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**STANDARD TERMS AND CONDITIONS**

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**Great Lakes Ports Ltd.**

Trading as

**APM Terminals Mombasa**

**(Herein after referred to as “APMT”)**

**THIS DOCUMENT PROVIDES STANDARD TERMS AND CONDITIONS**

**BETWEEN**

1 The Customer

And

**2 Great Lakes Ports Ltd. / APM Terminals Mombasa**, a company incorporated under the laws of Kenya, in the said Republic of Post Office Box 88686-80100, Mombasa and offices located between Jomvu Road and Nairobi Road near the airport landing strip.

(Each a “**Party**” and together the “**Parties**”)

**Background**

The Customer decided to appoint APMT as provider of Services (as defined below) subject to and in accordance with the standard terms and conditions as described below

**Agreed Terms**

**1. INTERPRETATION**

1.1 In the STANDARD TERMS, the following definitions are used:

“**Cargo**” means articles of any kind whatsoever, transported or to be transported, to be stored in a Container or to be cleared from the CFS;

“**Charges**” means the fees charged by the APMT to the Customer;

“**Container**” means any container, box, pallet or other item used for the consolidation or packing of Cargo;

“**Working Day(s)**” means any other day other than an Saturday or Sunday or public Holiday in [Kenya](#) in which banks are open in Kenya for general commercial business;

“**Depot**” means any facility owned or operated by the APMT for the purpose of storing containers or executing any other container related services required by the Customer ;

“**Force Majeure**” Means any Act of God, earthquake, flood, civil commotion, strikes, riots, terrorist attack, war or any event beyond the reasonable control of the party claiming Force Majeure. ;

“**Goods**” means the whole or any part of the Cargo and any packaging and any Container, in respect of which APMT provides the Transport Services;

“**Merchant**” means any shipper, consignee, receiver of the Goods, any person owning or entitled to the possession and/or control of the Goods and anyone acting on their behalf for whom agrees to provide or arrange Transport Services or other, similar services;

“**Off-dock Inland Terminal**” means any facility owned or operated by the APMT for the purpose of storing containers or executing any other container related services required by the Customer ;

“**Services**” means the services described in this Agreement, in particular in Appendix 1 and such other services to be provided by the APMT and agreed with the Customer

“**Transport Services**” means the transportation of Containers any other services under this Agreement;

1.2 The headings in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement;

1.3 In this Agreement references to the singular shall include the plural and vice versa;

1.4 Reference to any English legal term shall, in respect of any jurisdiction other than England, be deemed to include what most nearly approximates in that jurisdiction to the English legal term;

## 2. APPOINTMENT

The Customer appoints APMT, and APMT accepts such an appointment to provide **Full Import** (Dry and/or Reefers) depot Services to the Customer as further described in this Agreement. APMT can appoint third parties to provide part of the Services, or complementary services similar to the Services. To the extent any of the obligations are subcontracted under this agreement, APMT remains liable for the sub-contractor's performance and sub-contractor's fulfilment of the APMT's obligations under this agreement.

### **3. APMT'S PERFORMANCE**

- 3.1 APMT shall provide the Services in a professional, timely and professional manner and shall comply with all applicable regulations, laws, ordinances and good industry practices.
- 3.2 APMT shall employ and maintain sufficiently licensed, qualified, trained, directed and supervised staff necessary to properly and safely perform the Services. APMT shall have complete control and supervision of Containers, Cargo and Equipment while in the APMT's custody, possession and control; and APMT shall control the detail of the work of any person transporting, operating or otherwise handling Containers, Cargo and Equipment during such time.

### **4. CHARGES**

- 4.1 The Customer shall pay APMT charges invoiced, prior to taking release of the Cargo.
- 4.2 APMT or KPA (Kenya Ports Authority) has the right to adjust rates and charges. All tariffs and rates quoted have a validity as is stated in our Tariff Offer Document.
- 4.3 Rate adjustments necessitated by fuel increment announced by the government will take effect from the effective date of increment.

**5. LIABILITY**

- 5.1 The Customer shall notify APMT without undue delay upon becoming aware of any matter which gives rise to or may give rise to a claim for loss or damage(s). Such notification to state, in reasonable detail, the nature of the matter and claim, and so far as practicable, the amount claimed.
- 5.2 APMT shall be responsible for any losses caused by or arising out of the loss, damage or theft to any Container or Cargo during the period that any such Container or Cargo are in the actual or, by operation of applicable law, constructive possession, custody or control of APMT, to the extent only that such losses, damage or theft arise out of the breach/default or gross negligence of APMT, its employees, agents or sub-contractors. APMT's possession, custody or control shall include the period between the time of acceptance of the Container or Cargo or by APMT until the time of the delivery of the Container or Cargo.
- 5.3 APMT shall be responsible to the Customer for losses caused by or arising out of breach of any obligation under this Agreement by the APMT, its employees, agents or sub-contractors to an amount not exceeding the value as per calculations stipulated on the Ocean Bill of Lading, applicable to the particular shipment from origin to destination.
- 5.4 APMT shall not be liable for loss or damage to any Container or other Cargo caused by insufficient or deficient packing.
- 5.5 APMT shall not be responsible for or liable to the Customer for any consequential, punitive or other similar indirect loss or damages. This includes without limitation, loss of profits, loss of revenue or earnings, business or goodwill.

**6. LIEN**

All Containers, Cargo, Equipment and documents that are the property of the Customer shall be subject to a particular and general lien respectively for charges due to the APMT in respect of such Containers, Cargo, Equipment and documents. This lien shall be in addition to any other remedy/relief allowed by law or under this Agreement.

**7. CLAIMS AND TIME LIMIT**

- 7.1 APMT shall notify the Customer in writing of any loss of, damage to, theft of or delay to Cargo, Containers, Equipment or documents which occurs at any time, and shall assist the Customer in the handling and settlement of any claim.
- 7.2 Any claim or action for indemnity by the Customer against APMT shall, unless an extension of time is first obtained or legal steps have been taken to protect time, be subject to a time bar of 1 month, counting from the date of release of the Container or Cargo.

**8. FORCE MAJEURE**

- 8.1 Parties shall not be liable for any failure to perform, where and to the extent performance is prevented or seriously delayed by any event of Force Majeure.
- 8.2 The Party affected by Force Majeure shall notify the other Party without undue delay, following the commencement of the Force Majeure event setting out the nature and extent of the Force Majeure, and shall similarly notify the other Party, following the end of the Force Majeure event. This notification can be by means of a general notification or an announcement on the APMT notice board outside the office building.
- 8.3 The affected Party is not required to perform any of its obligations which are prevented or seriously delayed by the event of Force Majeure for as long as such event continue and unable the affected Party, using all reasonable efforts, to recommence its affected performance.

**9. THIRD PARTY LIABILITIES**

- 9.1 Each Party (the "Indemnifying Party") shall be responsible for and indemnify the other Party (the "Indemnified Party") from and against any claim by any third party caused by or arising out of or in connection with the Services and/or involving the

Indemnified Party's liability for death or personal injury or property damage which the Indemnified Party incurs or suffers as a result of the negligence, default or breach of statutory duty by the Indemnifying Party.

**10. DOCUMENTATION**

10.1 All documents must be in a form in accordance with regulations as issued by KPA, KRA, KEBS, KEPHIS, Shipping lines and other government or non-governmental regulatory bodies.

10.2 APMT shall only accept and release cargo after all charges due all parties are settled and all relevant documents are produced.

**11. CONFIDENTIALITY**

11.1 The Customer can make no announcement related to the STANDARD TERMS AND CONDITIONS, without the prior written agreement of APMT.

**12. MODIFICATIONS AND WAIVERS**

12.1 APMT reserves the right to amend the terms and conditions of this document, and the new version of the STANDARD TERMS AND CONDITIONS will be made available at the APMT release counter, with the Management of APMT, and be posted on the official website.

12.2 The Client accepts within the framework of this Agreement that APMT shall be allowed to subcontract part of the Services, however, APMT remains liable for any sub-contractor's performance and any sub-contractor's fulfillment of the APMT's obligations under this Agreement.

**13. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

**14. ENTIRE AGREEMENT**

These STANDARD TERMS AND CONDITIONS contain the entire understanding between the Parties unless otherwise agreed in a Contract, agreed and signed between parties and relevant to the scope of services offered with this document.

**15. GOVERNING LAW AND DISPUTE RESOLUTION**

- 15.1 These STANDARD TERMS AND CONDITIONS shall be governed by and construed in accordance with the laws of the Republic Of Kenya.
- 15.2 The Parties agree that all disputes or any difference of any kind whatsoever which may arise between the Parties in connection with or arising out of this Agreement shall be resolved in an amicable way, if not achievable, shall be settled by a recognized single arbitrator agreed by both Parties. Failing to reach agreement on such single arbitrator, one arbitrator shall be appointed by each Party hereto and a third arbitrator appointed by the two chosen arbitrators.
- 15.3 The Parties agree that all disputes or any difference of any kind whatsoever which may arise between the Parties in connection with or arising out of this Agreement shall be resolved in an amicable way, if not achievable, shall be settled by a recognized single arbitrator agreed by both Parties. Failing to reach agreement on such single arbitrator, one arbitrator shall be appointed by each Party hereto and a third arbitrator appointed by the two chosen arbitrators.
- 15.4 Any such arbitration shall be in accordance with and subject to the provisions of the laws of the Republic Of Kenya and conducted in English.
- 15.5 The decision/award of such arbitrator or arbitrators shall be final and binding upon both Parties and may be enforced in any court having jurisdiction over the person or the property of the Parties.



**APPENDIX 1**  
**(Off-dock Import Inland Terminal Services)**

It is contemplated that the Customer will nominate APMT as their Import ICD for stemming of Import laden Containers and APMT's obligations include the following Services:

1. Provide deposit and storage facilities, equipped and maintained for Containers.
2. All Container stacks are handled safely by properly maintained equipment, competent drivers and all safety procedures, regulations and laws are adhered to.
3. Provide security including a secure gate system. This security covers both the Off-dock Inland Terminal area in general and the gate in particular.
4. Complete within reasonable time all import and transfers and return with completion confirmation or any relevant information with regards per vessel.
5. APMT shall provide the Transport Services in a workmanlike and professional manner and shall comply with all applicable regulations, laws, ordinances and best industry practices (including those applicable to carriage of goods, safety, health and environment).
6. APMT shall hold any necessary approvals, certificates or licenses for performing the CFS and ICD Services. APMT shall pay all governmental and municipal costs, or other costs in accordance with any applicable laws, rules and regulations. Such costs are deemed to be included in the Charges.
7. APMT shall employ and maintain sufficiently licensed, qualified, trained, directed and supervised staff necessary to properly and safely perform the CFS and ICD Services in compliance with the STANDARD TERMS AND CONDITIONS as stipulated in this document.
8. The Customer shall ensure all payments due to shipping lines, KRA, KPA and other governmental and non-governmental authorities are fully settled before applying release/delivery of cargo.
9. The Customer will be solely responsible for completing release processing with the shipping lines, KPA, KRA and other authorities and APMT shall have no control over this process or any delay ensuing out of it.
10. The Customer commits to pay in full all APMT charges as Pricing Agreement made separately.

