuvring or laying alongside the wharf;
  - iii. will not break adrift from its mooring;

- iv. will not cause any damage, howsoever occasioned, to the wharf, the port premise, equipment either fixed or portable, fenders, mooring bollards and other property belonging to PPSB or third parties during or arising from the act of manoeuvring or laying alongside;
  - v. will be properly and safely berthed alongside the wharf to the satisfaction of PPSB;
  - vi. will discharge or load its cargo or container safely and with reasonable despatch complying with the requirements of the Applicable Law; and
  - vii. will leave the wharf when so directed by PPSB whom may direct the master of the berthed vessel at any wharf or anchored in the port premise to leave the wharf or the anchored area or shift to a new position at the sole risk and expense of the owner, master, servants or appointed agent.
- (c) Unless authorised by PPSB, no vessel shall:
- i. lay alongside a berth after it has completed loading or discharging or disembarking the passengers;
  - ii. wait alongside a berth for goods; or
  - iii. remain idle.
- (d) A vessel shall be allowed to anchor at the anchorage area when transacting Business with PPSB within any area the Port. If no Business is transacted by the vessel, or upon approval by PPSB, the Port User may request for temporary anchorage. Otherwise, PPSB at his own discretion shall alert the Appropriate Authorities to order the vessel's immediate departure from the anchorage area.
- (e) PPSB will provide without prejudice to the foregoing berthing or unberthing personnel and mooring crew at the Port's wharf to render assistance under instruction from the master of the vessel for the purpose of expediting or casting off the vessel's hawsers and mooring ropes and all cost and expenses incurred thereto shall be entirely borne by the owner, master, servant or their appointed agents without any liability on PPSB (be it delay, loss, injury or damage to persons or property, direct or consequential) arising therefrom.

## 7.0 Pilotage

### 7.1 Navigation in Pilotage District

Every vessel for which pilotage is compulsory as specified by the Appropriate Authority from time to time, shall navigate into the Pilotage District with the assistance of a Pilot or Pilots as may be determined by PPSB.

## 7.2 Requirement to use PPSB's Pilotage Services

Any vessel navigating within the Pilotage District is subject to compulsory pilotage by PPSB with the exception of the following category of vessels:

- i. any vessel below 600 GRT when navigating in the Pilotage District except for vessel above 200 GRT when berthing or leaving any of the Port's wharf;
- ii. any Royal Malaysian naval vessel;
- iii. any fishing vessel;
- iv. any non-self-propelled barge of below 600 GRT when berthing or leaving any of the Port's wharf with tugs assistance;
- v. any vessel that is specifically granted pilotage exemption by the PPC.

## 7.3 Use of Pilotage Services

- (a) Pilotage services in respect of any movement of a vessel shall be deemed to commence when the Pilot has boarded the vessel and to end when he leaves the vessel.
- (b) Any Pilot whilst engaged in any pilotage act shall be deemed to be the servant only of the master or owner of the vessel under pilotage who shall be liable for any injuries or losses suffered by such Pilot while on board the vessel. Neither PPSB nor the Pilot shall be liable for any loss or damage occasioned by any act, omission or default of such Pilot.
- (c) Every Pilot engaged shall reserve the right:
  - i. to enhance the safety level of the vessel while navigating or manoeuvring by requesting additional tug assistance, manpower, etc as he deems fit in accordance with the manoeuvring capability of the vessel;
  - ii. to refuse to continue or undertake the pilotage services by anchoring or otherwise securing the vessel under his conduct as safely as possible, if he is of the opinion that:
    - (aa) vessel is not fit to proceed in her existing condition;
    - (bb) the vessel appears to be overloaded; and/or
    - (cc) due to any other reasons that the Pilot deems fit.
- (d) For the ease of position identification by the Pilot, all vessels equipped with Automatic Identification System or any other system as may be made mandatory by International Maritime Organisation, International Convention for Safety of Life at

Sea 1974 and any other Applicable Law, shall switch on the system while approaching a Pilot station or anchoring at the anchorage area.

- (e) If a vessel having on board a Pilot leads another vessel having no Pilot on board, PPSB shall be entitled to the full pilotage dues as if the Pilot had actually been on board and had piloted that other vessel.
- (f) Any vessel requiring the service of any Pilot shall comply with the Applicable Law including but not limited to the Act and all international conventions ratified by the Government of Malaysia relating to pilotage and pilotage operation including any other direction stipulated by PPSB from time to time for the safe pilotage and convenience of pilotage operation.
- (g) The master of the vessel shall be responsible for any damage to the wharf and to the port premise, equipment, fendering or mooring bollards and other property belonging to third parties, caused during or rising from the act of berthing or unberthing whether by reason of incompetency or negligence of PPSB's officer or Pilot in charge or as a result of insecure or improper mooring of the vessel while lying alongside the Port's wharf and shall hold PPSB fully indemnified against all claims, demands, losses, costs and expenses arising from any damage.

## 8.0 Towage

### 8.1 Requirement to use the Towage Service

Every vessel, requiring towage services for the purpose of approaching or leaving or operating within the Port shall not make use of any towage or other assistance other than that is provided by PPSB.

### 8.2 Use of Towage Services

Towage and assistance in relation to towage of vessels shall only be undertaken by PPSB upon the following terms and conditions:

The towage service shall be deemed to commence when the tug leaves its base and to end when it returns to its base.

- (a) The master and crew of any tug provided by PPSB under Clause 8.1 above whilst performing towage inclusive of escort services, if any, shall be deemed to be the servants of and shall be under the order and control of the master of the vessel receiving the services, and all costs and expenses incurred for the services shall be borne entirely by the master of the vessel receiving the services.
- (b) PPSB shall not be liable to the Port User for any damage, loss, personal injury or death. The Port User shall bear, pay and indemnify PPSB against any damage or loss which it may suffer arising during or in the course of, or in connection with the towage services from any cause whatsoever including but not limited to unseaworthiness, unfitness or breakdown of the tug, its equipment or towing gear,

lack of fuel, stores or speed or otherwise but not including negligence at any time of PPSB, its employees or agents.

- (c) PPSB shall not be answerable for any loss and/or damage whatsoever which may happen or occasioned by any vessel or any cargoes on board the same whilst such vessel is in tow or being assisted by any of the tugs of PPSB or whether arising from any negligence caused by the master or crew as or from any defect or imperfection of PPSB's tugs or machinery or towing gear however occasioned, and the owner of the vessels or of the cargo or container on board the same so towed undertake to bear, satisfy and indemnify all parties against any such losses or damages.
- (d) In the event PPSB employs tugs belonging to other tug owners for the whole or any part of the towage services, the Port User shall not bring any suit against the other tug owners in respect of any matter arising out of such towage services rendered in connection with the towage services.
- (e) This BTC shall remain in force notwithstanding any deviation or interruption or failures in performance of the towage services and whether or not there has been any substitution of tugs.

### 8.3 Barge Services and Hire of Equipment and Cargo Handling Gear

- (a) All goods and merchandise delivered to the Port transported by barge shall be held entirely at the sole risk and expense of the owner and/or his authorised agent who shall be deemed to accept, both for himself and for all other parties interested in such goods and merchandise.
- (b) PPSB shall not be responsible for any loss, damage or delay to such goods or merchandise arising from any act, neglect, default, error in judgment or omission of PPSB and its agent, on board any tug engaged in towing the carrying barge or vessel, or for any defect, unfitness or insufficiency of power of any such tug, or for any act, neglect or default of PPSB and its agent or any other barge or vessel.
- (c) These conditions shall apply although the barge may for any reason have deviated or departed from the intended transit with the goods, and although the goods may have been loaded in the barge with other goods.
- (d) The Port User shall hire the equipment provided by PPSB for the loading and/or discharging of cargo or container at the terminal. For the purpose of this Clause, equipment shall mean cranes, machineries and other equipment to facilitate lifting and transfer of cargo or container from a vessel to a transport vehicle for conveyance out of the port premise and vice versa.
- (e) Where port cranes are hired and goods are required to be raised from or lowered below or over the hatchway of any vessel by the use of such cranes, PPSB shall require the hirer to indemnify PPSB against all risks involved.

- (f) Where PPSB undertakes the hiring of equipment by the Port User, it shall not in any case be responsible for the loss and damage in consequence of but not limited to the following: -
- i. any part of the port cranes or the load attached thereto, colliding with the rigging, spars or other equipment of a vessel, or resulting from the shifting or movement of the vessel, or any parts of its equipment;
  - ii. faulty slinging or improper loading of any cargo or containers by persons other than the employees of PPSB;
  - iii. the vessel having been improperly or securely moored;
  - iv. faulty vessel or vehicles twist-locks or any devices that secure the cargo or container to the vessel or vehicle including faulty cell guide of the vessel that can cause damage to container/equipment;
  - v. faulty devices that secure the cargo to the container;
  - vi. unstable condition or poor stability of vessel or vehicle.
- (g) Cargo handling gear hired from PPSB shall be deemed to be hired on condition that the entire liability rest with the hirer, who shall be required to indemnify PPSB accordingly. PPSB while taking all reasonable precaution that all the gear it provides is in sound and usable condition, shall accept no responsibility for any consequence which may arise to breakage or other unforeseen circumstances occurring during the period of hire.
- (h) PPSB's cranes shall get priority to be used for the operation of unloading and/or loading of the dry bulk vessel. In the event PPSB's cranes are not available, PPSB will give an approval to use the vessel's cranes. The operation of using vessel's crane must comply with the Cargo Performance Indicator ("CPI") which can be obtained from PPSB.

## 9.0 Services and/or Facilities Related to Cargo and Container

PPSB shall provide the following services in relation to cargo and/or container in accordance with the BTC, including but not limited to:

- (a) Cargo and/ or container handling;
- (b) Cranage services;
- (c) Prime mover services;
- (d) Storage facilities;
- (e) Reefer container services; and



(f) Any other services or facilities as may be determined by PPSB from time to time.

## 10.0 Receipt and Delivery of Cargo and Container

- 10.1 The cargo or container owner or its agent shall provide PPSB with all necessary information and instructions including adequate notice relating to the conditions of container and the contents and the cargo which requires special handling and shall further undertake to co-operate fully with PPSB in arranging for speedy receipt and delivery of such cargo and/or container in accordance with the requirements of PPSB, PPC and the Appropriate Authorities.
- 10.2 The delivery of the cargo and/or container shall not be considered to have been made to PPSB until the cargo and/or container have been landed, or disconnected from the ship's gear or PPSB's cranes, excluding restow via wharves. "**Landed**" means landed on any Port's wharf deck, trailer or other vehicle designated for such use by PPSB, which is managed by PPSB or used after obtaining PPSB's prior written permission.
- 10.3 The master, owner or agent of a vessel shall submit a true copy in English language of the inward cargo and/or container manifest in respect of cargo to be discharged or transhipped in the Port to the Appropriate Authority at least **twenty-four (24) hours** before arrival of vessel. Such manifest shall contain all particulars, amongst others, the vessel's gross weight, measurements, marks, numbers and contents of each package of cargo.
- 10.4 The cargo owner or its agent who has shipped cargo including transshipment cargo, shall submit a true copy of the outward manifest certified as being complete, of all cargo, including transshipment cargo, loaded within the Port. The manifest shall be submitted to the Appropriate Authority within **ninety-six (96) hours** prior to the departure of the vessel. It shall contain all particulars, amongst others, VGM, measurements, marks, numbers and contents of each package of cargo.
- 10.5 The following documentation and information for import cargo or inward container shall be presented by the master, owner or its agent prior to the berthing of the vessel:
- (a) A list of all containers to be discharged for subsequent delivery from the terminal upon which, stowage position, holding, temperature (if applicable), commodity, size, type, VGM, status, port of discharge, transport mode and International Maritime Dangerous Goods Code ("**IMDG Code**") shall be shown against each individual container number;
  - (b) A complete and up-dated container stowage plan. The status, together with the respective VGM, shall be shown against the individual container to be handled; and/or
  - (c) A detailed heavy lift or break-bulk and dry-bulk cargo summary showing quantity, weight, measurement, type of cargo, packing, stowage, IMDG Code, special lifting requirements and any other requirements and relevant information.

- 10.6 For outward cargo or container, the owner or its agent shall convey to PPSB prior to the delivery of the cargo and/or container to the terminal, the following particulars, amongst others, name of the vessel, the vessel's call number, container number, commodity size, type, VGM, quantity, port of discharge, port of transshipment, PPSB's commodity code (which can be obtained from PPSB), IMDG Code and holding temperature (if applicable).
- 10.7 Any alteration to the information contained in the documentation after presentation to PPSB and any additional services required by the Port User shall be advised and requested on a prescribed form.
- 10.8 The cargo owner or its agent shall ensure that the cargo whether break-bulk or containerized are properly packed and stowed in compliance with the Malaysian and international safety rules, guidelines, regulations and requirements.
- 10.9 No laden vessel with a grain cargo shall arrive at the Port unless all necessary and reasonable precautions in accordance to the Applicable Law have been taken in order to prevent the grain cargo from shifting. If those precautions have not been taken, the master of the vessel and any agent of the owner who was charged with the loading of the vessel or the sending of the vessel to sea shall each be liable to an offence under the Applicable Law and the owner of the vessel shall also be liable to the same unless he shows that he took all reasonable means to enforce such observance and was not privy to the breach thereof.
- 10.10 The cargo owner or its agent shall warrant that the weight of the cargo in the container does not exceed the load limit as prescribed by Convention for Safe Container 1972 ("CSC") plate of the respective container used and it must be sealed before trucking into the port premise.
- 10.11 The cargo owner or its agent shall be responsible to PPSB for any loss, damage, claim or expense arising from inaccurate, incomplete or an absence of information relating to the weight and the nature of the cargo or container's contents, or from incorrect stowage of the container where the Port User has previously approved the order of loading. PPSB shall be entitled at any time and at the expense of the Port User to reject any cargo or container not conforming to the above requirements.
- 10.12 The Port User shall provide at its own cost all materials necessary for securing the container and/or cargo on board the vessel. PPSB shall not be responsible for the security or damage of any lashing materials which may be left at the port premise from time to time.
- 10.13 The labour supplied on board the vessel for discharging and loading shall be under the control and superintendence of the vessel's officers.
- 10.14 PPSB shall not be held responsible or liable in any manner whatsoever for any losses or damages occurred to the Port User's transport while still in the port premise which has been considered delivered but not taken out of the port premise.
- 10.15 The cargo shall not be deposited on any PPSB's quay before the vessel is ready to receive them nor in any roadway, passage or port premise without the permission of PPSB.

- 10.16 The owner, master or agent of every vessel shall give written notice to PPSB of his intention to discharge or load before such work is commenced. Cargo discharged without permission of PPSB being first obtained shall not be deemed to be in the custody of PPSB and be held responsible for any loss or damage that may result to such cargo from any cause whatsoever.
- 10.17 PPSB shall not be responsible for delay in the shipment, discharge or delivery of cargo owing to abnormal conditions beyond its control nor under any circumstances shall it be liable in respect of any trading or consequential loss due to delay howsoever caused.
- 10.18 PPSB shall not be liable for, amongst others breakage, loss of contents, damage or complete destruction of unprotected cargo or containers or any spillage, leakage or deteriorating in condition of any cargo or container.
- 10.19 PPSB shall not be responsible for failing to note any damage or defect to any cargo and container including its contents upon discharge, receipt or handling of such.
- 10.20 PPSB shall have the absolute discretion to reject or refuse the landing or arrival of or to receive any cargo or container which it considers detrimental to be the security or safety of PPSB or of all other cargo or containers, or property or things within the port premise.
- 10.21 PPSB shall be entitled to inspect any book, voucher or other documents including but not limited to all bills of lading, consignment notes, freight lists, manifest of cargo which may be required in connection with the landing or shipping of cargo relating to any vessel, vehicle, container or cargo in the Port.

#### 10.22 Transshipment and Re-Export

Transshipment and re-export rates shall apply only to the cargo and container which fulfils the following conditions:

- i. the transshipment cargo and container shall be declared for transshipment or re-export at the Port at least **twelve (12) hours** prior to the arrival of the discharging vessel and subject to the approval of PPSB;
  - ii. the transshipment cargo and container shall be discharged by the discharging vessel onto the Port's wharf and remain in the custody of PPSB until it is transhipped or re-exported; and
  - iii. the transshipment cargo and container shall be reshipped by PPSB via another vessel at the Port's wharf.
- 10.23 PPSB may, on application by the Port User, allow transshipment cargo and container received from rail or road for onward transshipment by sea via the Port's wharf or received from sea for onward transshipment by rail or road via the Port's wharf be charged transshipment and re-export rates.

## **11.0 Acceptance of Cargo or Container Not a Proof of Acceptance in Good and Undamaged Condition**

- 11.1 Any acceptance of cargo or container by PPSB, its employees, servants, or agents, shall not constitute a proof that the cargo or container was accepted in a good and undamaged condition or that the container, the packing and the securing materials used for the container conformed with the Applicable Law.
- 11.2 In any event, the Port User shall at all time ensure that all cargo and/or container are safe and secured in accordance with the prescribed procedures and PPSB shall not at any cost be responsible for such damage or loss thereto.
- 11.3 PPSB may notify the Port User in a practicable time of any damage or defect to the cargo or container, the packing and the securing materials used for the container, which is apparent at the time of delivery to the Port User, hence the Port User shall not have any right to make any claim against PPSB by reason of the absence of any notification on the state or condition of the cargo or container .

## **12.0 Handling of Cargo and/or Container**

- 12.1 PPSB shall be entitled to:
- (a) retain possession of any cargo and/or container passing through or stored in the Port; or
  - (b) retain possession of cargo and/or container, or prohibit any vessel from leaving the Port, until payment of all charges in respect of such cargo and/or container or vessel is made to PPSB.
- 12.2 PPSB shall be entitled to inspect all bills of lading, consignment notes, freight lists, cargo manifests and any other documents whatsoever relating to the vessel, vehicle, cargo or container that has used, is using, will be using, or is in the port premise for any activities and services. Any of the PPSB's authorised personnel may board any vessel or enter any vehicle in the Port, to inspect such documents.
- 12.3 The master of any vessel shall at all times obey the Appropriate Authority's direction and/or instruction to shift or remove the vessel without compensation.
- 12.4 PPSB shall have the right to refuse rendering the Port Services and/or Facilities to the Port User by way of written notice in the event that PPSB is of the view that there exists situation which may prevent or hinder safe handling, storage or transport of the cargo and/or the container. Thereafter, the Port User shall remove the cargo and/or the container from the port premise.
- 12.5 The Port User shall bear all costs and expenses incurred by PPSB due to cancellation of the Port Services and/or Facilities by the Port User and PPSB shall have the right to charge all fees and charges for the Port Services and/or Facilities ordered in the event that the Port User makes any cancellation.

12.6 The cargo, container and all documents related to the cargo and/or the container shall be subject to PPSB's right to exercise lien for any outstanding amount due and payable to PPSB.

### **13.0 Discharging and Loading**

13.1 No cargo or container which are likely to be damaged by rain water shall be loaded or discharged when raining. The master of the vessel shall ensure that all hatches are closed when raining.

13.2 Any cargo or container discharged or loaded through loading arms or flexible hoses for liquid bulk cargo; vessel's crane or mobile crane for break bulk cargo; conveyor, pipeline or conventional methods for dry bulk cargo; shall mean that even if installed with the assistance of PPSB, it shall at all times be under the sole responsibility, supervision and control of the owner, master, land or sea transporter, contractor or any person who is in any way connected to the discharge or loading of the cargo or the container and is responsible for enforcing the proper procedures and precautions for the discharging or loading of the cargo or the container.

13.3 The service of fixing or unfixing such loading arms and or flexible hoses, such cranes, such pipeline, and or conveyor and or conventional methods by PPSB shall not render PPSB answerable for any loss, damage, injury or death caused during the discharging or loading of the cargo or the container.

13.4 Any Port User who makes any request to re-arrange the position of any cargo or container discharged from the vessel and Landed (as defined in Clause 10.2) onto a transport vehicle provided by PPSB for delivery, shall bear the costs, expenses and take full risks and responsibility for any loss, damage or destruction that may be occasioned to the cargo or container, in consequent to such re-arrangement of cargo or container original position on the transport vehicle.

### **14.0 Damage During Cranage**

14.1 Where PPSB undertakes the cranage of cargo or container to and from vessels or transport vehicles, PPSB shall not be responsible for any loss or damage in consequence of:

(a) any of the PPSB's cranes or the load attached thereto colliding with the rigging, spars or other equipment of the vessel or resulting from the shifting or movement of the vessel or any of its equipment;

(b) faulty slinging or improper loading of any cargo or container by persons, other than the servants of the PPSB acting within the scope of their employment;

(c) the vessel having improperly or insecurely moored;

(d) any of the cranes or the load attached thereto colliding with the rigging, spars or other equipment of the vessel, or resulting from the shifting or movement of the vessel or any of its equipment;

- (e) faulty vessels or vehicles twist-locks or any devices that secure the cargo or container to the vessel or vehicle including faulty cell guide of vessel that can cause damage to container or equipment;
- (f) faulty devices that secure the cargo to the container;
- (g) unstable condition or poor stability of vessel or vehicle;
- (h) poor cargo stowage or cargo stacked away from the hatch square; or
- (i) any error or inaccuracy or misrepresentation in the declaration by the Port User of the weight, length, width or height of cargo.

## 15.0 Handling of Damaged Cargo and Container

15.1 Damaged cargo and/or container shall be handled in accordance with the following procedures:

- (a) The Port User shall notify PPSB on any known damaged cargo and/or container within **twenty-four (24) hours** prior to the ETA;
- (b) Receipt of the damaged cargo and/or container shall be captured and updated into the Terminal Operating System ("TOS") as "damaged cargo and/or container";
- (c) Thereafter, the Port User shall act diligently and check the TOS and notify PPSB on the required actions to be taken for the purpose of handling of the damaged cargo and/or container;
- (d) The Port User or their authorised representative and PPSB shall jointly inspect and assess the damaged cargo and/or container;
- (e) The Port User shall repair, re-strap or re-condition the damaged cargo and/or container to the satisfaction of PPSB prior to the handling of the same, failing which PPSB may refuse to provide the Port Services and/or Facilities and the Port User shall forthwith remove the damaged cargo and/or container in accordance with PPSB's instruction at the Port User's own costs and expenses; and
- (f) PPSB shall have no obligation to accept the damaged cargo and/or container unless PPSB is of the view (to be decided solely by PPSB) that it can be handled safely based on the available or existing Port's equipment and/or facilities. In the event that special port equipment and/or facilities are required for the handling of the damaged cargo and/or container, the Port User shall notify PPSB in writing and the Port User shall bear all costs and expenses arising therefrom.

## 16.0 Disposal of Dunnage

All stages, dunnage, planks and other articles not provided by PPSB shall, after use in discharging or loading a vessel, be removed by the Port User from the port premise within

**twelve (12) hours** of the completion of the works, failing which PPSB shall remove them at the Port User's costs and expenses.

## 17.0 Right to Inspect Cargo and Container

PPSB shall be entitled at any time, which can be on, before, and/or after accepting the delivery of cargo and/or container, to weigh, measure, test, open or examine such cargo and/or container for inspection purposes.

## 18.0 Refusal of Objectionable Cargo and/or Container and Special Cargo

18.1 PPSB may prohibit the landing of, or refuse to receive any cargo (including, but not limited to Dangerous Cargo) and/or container, which in PPSB's opinion is detrimental to the safety of the Port, PPSB, or to other cargo and/or container or things within the port premise or not in compliance with provisions of the Applicable Law (collectively referred as "**Objectionable Cargo and/or Container**").

18.2 Save and except pursuant to any written agreement executed between the Port User and the PPSB, PPSB shall not be bound to accept any Special Cargo. For avoidance of doubt, "**Special Cargo**" shall refer to any cargo (including break bulk and/or containerised cargo) which:

- (a) is of high value;
- (b) requires special care; and/or
- (c) contains articles set out in **Schedule B** hereto.

18.3 The Port User shall give PPSB not less than **two (2) weeks** written notice prior to the arrival of the Special Cargo. PPSB shall have the right to impose any terms and conditions including any additional charges as it deems fit in the event that PPSB (at its sole discretion) decides to accept the Special Cargo. In the event of any non-compliance or breach by the Port User, PPSB shall have the right to reject the arrival of the Special Cargo or in the event the Special Cargo has been loaded into the port premise, PPSB may order the Special Cargo to be removed from port premise and all costs and expenses for its removal shall be borne by the Port User.

18.4 PPSB shall not be liable for any form of losses and damages of whatsoever nature to the Special Cargo including but not limited to all risks attached to the Special Cargo. The Port User shall exercise or provide sufficient security in accordance with the Applicable Law in order to protect and secure the Special Cargo.

## 19.0 Non-Delivery of Cargo and/or Container

PPSB shall not be responsible for any wrong or non-delivery of any cargo and/or container due to the following:

- (a) absence of any marking on the cargo and/or container;

- (b) error, deficiency, illegible or misleading markings;
- (c) identical or similar markings for different consignments;
- (d) failure on hauliers' driver to physically check the right container number is loaded on their trailer for delivery; or
- (e) by any mistake, action or omission committed by any other third party.

## 20.0 Disposal of Undeclared or Abandoned Cargo and/or Container

20.1 Subject to the provision of this Clause and without prejudice to PPSB's right to charge penalty on the Port User and any other right that the Free Zone Authority may have under the law, the Free Zone Authority shall have the right to dispose of any cargo and/or container by way of public auction in the event that:-

- (a) the cargo and/or container remains at the Free Zone Area and has not been declared; or
- (b) has been abandoned,

after a period of **four (4) months** from the date the goods are brought to the Free Zone Area, the Free Zone Authority may dispose of the cargo and/or the container by public auction. The procedures as set out in Free Zone Regulations 1991 (or any other Applicable Law enforceable at the material time) shall be applicable for disposal of undeclared or abandoned cargo and/or container.

20.2 Any proceeds of the public auction shall be paid into the Government of Malaysia (in accordance with the Free Zone Regulations 1991 and/or any other Applicable Law enforceable at the material time) less all costs and expenses incurred by the Free Zone Authority in carrying out the public auction.

20.3 PPSB shall have the right to charge and invoice the Port User for all costs and expenses incurred by PPSB for, related to or incidental to the storage of the undeclared or abandoned cargo and/or container until the actual disposal of the same (either by way of public auction or otherwise). In the absence of consignee and/or consignor, the lien holder of the container and/or cargo shall be responsible to bear all the above charges incurred, arising or in consequence thereto.

20.4 The Port User shall have the obligation to forthwith return the undeclared or abandoned cargo and/or the containers to its origin country at its own costs and expenses in the event that the Appropriate Authority does not approve for its disposal (either by way of public auction or otherwise) to be carried out in Malaysia.

## 21.0 Special Provisions for Dangerous Cargo or Container

21.1 The following shall apply to the dangerous cargo or container:



- (a) the provisions of International Maritime Dangerous Goods ("IMDG") Code standards;
- (b) the provisions of the Act;
- (c) the provisions of any Applicable Law, including but not limited to Federation Port Rules 1953, Merchant Shipping Ordinance 1952 and Petroleum Safety Measures Act 1984;
- (d) the provisions of the rules and regulations as stated in International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
- (e) the provisions relating to the carriage of goods by road, rail or sea, contained in any statutory instrument or order made pursuant the acts, rules, regulations, by-laws, guidelines, direction, international conventions and recommendations made by the Government of Malaysia or the Appropriate Authorities having power or right to do so, including but not limited to:
  - i. Occupational Safety and Health Act 1994;
  - ii. Occupational Safety and Health (Classification, Labelling and Safety Data Sheet of Hazardous Chemicals) Regulations 2013;
  - iii. Atomic Energy Licensing Act 1984;
  - iv. Environmental Quality Act 1974;
  - v. Environmental Quality (Scheduled Wastes) Regulations 2005;
  - vi. Explosives Act 1957;
  - vii. Animals Act 1953;
  - viii. Chemical Weapons Convention Act 2005;
  - ix. Pesticides Act 1974;
  - x. Poisons Act 1952; and
  - xi. Strategic Trade Act 2010.
- (f) provision of any other laws and international conventions applicable in Malaysia in relation to Dangerous Goods as may be amended and enacted from time to time.

21.2 The Dangerous Goods shall not be presented to PPSB unless permission has first been obtained from PPC and the Appropriate Authorities. For this purpose, applications for permission shall be according to Act and by-laws as well as the procedures and practices of PPSB and PPC.

- 21.3 The Port User shall be liable and accountable for any loss or damage caused to cargo or property or personal injury or death to persons, due to the Port User's omission to disclose to PPSB or due to the Port User's false declaration or misstatements to PPSB of the nature or classification of any Dangerous Goods delivered to PPSB for storage or discharge at the wharf. The Port User shall fully indemnify PPSB for any loss, damage, injury or death suffered by PPSB or for any claims made against PPSB by any party affected by such an act of omission or false declaration or misstatement by the Port User.
- 21.4 PPSB reserves the right to reject any Dangerous Goods if in the opinion of PPSB, there is no suitable facility or expertise available to render a safe and proper handling, storage or transportation of such goods, and the Port User shall have no claim or any right of recourse against PPSB for its refusal to accept such goods.
- 21.5 For delivery of Dangerous Goods in container or otherwise on a "*direct delivery*" or "*direct loading*" basis, the Port User has to ensure that such Dangerous Goods in container or otherwise are collected directly from the vessel side using the Port User's authorised vehicle for discharging operations, or such Dangerous Goods in container or otherwise are delivered direct to the vessel side using the Port User's vehicle for loading operations, failing which PPSB may disallow such Dangerous Goods in container or otherwise to be received into the Port, or such Dangerous Goods in container or otherwise will be directed to be stored in a special area in the port premise at the sole risk and expense of the Port User. The Port User shall fully indemnify PPSB for any damage suffered or loss incurred or any claims made against PPSB by any party due to any mishap or incident consequent to the storage of such Dangerous Goods or container. PPSB reserves the right to impose additional storage charges for its deployment of Port Safety personnel and equipment, as well as for any standby and escort services rendered.

## 22.0 Special Provisions for Obnoxious Cargo or Container

- 22.1 For the purpose of this BTC, "**Obnoxious Cargo or Container**" means any of the following kinds of cargo or container which are not included in the category of the dangerous cargo or container where:
- (a) substances which can cause adverse effect to personnel handling the substances;
  - (b) substances which will taint or contaminate other cargo or container in close proximity;
  - (c) substances which will damage other cargo or container by contact or by shifting e.g. carbon, graphite, white pigments, greases, crude oil and residual fuel oil;
  - (d) hygroscopic or deliquescent goods or goods in moist or wet condition such as hides;
  - (e) any cargo liable to infestation by insects, mites, weevils or grubs or any other cause which may require fumigation;
  - (f) any cargo of liquid or semi-solid nature and goods liable to qualify with a rise in temperature such a reasonably could be foreseen; or

- (g) any other cargo or container which is likely to adversely affect other cargo or container or to present any special difficulties in handling.
- 22.2 Obnoxious Cargo or Container shall not be permitted into the Port unless permission has been obtained. For this purpose, application for permission shall be made by the Port User to PPC or to the Appropriate Authority pertaining to the carriage of such Obnoxious Cargo or Container.
- 22.3 The Port User shall be liable and accountable for any loss or damage caused to cargo or container or property or personal injury or death to persons, due to the Port User's omission to disclose to PPSB or false declaration or misstatements made by the Port User to PPSB of any Obnoxious Cargo or Container delivered to PPSB, or discharged at the wharf. The Port User shall fully indemnify PPSB for any loss, damage, injury or death suffered by PPSB or for any claims made against PPSB by any party affected by such an act of omission or false declaration or misstatement.
- 22.4 PPSB reserves the right to reject any Obnoxious Cargo or Container if, in the opinion of PPSB, there is no suitable facility or expertise available to render safe and proper handling, storage or transportation of such Obnoxious Cargo or Container, and the Port User shall have no claim or any right of recourse against PPSB for its refusal to accept such Obnoxious Cargo or Container.

### 23.0 Disputes

- 23.1 Any disputes in relation to discrepancies in the total amount, markings and numberings, stowage and conditions of cargo or container to be delivered to PPSB or to be loaded on board of any vessel, should be communicated by the Port User, in writing to, and acknowledged by PPSB, during loading of the cargo or container on board of a vessel or prior to the completion of a vessel's operations (for the total amount disputed).
- 23.2 Any disputes in relation to damaged cargo or container shall be communicated by the Port User in writing to and acknowledged by PPSB before the delivery, exit or gate out of the said cargo or container or after the completion of Inter Terminal Transfer ("ITT") through System for On Dock Depot ("ODD") which is not claimable after **twenty four (24) hours** upon completion of the ITT transfer.
- 23.3 PPSB reserves the right to reject claims of any loss or damage to the cargo or container if Clauses 23.1, 23.2 and 23.3 are not complied by the Port User.

### 24.0 Storage and Warehousing

- 24.1 Unless otherwise agreed, PPSB may accept goods for storage or warehousing pursuant to this BTC, subject to PPSB's storage and warehousing terms and conditions as may be imposed and determined by PPSB from time to time.
- 24.2 No goods shall be accepted by PPSB for storage or warehousing without the submission by the Port User to PPSB of a written list of the goods, their detailed descriptions and quantities acceptable and duly acknowledged by PPSB in writing.

- 24.3 The Port User's acceptance or selection of the storage space for its goods, as offered by PPSB in any warehouse and storage area shall be for the duration of such warehousing and storage at the Port User's sole risks and expenses and PPSB shall not in any way be liable to the Port User in respect of any loss, damage, deterioration or destruction that may be occasioned to the goods while they are in storage within the space(s) so accepted or selected by the Port User.
- 24.4 PPSB may store in the open, goods which in the opinion of PPSB and as agreed by the Port User, are suitable for such open storage, on condition that all risks for such storage shall be fully borne by the Port User who shall take all necessary precautions at his own costs and expenses to protect the goods so stored from damage, deterioration or loss howsoever caused.
- 24.5 PPSB may at any time, give to the Port User not less than **thirty (30) days** prior written notice or any number of days considered by PPSB as reasonable within the requirements of Free Zones Act 1990, in written form, for any goods other than perishable or inflammable goods in conventional form or containerised to be removed by the Port User. On the failure to remove such goods pursuant to the notice given, PPSB shall be at liberty to proceed in accordance with the actions deemed suitable including but not limited to legal proceeding or disposal of the goods via auction.
- 24.6 PPSB may at his discretion, remove any goods which have been Landed (as defined in Clause 10.2) or received into PPSB's custody to any open-sided shed, warehouse, transit shed, open storage area, or from one place to another within the port premise.
- 24.7 PPSB reserves the right to shift any cargo stored in the port premise without assigning any reason whatsoever. No shifting of cargo shall be carried out by PPSB unless a prior written notice of not less than **seven (7) days** has been served on the Port User who shall agree to bear the costs for such shifting.
- 24.8 The owner of goods or its appointed surveyor, agent or representative shall be prohibited from entering any warehouse or storage areas within the port premise without the prior written permission of PPSB.
- 24.9 Subject to this Clause 24.0, PPSB disclaims all responsibility and liability for any loss or damage that may be occasioned to the goods so stored, and it shall be obligatory upon every Port User to put up their own fencing for the purpose of demarcating the storage and/or warehousing space occupied by the Port User, protecting and ensuring the safety and sound conditions of its goods.

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### PART III

#### TARIFF AND OTHER CHARGES

25.0 The Port User shall be responsible and liable to pay PPSB for:

- (a) The Rates payable by the Port User to PPSB pursuant to the Act, any other charges imposed by PPSB and/or pursuant to the mutual agreement between parties from time to time;
- (b) Any costs and expenses incurred by PPSB in complying with any Appropriate Authority's or PPC's regulations requiring the movement, treatment, removal or destruction of the Dangerous Goods, infested, contaminated or condemned goods or the treatment of the port premise as a result of any infestation or contamination arising from such goods;
- (c) All costs and expenses incurred by PPSB arising out of or incidental to the failure by the Port User to observe this BTC;
- (d) All rates for the supply of fresh water, provided that it shall be understood at all time that fresh water is supplied by PPSB directly from the water supply company licensed by the Government of Malaysia, and therefore PPSB shall not be held responsible and accountable for any contamination and/or for the quality of the fresh water so supplied and to any discrepancy arise between terminal's gauge and the ship's measurement;
- (e) All taxes payable by the Port User based on the prevailing percentage as shall be determined under any applicable tax imposed by the Government of Malaysia; and
- (f) All other charges in relation to the use of the Port Services and/or Facilities as may be imposed on the Port User by PPSB and/or the Appropriate Authority.

26.0 All amounts payable to PPSB shall be paid in Ringgit Malaysia ("RM") and shall be paid into a bank account held with a bank established in Malaysia as may be advised by PPSB.

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## PART IV

### FINANCE

#### 27.0 Ledger Account

- 27.1 PPSB requires all Port User to open and maintain a ledger with PPSB for the duration of the Business, subject to the terms and conditions imposed by PPSB and/or any other agreements or contracts entered with PPSB for the purpose of maintaining accounting records in respect of the Rates incurred by the Port User relating to the Port Services and/or Facilities ("**Ledger Account**").
- 27.2 For avoidance of doubt, the Ledger Account includes all accounts opened by the Port User with PPSB, including but not limited to, the Credit Account, Cash Account and Rental Account.

#### 28.0 Credit Account

- 28.1 The Port User, when submitting its application for credit facilities, shall furnish security for a sum and in a form as approved by PPSB, for the prompt and proper performance and observance by the Port User (including the obligation to pay the Tariffs referred to therein).
- 28.2 The Credit Account Holder, with approved credit facilities ("**Credit Customer**"), shall pay to PPSB the amount specified in the invoice within **thirty (30) days** from the date of such invoice ("**Credit Period for Credit Account**").
- 28.3 The invoice which has not been settled within the Credit Period for Credit Account shall be subject to an interest of **one and half per centum (1.5%) per month** thereof or any other interest as may be determined by PPSB from time to time in its absolute discretion, calculated on the amounts outstanding from expiry of the due date until the date of full settlement.
- 28.4 Notwithstanding anything herein contained, PPSB shall have the right to demand payment in advance for:

- (a) each vessel of the Port User calling at the Port; or
- (b) any other Port Services and/or Facilities to be utilised by the Port User,

provided that written notification is given to the Port User by PPSB and such interest shall be applicable as long as the amount specified in the invoice or any part thereof is not paid to or any amount outstanding has not been received by PPSB.

#### 29.0 Cash Account

- 29.1 Any Port User who has not obtained any credit facility from PPSB or whose application for any credit facility has yet to be approved by PPSB, such Port User shall be deemed a cash

customer of PPSB ("**Cash Customer**") and shall be required to pay for all charges, costs and/or expenses as set out in advance of the provision of the same ("**Advance Payment**"). The amount of Advance Payment shall be determined at the discretion of PPSB and informed in writing to the Port User.

- 29.2 Upon completion of the transaction relating to the Port Services and/or Facilities, the invoice shall be issued to the Port User whereby:
- (a) the Port User shall immediately make payment to PPSB for the difference between the Advance Payment and the amount stated in the invoice ("**Differential Amount**"), if any; and
  - (b) any surplus amount shall be refunded to the Port User within **sixty (60) days** after the issuance of the invoice.

### 30.0 Rental Account

- 30.1 In the event the Port User requires any warehouse or storage space within the Port, the Port User shall enter into an agreement with PPSB for the rental of the said area, whereby the terms and conditions for the rental of the said warehouse or storage space shall be expressly set out therein.
- 30.2 Notwithstanding the agreement for the usage of the warehouse or storage space within the Port, the Port User shall:
- (a) pay to PPSB the sum stipulated in the said agreement being the security deposit;
  - (b) pay to PPSB the amount specified in any invoice for the usage of the warehouse or storage space within **thirty (30) days** from the date of such invoice ("**Credit Period for Rental Account**"); and
  - (c) for any invoice which has not been settled within the Credit Period for Rental Account shall be subject to an interest of **one and half per centum (1.5%) per month** thereof or any other interest as may be determined by PPSB from time to time in its absolute discretion, calculated on the amounts outstanding from expiry of the due date until the date of full settlement.
- 30.3 Subject to the agreement entered between parties, PPSB reserves the right to terminate the rental agreement and repossess the said warehouse or storage area should the tenant defaulted in making payment under the said agreement.

### 31.0 Payment

- 31.1 Any invoice or record or statement of account maintained by PPSB in relation to any amount specified in the invoice or stipulated in this BTC shall be conclusive evidence of the amount from time to time owing by the Port User to PPSB under or in connection with the Ledger Account in any legal proceedings or action arising there from.

- 31.2 In the event the Port User has any dispute with regard to any amount charged pursuant to any invoice, provided always that the disputed invoice has been settled in full in the manner provided for in this BTC, the Port User is entitled to submit its appeal in writing to PPSB for a refund of the amount alleged to be overcharged within **six (6) months** from the date of the disputed invoice and all such applications shall be supported by reasonable explanation and documentary evidence as may be required by and to the satisfaction of PPSB.
- 31.3 The decision of an authorised officer of PPSB pertaining to the outcome of such appeals referred to in Clause 31.2 above shall be final and conclusive and shall not be subject to further appeal or negotiation.
- 31.4 PPSB shall be entitled to collect any amount which has not been specified in any of the previous invoice or which may otherwise be found to be due pursuant to this BTC, provided always that a demand in writing for any such payment has been forwarded to the Port User from the date the particular charge, cost or expense was incurred by the Port User.
- 31.5 If any due date for such payment(s) for any sum hereunder does not fall on a Business Day, then such payment(s) shall be made on the day preceding the Business Day.
- 31.6 All payment(s) to be made by the Port User pursuant to this BTC shall be made in full, without any deduction, set-off or withholding whatsoever, immediately available, freely transferable, on the due date of such payment. If the Ledger Account Holder is compelled by law or otherwise to deduct any taxes, levies, imports, duties, charges or fees or to make any such deductions, set-off or withholding from or in respect of such payment, the Ledger Account Holder shall pay such additional amounts as may be necessary to ensure that the net amount(s) received by PPSB hereunder after such deductions, set-off or withholding shall equal to the amount which PPSB would have received pursuant to the invoice had no such deductions, set off or withholdings been required to be made. The Ledger Account Holder shall indemnify and keep PPSB fully indemnified against any taxes or amount which may be assessed against PPSB or claimed or demanded from PPSB in respect of any sum paid or payable by the Ledger Account Holder hereunder and against any costs, charges, expenses, losses or liabilities which PPSB may incur or be liable for as a result of such assessment, demand or claim.

## 32.0 Security Deposit

- 32.1 Prior to the utilization of the Ledger Account, the Port User shall submit the security deposit or an irrevocable demand Bank Guarantee ("**BG**") whereby the amount for the security deposit or bank guarantee is prescribed as below:
- (a) Credit Account
- i. The Port User shall deposit with PPSB a BG or bankers' draft or cheque, all in the form and substance acceptable to PPSB, or cash of not less than **RM7,500.00 (Ringgit Malaysia Seven Thousand Five Hundreds Only)** or **one and half (1.5) month** estimated value or any other amount which may



be stipulated by PPSB, whichever is higher (“**Security Deposit for Credit Customer**”).

- ii. PPSB reserves the right, at any time, to increase the amount required as the security deposit for Credit Customer (collectively referred to as “**Deposit**”) in the event that it appears, in PPSB’s absolute opinion, that such security deposit accepted under Clause 32.1(a)(i) thereof is insufficient to secure any of the amount which may be owed by the Credit Account Holder. In this respect, the Credit Account Holder hereby undertakes to forward such additional amount to be utilised as security deposit to PPSB immediately upon receipt of PPSB’s notification for the same.
- iii. After prior written notice to such Credit Customer, PPSB shall utilise the Security Deposit for Credit Customer to set-off any outstanding invoice payable by such Credit Customer and/or Port Dues and Charges and/or any sum which may be due to PPSB pursuant to this BTC without prejudice to any of PPSB’s rights or remedies hereunder or whether at law or in equity, in respect of any breach of the stipulations herein contained. In the event the Deposits have been utilised by PPSB to set-off any outstanding invoice and/or the Rates or Tariff, the Account shall be suspended in the manner provided in Clause 33.0 herein.
- iv. PPSB may at any time at its absolute discretion shall refuse to grant further credit and demand immediate settlement by forfeiting the BG.

(b) Cash Account

- i. The minimum amount required for cash advance shall be at the discretion of PPSB or **one and a quarter (1.25) times** of the estimated total billing for each transaction.
- ii. PPSB is entitled to utilise the surplus payment for Cash Customer to set-off any outstanding invoice payable by such Cash Customer and/or Port Dues and Charges and/or any sum which may be due to PPSB with prior written notice.
- iii. If a payment is made pursuant to any claim by PPSB the Port User shall ensure that a further cash advance shall be deposited to PPSB for an amount not less than the amount so paid, on or prior to the date of such payment.

(c) Rental Account

The Port User shall deposit to PPSB a sum equivalent to **two (2) months** of the rental and **one (1) month** utility deposit to be held by PPSB during the term of the tenancy as security for the due performance and observance by the Port User of all its covenants and obligations in the relevant agreement, as set out in this Clause.

32.1 Upon the cessation of the Ledger Account, the amount provided to PPSB as security deposit shall be refunded to the Credit Account Holder free of interest or the BG shall be returned to the Ledger Account Holder, as the case may be, provided always that the Ledger Account Holder has settled all outstanding invoice, interests thereon, Port Dues and Charges and all other charges payable pursuant to this BTC ("**Outstanding Amounts**") but without prejudice to any other claims PPSB may have against the Ledger Account Holder under this BTC or any other contract or agreement entered between PPSB and the Ledger Account Holder.

### 33.0 Suspension of Ledger Account

33.1 In the event any invoice has not been settled in accordance with this BTC or any other manner stipulated by PPSB, PPSB may, in its absolute discretion, suspend the Ledger Account for such period and at any time without providing any prior notice or reminder until such time the outstanding amount has been fully settled by the Ledger Account Holder and the security deposit has been reimbursed or a new BG has been furnished, as the case may be, to PPSB. The Ledger Account Holder is not entitled to use the Port Services and/or Facilities during such suspension period until full settlement has been made for all outstanding amount.

33.2 In the event that there is a cash shortage, upon notification by PPSB, the respective account shall be suspended and will remain suspended until the necessary payment has been made by the Port User.

33.3 This BTC shall remain in force notwithstanding Clause 33.1 hereof.

### 34.0 Cessation of Ledger Account

33.4 In the event that the Ledger Account Holder fails to remedy its breach in accordance with any of the PPSB's written notice, PPSB shall have the right to cease the operation of the Ledger Account and stop the provision of all Port Services and/or Facilities.

33.5 PPSB shall serve notice of demand to the Ledger Account Holder at any time after the cessation of the Ledger Account and the Ledger Account Holder shall forthwith pay all amount demanded by PPSB in the notice of demand within a period stated in the notice of demand, failing which PPSB shall have the right to impose an interest of **one and half per centum (1.5%) per month** thereof, calculated on the amounts outstanding from expiry of the due date until the date of full settlement.

### 35.0 Remedy for Non-Payment

35.1 Default

35.1.1 Notwithstanding the period for payment given by PPSB either stipulated in this BTC or in any other separate contract or agreement entered into with the Port User:

- (a) if any legal proceeding is commenced by any person for the bankruptcy, liquidation or winding up of the Port User;

- (b) if the Port User makes any offer of composition or arrangement with its creditors or makes a general assignment for the benefit of its creditors or cease or threaten to cease to carry on the whole or any substantial part of its business;
- (c) if any order of distress or attachment or similar order shall be made against any assets of the Port User (including the Port Users' cargo or vessel); or
- (d) if the Port User shall fail to perform or observe any of its obligations under this BTC,

all sum or money due and owing by the Port User towards the account of PPSB shall become immediately due and payable.

35.1.2 If due to any reason whatsoever the Port User does not make any payment on or before the due date for payment referred to in Clause 35.1.1:

- (a) PPSB shall be entitled to engage the services of any person and recover such sum from the Port User, in which event the Port User shall also be liable for all costs incurred by PPSB for such services (including the legal and other related costs and any interest and taxes for the said services);
- (b) regardless of whether or not PPSB shall have engaged the services of any person as described in Clause 35.1.2(a), the Port User shall in addition to the sum of money owing and the costs described in Clause 35.1.2(a) above (if any), pay to PPSB interest on such sums and the costs at the rate equivalent to the rate stipulated in the invoice or any contract entered into between the parties, which interest shall be payable on 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 Business, whichever is earlier.

## 35.2 Right of lien and retention

- (a) PPSB shall have the right of lien and retention over all asset (including any sum collected by PPSB from third parties on behalf of the Port User, cargo, container (including the contents therein) and all documents which PPSB shall now or thereafter hold, or on behalf of the Port User or which is now or thereafter due to the Port User, to secure the payment of all sums due from the Port User to PPSB and the discharge of all liabilities of the Port User to PPSB under the contract or by law and/or pursuant to this BTC.
- (b) In the exercise of PPSB's right of lien and retention, PPSB shall be entitled to seize and detain such asset, cargo, container, sums and documents until the sums due from the Port User to PPSB are fully paid.

- (c) PPSB's lien shall have priority over all other liens and claims in respect of such assets, cargo, container, sums and documents to the extent which is allowed by the Applicable Law.

### 35.3 Right to distrain for non-payment of rates and tariffs

- (a) If the Port User fails to pay any dues, Charges or monies owing under any Business transacted, PPSB may, in addition to any other remedy which PPSB may be entitled to use, distrain or arrest the vessel in respect of which such dues, Charges or monies are payable and the tackle, apparel or furniture or belongings thereto or any part thereof, and detain the same until the amounts so due are paid.
- (b) In case any part of the dues, Charges or monies or of the costs of the distress or arrest, or of the keeping of the vessel, tackle, apparel or furniture, remain unpaid for a period of not less than **fourteen (14) days** after any such distress or arrest has been so made, PPSB 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.

### 35.4 Right to sell for non-payment

Any goods which has been placed in the custody of PPSB and is not removed from the port premise within a period of **twenty one (21) days** from the time when the goods was placed in custody, PPSB may at expiration of the said period of **twenty one (21) days** without further notice and being accountable to such Port User arrange with the Royal Customs and Excise Department to sell any or all the goods which is still in its custody.

### 35.5 Right to dispose of Cargo and Container remaining in custody

- (a) Any cargo and/or container which has been placed in the custody of PPSB and is not removed from the port premise within a period of **twenty one (21) days** from the time when the cargo and/or container was placed in custody, PPSB may at the expiration of the said period of **twenty one (21) days** without further notice and being accountable to such Port User arrange to dispose of the cargo and/or container by sale or in such other manner as it thinks fit.
- (b) Prior to enforcing its right under Clause 35.5(a), PPSB shall ensure that:
  - i. In the case of cargo and/or container for which through bill of lading has been issued there shall be substituted period of **forty-two (42) days** in lieu of the period of **twenty-one (21) days** referred to in Clause 35.5 (a).
  - ii. If the cargo and/or container is perishable in nature, PPSB may direct its removal within a shorter period as PPSB deems fit, and if not removed then, PPSB may dispose of the cargo and/or container as it deems fit.

- (c) PPSB may order the removal of any cargo and/or container in its custody if PPSB believes that such cargo and/or container is, or could become a danger to the environment and/or persons. Any costs and/or expenses incurred by PPSB in removing of such cargo and/or container shall be borne by the Port User.
- (d) PPSB shall render the surplus proceeds of sale of the cargo and/or container, if any, to the Port User and any other person entitled thereto on demand, and in case no such demand is made within **one (1) year** from the date of the sale of such cargo and/or container, the surplus shall be paid to the account of PPSB, whereupon all rights to the same by such person shall have expired.

### **36.0 Assignment**

The Ledger Account Holder shall not transfer or assign its rights hereunder or any interest herein without the prior written consent of PPSB and it shall in any event remain liable for all its obligations hereunder. All undertakings, agreements, representations and warranties given, made or entered into by the Ledger Account Holder herein shall survive any assignments hereunder.

### **37.0 Costs and Expenses**

The Ledger Account Holder shall be liable to pay:

- (a) all fees, costs and expenses in connection with or incidental to the Ledger Account; and
- (b) any other costs and expenses incurred by PPSB including but not limited to PPSB's solicitors' fees arising from the Ledger Account Holder's default or breach.

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## PART V

### LIMITATION OF LIABILITY

#### 38.0 PPSB's Limitation of Liability

PPSB as a bailee shall not be liable for any loss (whether direct or consequential), damage (whether direct or consequential), costs, expenses, injury or death of whatsoever nature or kind and howsoever sustained or occasioned and whether to asset, property or person unless it can be proved that such loss, damage, costs, expenses, injury or death of the type specified in Clause 38.0(A) to 38.0(D) below are caused by the fault or negligence of PPSB or its employees or agents (and any employee thereof) and in that event the liability of PPSB shall in no case exceed the financial limits set out hereunder:-

##### (A) Physical Loss or Damage to Container

- i. PPSB shall pay the depreciated value of the container or the reasonable costs of repair, whichever is the lower; provided always that the liability of PPSB under this Clause 38.0(A) shall not exceed the aggregate of:
  - a. RM4,000.00 per 20' General Purpose Unit;
  - b. RM6,000.00 per 20' Open Top/Hard Top/Flat Rack Unit;
  - c. RM7,500.00 per 40' General Purpose/High Cube Unit;
  - d. RM10,000.00 per 40' Open Top/Hard Top/Flat Rack Unit;
  - e. RM40,000.00 per 20' Reefer/Tank Unit;
  - f. RM60,000.00 per 40' Reefer/Tank Unit;

in respect of any one incident or series of related incidents occurring in connection upon one event.

##### (B) Physical Loss or Damage to Cargo

- i. PPSB shall pay the Freight on Board ("F.O.B.") value of any cargo loss or the reduction in value of any cargo damaged provided always that:
  - a. The liability of PPSB under Clause 38.0(B) shall not exceed the amount paid by the Port User in respect of such loss or damage pursuant to the Bill of Lading or other contract of carriage, whichever is the lesser;
  - b. Notwithstanding Clause 38.0(B)(i)(a) above the liability of PPSB under this Clause 38.0(B)(i) shall not in any event exceed in the aggregate of RM100,000.00 in respect of any incident or series of related incidents occurring in connection with or consequent upon one event; and

- c. The Port User undertakes that no claim be made against any employee or agent of PPSB which imposes or to impose upon any of them any liability whatsoever in connection with the cargo, container or vehicle and if any such claim should nevertheless be made, to indemnify PPSB against all consequences thereof.
- ii. Without prejudice to the foregoing, every PPSB's employee or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit.
- iii. The Port User shall defend, indemnify and hold PPSB harmless from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the PPSB under this BTC and without prejudice to the generality of this Clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of PPSB, its employees and agents.

(C) Physical Loss or Damage to Property or Asset

- i. PPSB shall pay the depreciated value of such property or asset or the reasonable costs of repair, whichever is the lesser, provided always that the liability of PPSB under this Clause 38.0(C) shall not exceed in the aggregate RM25,000.00 in respect of any one incident or series of related incidents appearing in connection with or consequent upon one event.
- ii. In respect of actual, direct and physical loss of damage to the vessel or its equipment, PPSB shall pay the depreciated value of such vessel or the reasonable costs of repair, whichever is the lesser, provided always that:
  - a. The liability of PPSB under this Clause 38.0(C) shall not exceed the aggregate RM100,000.00 in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event; and
  - b. Such sum of RM100,000.00 shall be inclusive of any liability of PPSB pursuant to other paragraphs of this Clause 38.0 arising out of the same incident or related series of incidents occurring in connection with or consequent upon one event.

(D) Death, Injury or Illness

- i. The liability of PPSB shall not exceed in the aggregate RM100,000.00 in respect of any one incident or series of related incidents occurring in connection with or consequent upon one event.
- ii. The Port User shall indemnify PPSB against all liability incurred by PPSB pursuant to Clause 38.0 of Part V to the extent that such liability exceeds the financial limits therein prescribed.

- iii. In cases where liability attaches pursuant to these conditions to more than one party which can be defined as the Port User, such liability shall be joint and several and may be enforced against any one or more parties.
- iv. All claims in respect of any loss, damage, cost, expense, death or injury must be made to PPSB by the Port User in writing setting out particulars thereof and the Port User shall use its best endeavour to do so within **seventy-two (72) hours** from the time of occurrence causing such loss, damage, cost, expense, death or injury.

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## PART VI

### EXCLUSION OF LIABILITY

#### 39.0 PPSB's Exclusion of Liability

Notwithstanding anything herein before contained, PPSB shall not in any event be liable for:

- (a) Any circumstances due to the Events of Force Majeure;
- (b) Death of or injury of illness to persons or loss of or damage to any vessel, plant, equipment, container or cargo arising from any consequential loss therefrom, arising as result of:
  - i. criminal or tortuous acts by persons known or unknown other than PPSB or its employees;
  - ii. inherent liability due to wastage in bulk weight, latent defects, contamination or inherent defects, vice or natural deterioration of cargo and/or container;
  - iii. ullage, spillage, leakage from tank or pipelines;
  - iv. any failure or malfunction of insulated container (reefer), refrigeration equipment and gaseous refrigeration;
  - v. failure, mistake or delay in forwarding or in delivery any information and/or date of the cargo and container;
  - vi. loss of a particular market;
  - vii. the act or omission of the Port User or the owner of the container or cargo or their respective employees, agents or sub-contractors;
  - viii. the act or omission of any PPSB ship planner in preparing a sequence plan or stability calculations for the loading or discharging of containers and/or cargo provided that any amendments made by PPSB's ship planner shall be brought to the immediate attention and approval of the planner of the respective vessel's agent or to its appointed agent;
  - ix. any defective or malfunction twist locks and/or any container lashing device used on board;
  - x. any rust, damage or deterioration caused by rain, exposure or other action of climatic conditions or by any other gradually operating cause;
  - xi. work carry out in the loading and/or discharging of containers onto or from a non-purpose built cellular vessel;

- xii. any latent defects not discoverable by due diligence;
  - xiii. any saving or attempting to save life or property at sea or on land;
  - xiv. acts of government or of any semi-government port or other authority; or
  - xv. any other act or circumstance beyond the control of PPSB.
- (c) Damage to container of the following nature which shall be presumed conclusively not to have been caused by the negligence of PPSB, its employees or agents, namely:
- i. roof rails: damage thereto within 60 cm of the corner castings in any directions;
  - ii. roof puncture: within 60 cm radius of the corner castings;
  - iii. door mouldings: cracked or split door mouldings without evidence of physical damage;
  - iv. container walls, door, floor or roof: bulging or warping caused by incorrectly loaded or inadequately secured cargo or by uneven distribution of cargo.
- (d) Notwithstanding anything to the contrary herein contained, PPSB shall not, in any event, be liable to the Port User for any loss or damage to cargo and/or container, or delay in connection with a vessel, cargo and/or container or their delivery, or any detention of the vessel, cargo and/or container, arising as a result of Event of Force Majeure.
- (e) Notwithstanding anything to the contrary herein contained, PPSB shall not, in any event, be liable to the Port User for any loss or damage to any property, or death or injury to persons in premises occupied and facilities controlled by the Port User within the port premise, where such loss, damage, death or injury is not caused by PPSB, its employees, servants, agents or subcontractors the Port Users hereby agree to indemnify and shall keep PPSB, its employees, servants, agents and subcontractors indemnified against any claims for such loss, death or injury.
- (f) Persons other than PPSB
- i. Notwithstanding anything herein contained, PPSB shall not in any event be liable to the Port User for any injury to or death of any person, or loss or damage to any property otherwise than in the circumstances and to the amount not exceeding the limits respectively set out in Clause 38.0, PART V above.
  - ii. Without prejudice to the generality of the foregoing, PPSB shall not be liable for any injury to or death of any person caused or contributed to by the cargo and/or container, or any inherent vice thereof, or caused or contributed to by the

storage, carriage, handling or other dealings with a cargo and/or container, by persons other than PPSB or its employees, servants or agents, or sub-contractors, and the Port User shall indemnify and keep PPSB, its employees, servants or agents and sub-contractors indemnified against all actions, proceedings or claims whatsoever made against them in connection with, or arising out of, or in any way incidental to such injury, death, loss or damage in the aforementioned circumstances.

- (g) Notwithstanding anything to the contrary herein contained, PPSB shall not, in any event, be liable to the Port User for any loss of profits or otherwise whatsoever caused, including but not limited to any detention or delay of the vessel howsoever caused, any delays in discharging or loading containers and/or cargo, caused by inclement weather or mechanical failure in any cranes or other equipment.
- (h) Unprotected Cargo or Container
  - i. Notwithstanding anything to the contrary herein contained, PPSB shall not, in any event, be liable to the Port User for any breakage, loss of content, damage or complete destruction of unprotected cargo or container.
  - ii. Notwithstanding anything to the contrary herein contained, PPSB shall not, in any event, be liable to the Port User for any of the circumstances described in Clause 39.0 arising as a result of:
    - (aa) any cause arising without the actual fault or privity of PPSB, or without any fault or neglect of, or by, its employee, agent or servant; or
    - (bb) any other acts or circumstances beyond the reasonable control of PPSB.
- (i) Any liability arising from the occurrence of pollution at the port premise or any navigable passage in the Port, not attributable to PPSB.

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## PART VII

### GENERAL CONDITIONS

#### 40.0 Covenants

- 40.1 Each party has agreed to and acknowledged this BTC in good faith and shall give all such assistance and information to the other party and shall take all necessary actions as may be reasonably required to give full effect to the terms of this BTC.
- 40.2 For the purpose of this BTC, any act, default or omission of the agents or servants of the Port User shall be deemed to be the act default or omission of the Port User.
- 40.3 Unless expressly stated in writing otherwise by the Port User, at all material times PPSB shall transact the Business and provide its Port Services and/or Facilities to the Port User solely based on the Port User's representations and assurances which include the following:
- (a) All export cargo and container presented for shipment by the Port User shall be accompanied by documents containing all relevant details as required by PPSB.
  - (b) All cargo and container shipped by the Port User are in every manner safe and secure in accordance and compliance with all lawful requirements for handling by PPSB, and where applicable does not exceed their rated gross weight.
  - (c) The packing and stowage of container or cargo comply with the Malaysian and International Safety Rules, regulations and best trade.
  - (d) Any information given by the Port User shall be deemed to be accurate. The Port User shall not hold PPSB liable and shall indemnify PPSB for any wrongdoings as a result of any inaccuracies contained in the information supplied, whether provided by electronic data or otherwise.
  - (e) The Port User shall respect and maintain the confidentiality of information acquired as a consequence of the electronic link to PPSB's computer system and or applications whether such information is specific to PPSB or a third party and shall not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose.
  - (f) The Port User shall not divulge its identification, password, digital signature or any other security measures (as may be granted to the Port User by PPSB or directed by PPSB to be used by the Port User) for access to PPSB's computer system to any unauthorised person.
  - (g) The Port User shall be fully responsible for the accuracy of the information pertaining to its cargo, container and vessel, transacted through PPSB's computer system and or applications via the Port User's authorised identification, password, digital signature or any other security measures (as may be granted or directed by PPSB to be used by the Port User from time to time).

- (h) PPSB shall not be made responsible, in any manner whatsoever, to any access to the information in PPSB's computer system and or applications due to the Port User's disclosure of his ID, password, digital signature or any other security measures (as may be granted or directed by PPSB to be used by the Port User from time to time) to any unauthorised person.
- (i) The Port User shall not tamper, hack, invade, abuse or perform any unauthorised access or use of the PPSB's computer system and or applications. For the purposes of this sub-clause, all such acts prohibited under the laws of Malaysia relating to computers and computer networks, in addition to any other prevailing Applicable Law, shall be deemed to be part of this BTC.
- (j) The Port User shall also not divulge, disclose or leak intellectual property or trade secrets of PPSB or other materials which by form and/or nature are confidential to PPSB, to other third parties unrelated to PPSB. Any divulgence, disclosure or leakage by the Port User of PPSB trade secrets or other PPSB confidential material done without express authorisation in writing from PPSB, shall be breach of trust and the Port User shall be liable for any and all damages suffered and sustained by PPSB.
- (k) The Port User undertakes and agrees to indemnify, save and hold harmless PPSB at all times against all actions, claims, proceedings, costs, or damages whatsoever arising from any action done by the Port User.
- (l) The Port User shall use only authorised vehicles to move around the port premise, or obtain the necessary vehicle pass from the PPSB.
- (m) No person should be permitted to operate any machineries unless properly trained, competent and authorized in writing by the relevant authority or employer (if there are no relevant requirement) to do so.
- (n) The Port User and its employees are required to ensure that every person who does work or deals with any substance has been informed of or have the knowledge on:
  - (aa) emergency procedures;
  - (bb) hazards the employee may be exposed to while at work;
  - (cc) hazards the employee may create while at work which could harm other people;
  - (dd) how to minimize the likelihood of these hazards becoming a source of harm to others;
  - (ee) the location and correct use of safety equipment.

- (o) The Port User is responsible to ensure that his employees attended the Safety Induction Course provided by PPSB. All the expenses in relation to the course shall be borne by the Port User.

40.4 Environmental rules:

- (a) The Port User shall not:
  - i. discharge, throw, deposit, permit, or allow the escape of amongst others any dirt, ashes, exhaust, steam, oil, water, filth or waste matter, whether liquid or solid, onto any port premise without the prior written permission of PPSB; or
  - ii. cause smoke, soot, ash, grit or oil to be emitted from any ship at the Port, in such quantity or density as may be deemed, in PPSB's sole opinion, to be a nuisance or annoyance.
- (b) The Port User is responsible to:
  - i. provide spill kits (if relevant) or has the knowledge to use spill kits at site for emergency response for spillage incidents.
  - ii. dispose any tools, gloves or rags that contaminated with oil or any substance defined as scheduled waste as per requirement of the Environmental Quality (Scheduled Waste) Regulations 2005.

40.5 Except with the permission of PPSB, no person or vehicle shall enter or leave the port premise from any place or by any means, other than an entrance or exit or means designated by PPSB for that purpose in accordance with PPSB's procedures.

40.6 All vessel's crew must have proper clearance from the Malaysian Immigration Department and/or other relevant Appropriate Authority before disembarking from the vessel.

40.7 The Port User is obliged to comply with the following, as may be notified by PPSB from time to time:

- (a) restricted areas prohibition;
- (b) firearms prohibition;
- (c) prohibition and control of fires;
- (d) traffic and safety signs or orders;
- (e) no smoking and unprotected fire signs;
- (f) restriction on speed;
- (g) prohibition of taking photo and video;
- (h) the requirement for co-operation with PPSB's authorised officers;
- (i) the usage of Personal Protective Equipment ("PPE") in all operations area;
- (j) PPSB's drug policy;

#### 40.8 Permit:

##### (a) Permit to Work

- i. No works, including hot works, maintenance works, handling, bunkering, radiography, cold works, drilling, blasting, hydro jetting, diving, pressure test, working at height, excavating, confined-space entry, scaffolding, painting, grinding, operating with battery/electrical tools, vessel-to-vessel transfer repair or maintenance works on vessel or barge or any other works that require safety precautions and procedures, shall be carried out in the port premise without a Permit to Work issued by the OSHE.
- ii. The works carried out as described in Clause 40.8 (a) (i) above shall be deemed to be under the sole responsibility, supervision and control of the person executing the works, and the issuance of a Permit to Work by the OSHE shall not render PPSB answerable for any loss, damage, injury or death caused by the works or by any fault of or omission in the execution of the works by the owner, consignee, consignor, operator of the machines and processes.

##### (b) Hot Work Permit

The Port User shall follow Hot Work Procedure provided by PPSB's Fire & Rescue Section.

40.9 It shall be obligatory on the Port User to adhere to PPSB's safety, health and environmental guidelines and policies known as "**PPSB OSHE Procedure and Guidelines**" appearing in **Schedule C** herein (as may be revised from time to time).

40.10 It shall be obligatory on the Port User to adhere to other policies pertaining to the practice and implementation for efficiency, safety and proper administration, management and operation of the Port.

#### 41.0 Compliance to Applicable Law, Rules, Guidelines and Regulations

41.1 This BTC shall be governed by, and construed in accordance with, the laws of Malaysia and the parties hereby agree to:

- (a) submit to the exclusive jurisdiction of the Courts of Malaysia in respect of any controversy, dispute or claim whatsoever arising out of or in connection with a matter contained in this BTC which by virtue of the express provisions of any applicable written laws, by-laws, rules or regulations mandatorily require the parties to refer such controversy, dispute or claim to the Courts of Malaysia only;
- (b) waive any objection on the grounds of venue or forum of non-convenience or any similar grounds;
- (c) consent to service of legal process in respect of any matter arising out of this BTC by forwarding a copy of such legal process by prepaid registered post to their last known address or in any other manner permitted by the relevant law.

- 41.2 PPSB or such person as may be authorized by PPSB may board any vessel within the port premise whenever he suspects that an offence under the Act or any Applicable Law made thereunder has been or is about to be committed on board such vessel or whenever he considers it necessary to do so in the discharge of his duties under the Act or any Applicable Law thereunder.
- 41.3 PPSB or such person as may be authorized by PPSB may, in exercising his powers carrying out his duties under Clause 41.2, seize any article, document or thing which he has reasonable grounds for believing that it is required for the purpose of investigation and prosecution of an offence under the Act or any Applicable Law thereunder.
- 41.4 Any master of such vessel who wilfully delays, fails to comply with any order lawfully given, withholds any information or obstructs in any manner whatsoever, PPSB or such person as may be authorized by PPSB in pursuant to Clause 41.2, shall be guilty of an offence subject to the Applicable Law and PPSB's policies and procedures.

#### **42.0 Knowledge, Acquiescence and Indulgence**

- 42.1 Knowledge or acquiescence of either party hereto of or in any breach of any of the conditions or covenants herein contained shall not operate as or be deemed to be a waiver of such conditions or covenants or of any of them and notwithstanding such knowledge or acquiescence each party hereto shall be entitled to exercise its respective rights under this BTC and to require strict performance by the other party of the terms and conditions herein.
- 42.2 Any indulgence given by PPSB shall not constitute a waiver of or prejudice PPSB's right herein contained.

#### **43.0 Successors in Title and Assigns Bound**

This BTC shall be binding upon and shall inure for benefit of the respective legal representatives, receivers and/or managers, liquidators, successors in title and permitted assigns of the parties hereto.

#### **44.0 Examination/Inspection by Customs or Free Zone Authority**

- 44.1 The Port User shall advise PPSB in advance in the prescribed form of any requirement for its cargo and/or container to be examined by the Customs or that they will be subject to the implementation of any regulations of the Free Zone Authority.
- 44.2 PPSB shall not be responsible for any shortages of contents for cargo as a consequence of samples being taken pursuant to such inspection or examination by Customs.
- 44.3 Where PPSB provides adequate storage area in the container freight station, it shall be the responsibility of the Port User to provide tally clerks for the tallying of cargo during the stuffing/ unstuffing into and/or from containers.



#### **45.0 Compliance with Anti-Corruption and Anti-Bribery Laws**

The Parties hereby agree, covenant and undertake to each other to at all times comply with all anti-corruption laws and anti-bribery laws and regulations applicable to each of them.

#### **46.0 Safety, Vehicle and Access to the Port Premise**

- 46.1 The Port User shall not be allowed to park their vehicles, including its trailers and prime movers at any area in the port premise other than at the designated parking areas.
- 46.2 The Port User entering the port premise must be in possession of a valid permit issued by a competent officer of PPSB and shall at all times abide by the rules and regulations promulgated or enforced from time to time by PPSB regarding the conduct of persons within the port premise.
- 46.3 Port User shall indemnify and keep indemnified PPSB at all times from and against all actions, proceedings and claims whatsoever brought against PPSB and/or costs and expenses incurred by PPSB which arise directly or indirectly from the actions or omissions of any Port User's visitor causing or relating to any of the following matters:
- (a) Loss of life or personal injury to any Port User's visitor.
  - (b) Loss of or damage to the property or asset of any Port User's visitor.
  - (c) Loss of life or personal injury to any person which may be directly or indirectly attributable to the negligence of any Port User's visitor.
  - (d) Loss of or damage to the property of any person which may be directly or indirectly attributable to the negligence of any Port User's visitor.
  - (e) Consequential loss arising from any of the above Clauses 49.3(a) to 49.3(d).
- 46.4 Any Port User intending to bring into the port premise vehicles, equipment or machinery shall obtain prior permission in writing from PPSB, failing which such vehicles, equipment or machinery shall be deemed to be trespassing into the port premise.
- 46.5 All persons and vehicles entering, leaving and using the Port Services and/or Facilities in the port premise are subject to the requirements of the Act, Protected Areas and Protected Places Act 1959, Free Zones Act 1990 and Applicable Law as may be revised from time to time in respect of the access to the port premise.
- 46.6 Any entry into the port premise shall be subject to the issuance of a permit by PPSB who shall have the absolute discretion to revoke the permit at any time without assigning any reason whatsoever.
- 46.7 PPSB shall also have the absolute discretion to designate areas within the port premise and set procedures (which may be revised from time to time) for the entry into, use of and exit from the port premise.

- 46.8 All persons, Port User and vehicles can only have access to and/or remain within, any part of the port premise upon possession of a valid permit issued by the PPSB's authorised officer.
- 46.9 All persons, Port User and vehicles shall leave the port premise once the said permit expires or when ordered to do so by PPSB's authorised officer.
- 46.10 All persons, Port User and vehicles shall enter, remain and exit the port premise at their own risk and expenses. PPSB shall not be liable for any injury, loss or damage whatsoever and howsoever caused to such persons or Port Users or vehicles.
- 46.11 PPSB reserves the right to refuse, prevent and or restrict any person, Port User, vehicles from having access to or entering, remaining and or leaving the Port without assigning any reasons and without any limitation as to the duration of such as its allowed under the law.
- 46.12 The grant of PPSB's permission herein required shall be evidenced by the permit issued by PPSB subject to any conditions imposed as PPSB deems fit.
- 46.13 PPSB may in its discretion without assigning any reason therefore, refuse entry or exit or require the Port User to remove any person or property whether or not such person or property is in possession of or covered by a permit issued by PPSB.

#### **47.0 Rights and Remedy**

The rights and remedies provided in this BTC are cumulative, and are not exclusive of any rights or remedies of the parties provided at law, and no failure or delay in the exercise or the partial exercise of any such right or remedy or the exercise of any other right or remedy shall affect or impair any such right or remedy.

#### **48.0 Amendments**

The Port User acknowledges that this BTC is not exhaustive and PPSB shall have the absolute right to amend or vary this BTC at any time it deems fit. The amended BTC shall forthwith be enforceable upon written notice by PPSB in accordance with Clause 57.0 below.

#### **49.0 Conduct of Business**

Every Business, Port Services and/or Facilities conducted or provided by PPSB is subject to the exclusions and limitations of liability as set out in this BTC. The liability of the Port User and PPSB under this BTC shall be deemed to be superseded only to the extent permitted by law.

## 50.0 Confidentiality

50.1 Each party shall, whilst this BTC is in force and thereafter, keep, and procure and ensure that all of its representatives and its affiliates keep, in strict confidence any and all information that it has acquired or may acquire from the other party or has access to in relation to the other party (collectively, "**Confidential Information**"), and each party shall not and hereby agrees and undertakes to the other party that it will not, without the prior written consent of the other party, use any such Confidential Information for any purpose other than those contemplated in this BTC or disclose any such Confidential Information to any third party. Confidential Information, in relation to a party, does not include information:

- (a) which is already known to it at the time when such information is disclosed to it;
- (b) which is publicly known through no fault of its own (or that of its representatives, related corporations or affiliates);
- (c) which is legally acquired by it from third parties; or
- (d) which it is required to be disclosed by law, rules of a recognised stock exchange, government, government department or governmental, statutory or regulatory body or court of law.

50.2 The provisions of this Clause shall survive the expiry and/or any rescission or termination of this BTC. No Party and/or its affiliates shall make any announcement or grant any interviews whatsoever relating to the Confidential Information or its subject matter without the prior written consent of the other party (which approval will not be unreasonably withheld, delayed or conditioned) except where required by Applicable Law or pursuant to the requirements of any stock exchange on which the shares of a party and/or its affiliates are listed for trading and quotation or by any legal or regulatory authority, in which event the party and/or its affiliates required to disclose will, where reasonably practicable, immediately notify the other party of such requirement and obtain its consent (which consent will not be unreasonably withheld, delayed or conditioned) prior to such disclosure.

## 51.0 Survival of Obligations

Notwithstanding the complete performance of this BTC or the termination of this BTC in so far as it relates to the Port User, this BTC shall remain in full force and effect between PPSB and the Port User in so far as such terms and conditions shall remain unfulfilled or relevant.

## 52.0 Invalidity and Severability

If any provision of this BTC is or may become invalid under any written law, or is found by any court or administrative body or competent jurisdiction to be illegal, void, invalid, prohibited or unenforceable then:

- (a) such provision shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability;
- (b) the remaining provisions of this BTC shall remain in full force and effect; and

- (c) the parties shall use their respective best endeavours to negotiate and agree on a substitute provision which is valid and enforceable and achieve to the greatest extent possible the economic, legal and commercial objectives of such illegal, void, invalid, prohibited or unenforceable term, condition, stipulation, provision, covenant or undertaking.

### 53.0 Time of Essence

Time wherever mentioned in this BTC shall be of the essence.

### 54.0 Notice

54.1 Every notice, request, demand or other communication shall be given or made in writing to the other party by registered mail, facsimile, email and posted and sent to:

- (a) For PPSB: PPSB's business address or official email address;
- (b) For the Port User: Its last known address.

54.2 Every notice, request, demand or other communication shall be deemed to have been communicated and received **four (4) days** after being deposited in the post office (registered mail) or forthwith upon successful transmission, submission or posting.

### 55.0 Business Integrity

55.1 The Port User must comply with all applicable anti-trust or competition laws and regulations that deal with agreements among competitors or Port User, discrimination practices, cartels especially price fixing and other agreements or practices that may reduce competition.

55.2 Any and all forms of corruption are strictly prohibited. In all its activities, Port User must never, directly or through intermediaries, offer or promise any personal or improper advantage in order to obtain or retain a business or other advantage from PPSB, whether public or private. Nor must PPSB accept any such advantage in return.

55.3 The Port User must report to PPSB any situation that might be construed as a conflict of interest and more specifically when PPSB's employee may have potential interest in the Port User's activities or any shares in the Port User's capital.

55.4 The Port User's transactions must strictly comply with economic sanctions-embargoes laws and regulations published by a relevant governmental entity, including but not limited to the United States, the European Union and the United Nations. The Port User guarantees that it is not part of the sanctioned parties list and shall immediately notify PPSB if it becomes listed.

## 56.0 Privacy Laws

- 56.1 If, during the course of dealings between the Port User and PPSB, the Port User has disclosed any personal information of any individual (including, but not limited to those of the Port User's) to PPSB, the Port User covenants, represents and warrants that it has obtained the necessary consent from the relevant individual whose personal information is being shared with PPSB and that the Port User's processing of such personal information will not breach any privacy laws in Malaysia, including the Personal Data Protection Act 2010.
- 56.2 In connection with the above, the Port User and PPSB both agree and warrant to each other that each party shall take practical steps to ensure the security of the personal data which has been obtained by or made available to the other party to ensure that the level of protection provided for such personal data is in accordance with the Personal Data Protection Act 2010 and all other subsidiary legislations, regulations, principles, code of practice in relation to the use of personal data as may be issued and amended from time to time, and make the changes as suggested (at the Port User's own cost).

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## SCHEDULE A

### Rates and Tariff

(which shall be taken, read and construed as an integral part of this BTC)

1. Gazetted Port Tariff
2. Non-Gazetted Port Tariff
3. Any other rates or tariff imposed by PPSB or any Appropriate Authority from time to time

## SCHEDULE B

(which shall be taken, read and construed as an integral part of this BTC)

### Special Cargo

1. Gold.
2. Silver
3. Bullion, coins and currency notes.
4. Precious stones.
5. Precious metals.
6. Securities for cash and stamps.
7. Documents and title deeds.
8. Opium, essential oils and similar valuable drugs.
9. Lace, fur and feather.
10. Works of art and paintings.
11. Scientific instruments of all kinds.
12. Revenue of postal stamps.
13. Gold, silver and platinum watches.
14. Precious metal jewellery.
15. Antiques.
16. All other special valuable articles.

## SCHEDULE C

(which shall be taken, read and construed as an integral part of this BTC)

### PPSB OSHE Procedure and Guidelines





## Occupational Safety, Health and Environment (OSHE) Procedure and Guidelines

### Compliance to the OSHE Rules

1. Port Users must be fully aware of all necessary OSHE requirements prior to entering the Port Operations Area. Port Users are required to demonstrate and be fully committed to ensuring HSE remains high on their agenda at all times. Port Users shall promptly notify PPSB of any health and safety hazards which may arise in connection with the works/activities conducted.
2. Port Users shall comply with all port safety / traffic rules, and safety / warning signage at all times, and fully cooperates with the terminal Supervisors / Executives / Managers. In addition to any instructions and advice that may be given by other PPSB's Management personnel, the port users shall use their own initiative to familiarize themselves with the terminal layout, and to anticipate unsafe / hazardous conditions, and be prepared to take the requisite avoidance and / or protective measures.
3. Port Users shall be adequately attired in the necessary PPE's (safety helmet, vest, shoe and others as required by the task) whilst at the Port Operations Area, as required by PPSB's OSHE codes, rules and procedures.
4. An authorized PPSB's staff must accompany visitors at all time during their visit to any PPSB's operation area. These Port Users are prohibited from moving around on their own. For new entry it must be communicate and inform to OSHE Unit for safety briefing purposes.
5. Port Users shall always be alert of all associated hazards of activities that are being carried out around them, when in the Port Operations Area and to evaluate risk and control measures accordingly.
6. Port Users shall use only authorized Vehicles to move around the Port Area.
7. Operations Area, or obtain the necessary Vehicle pass from the Security, Safety and Emergency Services Department. Motorcycles and bicycles are strictly prohibited at the North Butterworth Container Terminal and other gazetted Port Operations Area.



8. If the Port Users are authorized personnel allowed to board vessels or ships, then the Port Users shall always comply with the vessel and ship's safety rules whilst onboard such vessels or ships.
9. Port Users are strictly prohibited from accessing, riding, operating, or carrying out maintenance / repair / modification works on any machinery, equipment and plant within the Port Premises, unless authorized by PPSB.
10. Port Users shall report any defects, damages to property / equipment's or deficiencies at any area within the Port Premises that may be liable to cause accidents, to PPSB immediately.
11. Port Users shall report all accidents, incidents or injuries to PPSB immediately and to cordon off the incident area until the arrival of PPSB team.
12. To comply with 1<sup>st</sup> schedule of NADOPOD Regulation) Factory & Machinery. General Guidelines on Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning & Occupational Disease) Regulations 2004 (NADOPOD), 2005.
13. Port Users shall safeguard all of PPSB's properties by adopting and promoting a sense of belonging.
14. Port Users shall adhere to all of PPSB's HSE policies and regulations.
15. Port Users mandatory to comply with the relevant laws pertaining to OSHE Legislative such as the Occupational Safety and Health Act (OSHA 1994), Factory and Machinery Act (FMA 1967), Environmental Quality Act (EQA1974) and any other applicable laws.
16. PPSB may terminate or suspend a Port Users' access to any or all parts of the premises, without notice, for any conduct that PPSB, in its sole discretion, believe is in violation of any applicable law, or are harmful to the interests of other Port Users or PPSB.
17. Port Users shall nominate a representative(s) (if relevant) or himself to be in charge and co- ordinate the work with PPSB's personnel at PPSB's operation areas. The said representative(s) shall also be responsible to continuously promote safety awareness amongst their personnel at all times during the contract execution period.



18. Port Users shall, at its own expense, supply to all its employees and himself and ensure that its employees are provided with adequate personal protective clothing and equipment, which shall satisfy statutory requirements and accepted by industry standards. Such protective equipment shall be supplied to the employees and shall be maintained in good condition by the employees/Port Users. Such protective equipment shall be worn by the employees on all relevant occasions as indicated by notices, instructions and good sense.
  
19. Port Users are to bring their own equipment and be responsible for them. PPSB shall not be liable for any loss or damage of equipment within PPSB's premises. All equipments must be in good and safe condition that meets PPSB's OSHE standards. The equipment is to be inspected and approved by PPSB's authorized personnel before use in PPSB's premises, when required.
  
20. Port Users shall be responsible for providing all safety signs, barricades, stanchions, safety cones or safety taping as required to isolate the work area from pedestrian traffic and to prevent unauthorized access to the area.
  
21. When Port Users or his employees have to be transported to or from a place of work that the employees/Port User were assigned to, Port Users and his employees will take all practicable steps to ensure any means of transport by himself or provided by him is safe.
  
22. Port Users must ensure that he and his employees are either sufficiently experienced to do their work safely or are supervised by an experienced person and recommended buddy system all the time.
  
23. No person should be permitted to operate any machineries unless properly trained, competent and holding valid certificate and licensed and authorized in writing by the any relevant authority or employer (if there are no relevant requirement) to do so.
  
24. Port Users and his employees are required to ensure that every person who does work or deals with any substance has been informed of or have the knowledge:
  - a. Emergency, Preparedness & Response Procedures
  - b. Hazard Identification and Risk Evaluation
  - c. Identify control measures to minimize the associated hazards.

25. Port Users is responsible to ensure that he and his employees attended the Safety Induction Course provided by PPSB OSHE and Security Section. All the expenses in relation to the course shall be borne by the Port Users.

## Housekeeping

Port users must ensure:

### 1. Work Area

- a. Work areas must be kept clear of rubbish or debris.
- b. Walkways and gangways must be clearly marked.
- c. Floor's surface is diligently checked for defects and any defects should be reported for repair.
- d. Floors are skid-proof.
- e. Clean the area after every job with the necessary cleaning appliances.
- f. Oil leaks and spills must be immediately cleaned. Drip pans should be used to avoid oil spill in the work area.
- g. Make sure that there is adequate working space around machines or cargo.
- h. Equipment to be placed carefully, at a specific and safe area.
- i. Beware of objects protruding into walkways or gangways.
- j. Cables are not run across gangways and under earth cables without protection.
- k. Floors and walkways must be kept clear of tools, scrap metal and other objects or materials that could cause slip, trip and fall hazards.
- l. Oil or grease spillages must be immediately cleaned and all floors must be regularly brushed.

### 2. Storage

Storing of Chemical should ensure that store in appropriate place and ensure Safety Data Sheet (SDS) available.

- a. Store and stack all materials/cargo in an orderly manner.
- b. Mark gangways around stacks.
- c. All stacks are cross-tied and placed at a reasonable height.(approved stacking height).

- d. All stacks are diligently checked where necessary.
  - e. Objects have been properly stored and free from fall hazard.
  - f. Workers should never lift heavy items above its chest level.
  - g. Flammable liquids are stored in a “NO SMOKING” area and with adequate signage’s.
  - h. Stacks are not closely placed to the sprinkler heads, in accordance with the requirement of applicable law.
  - i. Gas cylinders are not left unsupported and are always stored in purpose-built racks/stored vertically.
  - j. Small items should be stored and placed in suitable containers.
  - k. The use of pallets and handling aids indicate safety stacking.
  - l. Stacking of materials must be properly carried out and adequate clearance should be allowed between the top of stacked items and the ceiling.
3. Scrap, Rubbish and Debris
- a. Suitable waste/rubbish containers/ bin should be allocated for all rubbish, debris and scrap in accordance with the requirement of the applicable law.
  - b. Rubbish containers/ bin are not left in walkways or gangways
  - c. Gangways and surrounding working area must be free from all form of scrap, rubbish, debris and waste materials.
  - d. Rubbish does not accumulate on floors during or after work.
  - e. Rubbish does not accumulate and block ways
  - f. Oil and paint, are kept and where possible bundles of rags in sealed containers.
  - g. Waste/rubbish containers are emptied everyday.
  - h. Swarf and metal filings are to be cleaned up with brush only, not with barehands.
  - i. Scrap must be separated into three separate areas, one for the useful, another for the saleable and another for dirt or refuse. All such dumps must be suitably labeled.

#### 4. Maintenance

Only authorized person are allowed to carry out with the maintenance work with handling system.

- a. Machines are guarded when cleaning.
- b. Ensure “Lock-out & Tag-out” system are in place during the machine maintenance work.
- c. Guards should be checked and maintained regularly.
- d. All fuse boxes and switch panels should be cleaned out regularly.
- e. The dust accumulation in motors should be cleaned out regularly.
- f. Avoid leakage of liquid by checking all pipe joints, valves and traps.
- g. All sharp edges and splinters are removed from racks and benches.
- h. All machines, motors, exhausts and moving parts are kept unobstructed.
- i. All wash rooms and areas are kept clean.
- j. Protective clothing and equipment shall be worn whenever the work requires it.
- k. First Aid facilities are adequate.
- l. Key members are trained in First Aid techniques.

#### 5. Pest and Nuisance Control

- a. No pets are allowed in PPSB’s terminal
- b. PortUsersareresponsibletotakenecessaryactionstoconductpreventiveandcontrol actions against disease borne vectors e.g rodents and mosquito in their area.

### Environment

#### 1. The Port User shall not:

- a. Discharge, throw, deposit, permit, or allow the escape of any dirt, ashes, exhaust, steam, oil, water, filth or waste matter, whether liquid or solid, onto any Port Premises without the prior written permission of PPSB ; or
- b. Cause smoke, soot, ash, grit or oil to be emitted from any ship at the Port, in such quantity or density as may be deemed, in PPSB’s sole opinion, to be a nuisance or annoyance.

2. Port Users is responsible to:
  - a. Provide spill kits (if relevant) or has the knowledge to use spill kits at site for emergency response for spillage incidents.
  - b. Dispose any tools, gloves or rags that contaminated with oil or any substance defined as scheduled waste as per requirement of the Environmental Quality (Scheduled Waste) Regulations 2005.
  - c. Only sewerage waste from tenant's premises can be discharged into PPSB's sewerage system. All industrial waste must not be discharged into PPSB's sewerage system. It shall be adequately treated (conforming to DOE's standard) before being discharged into the designated monsoon drain.

### **Dangerous Goods**

1. 'Dangerous Goods' means all cargo defined as dangerous or hazardous by any Statute, Statutory Instrument or Order, any Regulation or recommendation made by the Government or the relevant authorities or by any applicable laws relating to the handling, storage or carriage of cargo; likewise all cargo which although not so defined, are known to have properties likely to endanger life or property.
2. The following shall apply to Dangerous Goods tendered to PPSB:
  - a. the provision of the International Maritime Dangerous Goods Code (IMDG Code) standards as amended from time to time;
  - b. the provision of the Act;
  - c. the provision of any applicable laws as amended from time to time;
  - d. the provisions of any Federation Port Rules 1953 and any subsidiary laws of the Merchant Shipping Ordinance 1952;
  - e. the Petroleum Safety Measures Act 1984 as amended from time to time;
  - f. the provision of the Rules and Regulations as stated in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
3. Provision relating to the carriage of goods by road, rail or sea, contained in any statutory instrument or order made pursuant to the Act, applicable laws and in any international conventions or agreements or otherwise regulations and recommendations made by the Government or other relevant authorities and the requirements of local by-laws which may include the following Acts, Rules and Regulations as may be amended from time to time:



- a. Occupational Safety and Health Act 1994;
  - b. Occupational Safety and Health (Control of Industrial Major Accident Hazard) Regulations 1996;
  - c. Atomic Energy Licensing Act 1984 Radiation Protection (Transport Regulations 1989);
  - d. Environmental Quality Act 1974;
  - e. Environmental Quality (Schedule Wastes) Regulations 1989;
  - f. Factories and Machinery Act 1967; and
  - g. Other relevant Acts, Rules and Regulations pertaining to Malaysia in relation to Dangerous Goods as may be enacted from time to time.
4. Dangerous Goods shall not be presented to PPSB unless permission has first been obtained from Penang Port Commission (PPC). For this purpose, applications for permission shall according to the current practice of PPC and PPSB.
  5. The User shall be liable and accountable for any loss or damage caused to cargo or property or personal injury or death to persons, due to the User's omission to disclose to PPSB or due to the User's false declaration or misstatements to PPSB of the nature or classification of any Dangerous Goods delivered to PPSB for storage or discharge at the Wharf. The User shall fully indemnify PPSB for loss, damage, injury or death suffered by PPSB or for any claims made against PPSB by any party affected by such an act of omission or false declaration or misstatement.
  6. PPSB reserves the right to reject any Dangerous Goods if in the opinion of PPSB, there is no suitable facility or expertise available to render a safe and proper handling, storage or transportation of such goods, and the User shall have no claim or any right of recourse against PPSB for its refusal to accept such goods.
  7. For delivery of Dangerous Goods in containers or otherwise on a "direct delivery or direct loading" basis, the User has to ensure that such Dangerous Goods in containers or otherwise are collected directly from the vessel side using the User's vehicle for discharging operations, or such Dangerous Goods in containers or otherwise are delivered direct to the vessel side using the User's vehicle for loading operations, failing which PPSB may disallow such Dangerous Goods in containers or otherwise to be received into the Port, or such Dangerous Goods in container or otherwise will be directed to be stored in a special area in the Port premises at the sole risk and expense of the User. The User shall fully indemnify PPSB for any damage suffered or loss incurred or any claims made against PPSB by any party due to any mishap or incident consequent to the storage of such Dangerous Goods or container. PPSB reserves the right to impose additional storage charges for its deployment of Port Safety personnel and equipment, as well as for any standby and escort services rendered.





## Obnoxious Cargo

1. For the purpose of these Terms and Conditions of Business “Obnoxious Cargo” means any of the following kinds of cargo which are not included in the category of Dangerous Cargo:
  - a. substances which can cause discomfort to or adversely affect personnel handling them;
  - b. substances which will taint or contaminate other cargo or containers in close proximity;
  - c. substances which will damage other cargo or container by contact or by shifting e.g. carbon, graphite, white pigments, greases and other ‘dirty cargo’;
  - d. hygroscopic or deliquescent goods or goods in a moist or wet condition such as hides;
  - e. cargo liable to infestation by insects, mites, weevils or grubs or any other cause which may require fumigation;
  - f. cargo of liquid or semi-solid nature and goods liable to qualify with a rise in temperature such as reasonably could be foreseen ;or
  - g. any other cargo or container which is likely to adversely affect other cargo or containers or to present any special difficulties in handling.
  
2. Obnoxious goods shall not be permitted into the Port unless permission has first been obtained. For this purpose, application for permission shall be made by the User to PPC or any lawful authority pertaining to the carriage of such obnoxious goods.
  
3. The User shall be liable and accountable for any loss or damage caused to cargo or property or personal injury or death to persons, due to the User’s omission to disclose to PPSB or false declaration or misstatements made by the User to PPSB of any Obnoxious Cargo delivered to PPSB, or discharged at the Wharf. The User shall fully indemnify PPSB for any loss, damage, injury or death suffered by PPSB or for any claims made against PPSB by any party affected by such an act of omission or false declaration or misstatement.
  
4. PPSB reserves the right to reject any Obnoxious Goods if, in the opinion of PPSB, there is no suitable facility or expertise available to render safe and proper handling, storage or transportation of such Obnoxious Goods, and the User shall have no claim or any right of recourse against PPSB for its refusal to accept such Obnoxious Goods.



## Permit To Work

1. No works, including hot works, maintenance works, handling, bunkering, radiography, cold works, drilling, blasting, hydro-jetting, diving, pressure test, working at height, excavating, confined-space entry, scaffolding, painting, grinding, operating with battery/ electrical tools, vessel-to-vessel transfer repair or maintenance works on vessel or barge or any other works that require safety precautions and procedures, shall be carried out in the Port premises without a Permit to Work issued by the Safety Department(OSHE).
2. The works carried out as described para (1) above shall be deemed to be under the sole responsibility, supervision and control of the person executing the works, and the issuance of a Permit to Work by the Safety Department (OSHE) shall not render PPSB answerable for any loss, damage, injury or death caused by the works or by any fault of or omission in the execution of the works by the owner, consignee, consignor, operator of the machines and processes.