



Effective 1st November 2013 until further notice

**Standard Terms and Conditions for any Vessel Operating at Adriatic Gate
Container Terminal**

(hereinafter referred to as the "User")

- and -

Adriatic Gate j.s.c.

A. K. Miosica n/n

51000 RIJEKA

Croatia

(hereinafter referred to as "AGCT" or "Terminal Operator")

TERMINAL SERVICES STANDARD AGREEMENT

(hereinafter referred to as the "Standard Agreement")

NOTE: This Standard Terms and Conditions only applies in the absence of any other signed Standard Agreement between AGCT and the User. If a separate Standard Agreement is signed, then this separate Standard Agreement supersedes these standard terms and conditions.



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SECTION 1 – FORM OF STANDARD AGREEMENT

THIS STANDARD AGREEMENT, unless superseded by a direct Standard Agreement between the User and AGCT will always be in force, and will be assumed to be mutually agreed between the Parties.

WHEREAS:

1. DEFINITIONS AND INTERPRETATION

1.1 The terms defined in the Standard Conditions have the same meaning when used in this Form of Standard Agreement except where expressly stated otherwise.

1.2 The following words and expressions shall have the following meanings in this Form of Standard Agreement, unless the context otherwise requires and/or unless expressly stated otherwise:

"**Commencement Date**" means from 1st November 2013, until further notice;

"**Standard Conditions**" has the meaning as set out in Clause 1.4 of this Form of Standard Agreement;

"**Territory**" means AGCT in the Port of Rijeka, Croatia;

"**User Container**" means a Container or an Out of Gauge Container which is owned, leased, chartered, managed, operated and/or used by the User or any other company or entity within the User Group;

"**VSA**" means any vessel sharing Standard Agreement being an Standard Agreement between any container shipping division of the User Group and other shipping lines where two or more shipping lines agree to share, swap and/or purchase cargo/container space from each other;

"**VSA Ship**" means a Container Ship or any other vessel or barge accepted for berthing and work at AGCT, which is owned, chartered and/or operated by a VSA Partner;

"**VSA Partner**" means a shipping line which is party to a VSA with any container shipping division of the User Group;

"**VSA Volume**" means (i) a Container or an Out of Gauge Container which is owned, leased, chartered, managed, operated and/or used by the VSA Partner or any other company or entity within the VSA Group; (ii) goods of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container or an Out of Gauge Container which is owned, leased, chartered, managed, operated and/or used by the VSA Partner or any other company or entity within the VSA Group; and (iii) includes the VSA's Non-containerised Cargo.

1.3 In this Standard Agreement:

1.3.1 a reference to a **Condition**, unless the context otherwise requires, is a reference to a clause of the Standard Conditions as set out in Section 2 of this Standard Agreement;



- 1.3.2 a reference to a **Clause**, unless the context otherwise requires, is a reference to a clause of this Form of Standard Agreement;
- 1.3.3 the word **Charges** shall not have the meaning given to it in Condition 14.1, instead it shall mean the rates and charges which apply to the Services and which are calculated in accordance with Section 4 of this Standard Agreement;
- 1.3.4 the word **Services** shall not have the meaning given to it in Condition 14.1, instead it shall mean the services to be provided at the Container Terminal to the User by the Terminal Operator as more particularly set out in Section 3 of this Standard Agreement and such other services which may be agreed between the Parties from time to time;
- 1.3.5 the word **User** shall not have the meaning given to it in Condition 14.1, instead it shall mean the entity defined as such in the Form of Standard Agreement;
- 1.3.6 a **month** means a calendar month; and
- 1.4 Documents comprising this Standard Agreement
- 1.4.1 This Standard Agreement consists of the following documents:
- Section 1** Form of Standard Agreement
 - Section 2** Terminal Services – Standard Terms and Conditions ("**Standard Conditions**")
 - Section 3** Service Specification
 - Section 4** Charges
- 1.4.2 In the event of a conflict between the provisions of any of the documents comprising the Standard Agreement, the documents take precedence in the order set out above.
- 1.5 This Standard Agreement is entered into by the Parties in the English language. All amendments to this Standard Agreement, all correspondence between the Parties concerning or relating to this Standard Agreement, and all notices given and all documentation to be delivered by either of the Parties to the other Party pursuant to this Standard Agreement in whatever form, shall be in the English language. The English language version of this Standard Agreement shall, if there is any conflict or ambiguity, take priority over any translated version.
- 1.6 This Standard
- 1.7 Standard Agreement supersedes all previous Agreements and arrangements between the Parties with respect to the provision of the Services as from the Commencement Date.



2. DURATION

2.1 This Standard Agreement will take effect from 1st November 2013, and will continue until further notice.

3. SCOPE OF THIS STANDARD AGREEMENT

3.1 The provisions of Condition 16 shall not apply to this Standard Agreement and instead the provisions of this Clause 3 shall apply.

3.2 The Terminal Operator will provide Services to the User subject to and in accordance with this Standard Agreement.

3.3 This Standard Agreement shall apply to all Services provided in relation to: (i) all Container Ships or any other vessels or barges accepted for berthing and work at AGCT, owned, chartered and/or operated by the User or any member of the User Group (in this Clause "**User Ship**"); (ii) to all Containers and Out of Gauge Containers owned, leased, chartered, managed, operated and/or used by the User or any member of the User Group; and (iii) Cargo, whether transported on a User Container Ship or a VSA Container Ship and/or entering, remaining in or at, or leaving the Container Terminal.

3.4 The User undertakes to only use container terminals owned, operated or managed by the Terminal Operator Group in respect of Container Ships or any other vessels or barges accepted for berthing and work, calling at any container terminal in the Territory.

3.5 The Parties acknowledge and agree that the User shall contract with VSA Partners on free in free out terms whereby the costs of loading and discharging the VSA Volume shall be invoiced separately by the Terminal Operator to the VSA Partner and paid by the VSA Partner to the Terminal Operator directly under an individual terminal Standard Agreement, between such VSA Partner and the Terminal Operator and such VSA Partner shall therefore not enjoy the Charges as applicable to this Standard Agreement.

4. VOLUME FORECAST

4.1 This is not applicable in this standard agreement.

5. RATES AND PAYMENT

5.1 The provisions of Conditions 22.1 and 22.2 shall not apply to this Standard Agreement and instead the provisions of Clauses 5.2 and 5.3 shall apply. The provisions of Clause 5.4 shall apply in addition to the provisions of Conditions 22.3 to 22.6.

5.2 The User will pay the Charges to the Terminal Operator in respect of the Services rendered by the Terminal Operator.

5.3 Invoices in respect of the Charges will be raised by the Terminal Operator in advance of each port call by a User Ship and paid by the User prior to vessel berthing.



5.4 Any disbursement incurred by the Terminal Operator on behalf of the User and not related to a particular port call shall be computed and settled in the same currencies as those in which they were incurred. Any disbursement must be properly accounted for each port call and duly supported. All supporting vouchers and sub-vouchers shall be in English and shall clearly state the Services rendered and the purpose of the same. Payment of these disbursements must be paid within 10 days of the vessel departure.

6. **TERMINATION**

6.1 This standard agreement remains in force until further notice.

7. **FORCE MAJEURE**

7.1 The provisions of this Clause 7 shall apply in addition to the provisions of Condition 25 as set out in Section 2 of this Standard Agreement.

7.2 In the event that either Party is delayed or prevented from performing its obligations under this Standard Agreement by any of the events listed in Condition 25.1 (in this Clause a "**Force Majeure**"), such Party shall:

7.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

7.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Standard Agreement, which may involve moving the User Containers and/or the Cargo to another secure facility; and

7.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

7.3 If the Terminal Operator is prevented by Force Majeure from providing the Services either at all or to a substantial extent and the period of Force Majeure exceeds two (2) months then at any time on or after the expiry of that period either Party may terminate this Standard Agreement immediately by serving fourteen (14) days written notice to the other.

7.4 During any period of Force Majeure, if the Terminal Operator incurs any additional costs in complying with its obligations under Clause 7, the User shall pay the same to the Terminal Operator.

8. **ASSIGNMENT AND SUB-CONTRACTING**

8.1 The provisions of Condition 27 shall not apply to this Standard Agreement and instead the provisions of this Clause 8 shall apply.

8.2 Subject to Clause 8.3 neither Party may assign, novate or otherwise dispose of its rights or obligations under this Standard Agreement or any part thereof without the prior written consent of the other Party (such consent not to be unreasonably withheld or unduly delayed).



- 8.3 Either Party may assign, novate or otherwise dispose of its rights or obligations under this Standard Agreement to any member of its Group ("**Assignee**") which is capable and continues to be capable of meeting the liabilities of the assigning Party, upon giving prior written notice to the other Party.
- 8.4 If at any time after the assignment under Clause 8.3, the Assignee ceases to be a member of such Group or if it is no longer capable of meeting the liabilities of the assigning Party, the obligations of the Assignee shall immediately revert to the assigning Party.
- 8.5 Notwithstanding the provisions of Clause 8.1, the Terminal Operator may sub-contract any part of its obligations under this Standard Agreement.

9. **COUNTERPART**

- 9.1 This Standard Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.

10. **USER'S OBLIGATIONS**

- 10.1 In receiving the Container Terminal Services from the Operator, the User shall:
- (a) act in compliance with this Standard Agreement and the applicable laws;
 - (b) act in a safe and efficient manner and strictly comply with the safety and security regulations of the Terminal Operator;
 - (c) act in accordance with any lawful and reasonable directions given from time to time by the Terminal Operator within the scope of this Standard Agreement; and
 - (d) act in strict compliance with other relevant policies, procedures, and regulations of the Terminal Operator in the conduct of the services contemplated under this Standard Agreement.

11. **REFUSAL TO RENDER SERVICES**

- 11.1 The Terminal Operator may refuse to render services contemplated under this Standard Agreement on account of the following reasons:
- (a) The condition of the entrusted Container and Cargo being contrary to this Standard Agreement;
 - (b) When the User requests the service during storm, typhoon, storm warning, rain and snow;
 - (c) When the Container does not get the permission of the authority concerned;
 - (d) When it is possible that an accident will occur during service due to insufficient condition of Container and Cargo;
 - (e) When the export container has no permit;
 - (f) When a danger is expected because of the deficiency of service equipment or tools;



- (g) When the amount payable for the services rendered is not paid within the time limit for payment as set forth in this Standard Terms and Conditions.

12. HEALTH AND SAFETY RULES

12.1 The User is required to:

- (a) ensure that its employees, servants, subcontractors and agents comply with the Health and Safety Rules and other instructions as set out by the Terminal Operator;
- (b) ensure that its Vessels comply with the laws and reasonable instructions as set out by the Terminal Operator. The Terminal Operator shall have the right to refuse berthing and/or labour assignment to the User in the event of, and to the extent of, the User's non-compliance, with material effect, with any of such laws or instructions of the Terminal Operator. If a Vessel is at berth at the time of such non-compliance, the User undertakes to meet any additional costs resulting from such non-compliance and/or ensure that the berth is vacated immediately upon receipt of written request from the Terminal Operator.
- (c) **Removal of Objectionable Cargo:** The Terminal Operator reserves the right to move to another location and/or inspect any Cargo which in its reasonable judgement is likely to damage other cargo or property, at the risk and expense of the User. The User will be notified prior to such removal if practicable.

13. MISCELLANEOUS

- 13.1 This Standard Agreement may not be modified, amended, added to or otherwise varied except by a document in writing signed by each of the Parties.
- 13.2 In case one or more of the provisions contained in this Standard Agreement shall be declared invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 13.3 The Parties shall do and execute, or procure to be done, and executed all such further acts, deeds, documents and things as, may be necessary, to give full effect to the terms and intent of this Standard Agreement.

When the User, or his/her Agent agrees to berth the vessel, and accept the Payment terms in writing or by email, it is hereby agreed that the User has accepted these standard terms and conditions.

SECTION 2: TERMINAL SERVICES – STANDARD CONDITIONS

THE USER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE TERMINAL OPERATOR'S LIABILITY AND THOSE WHICH REQUIRE THE USER TO INDEMNIFY THE TERMINAL OPERATOR IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME BEING CLAUSES 18, 19 AND 23

14. DEFINITIONS AND INTERPRETATION

14.1 In these Standard Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"**Agent**" shall have the meaning as set out in Condition 21.1;

"**Cargo**" means goods of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container, or an Out of Gauge Container and includes any Non-containerised Cargo carried on a Container Ship or any other vessel or barge accepted for berthing and work at AGCT;

"**Charges**" shall have the meaning as set out in Condition 22.1;

"**Confidential Information**" means the provisions of these Standard Conditions and other related Standard Agreements and all data and information disclosed (whether before or after the date of this Standard Agreement and whether or not in writing, or in the form of computer discs, whether or not communicated verbally or by any other means and whether directly or indirectly) by the disclosing party (or by another person on behalf of the disclosing party) to the receiving party in whatever form, tangible or intangible, that is not generally known to the public and relates to the operations, businesses, technology, practices, products, marketing, sales, services, finances, or legal affairs of the disclosing party or of any third party doing business with or providing information to the disclosing party, including this Standard Agreement, information about this Standard Agreement, and negotiations pertaining to the terminal and this Standard Agreement as well as actual or prospective customers, business partners, market opportunities, business, sales, marketing, pricing, technical, financial and legal plans, proposals and projections, product information, know-how, design rights, trade secrets, concepts, techniques, processes, methods, systems, designs, programs, codes, formula, research, experimental work and work in progress, together with any reproductions of such information in any form or medium or any part(s) of this information;

"**Container**" means any full, partly loaded or empty standard ISO container 20', 40', 45' in length, 8' in width and 8'6"/9'6" in height including, but not limited to, dry, flat-rack, open top, artificial 'tween-deck, pallet-wide, platform, reefer and tank containers with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers), and which can be handled by means of a container spreader;

"**Ship**" means a ship or a barge fitted for the carriage of Containers, Out of Gauge Containers and/or Non-containerised Cargo whether above or below deck, including all lashing equipment required for the proper securing of Containers or Non-containerised Cargo on board;

"**Container Terminal**" means the container terminal facilities at AGCT, Rijeka, Croatia;



"**Custody**" means:

- (a) in respect of import Containers (laden or empty) or Non-containerised Cargo: (i) the period which begins when the Container or Non-containerised Cargo is physically lifted off from the Ship's deck, hold or from the top of other Containers on the Ship and ends when the Container or Non-containerised Cargo is mounted onto the withdrawing truck by the Terminal Operator's cargo handling equipment for delivery to consignee, or if shorter, (ii) the period during which the User is responsible for the Cargo under the bill of lading or other transport document if one has been issued;
- (b) in respect of export Containers (laden or empty) or Non-containerised Cargo the period which begins when the Container or Non-containerised Cargo is physically lifted off from the truck by the Terminal Operator's cargo handling equipment for stacking at the container yard of the Container Terminal and ends when the Container or Non-containerised Cargo is laid to rest on the Ship's deck, hold or on top of another container on the Ship;
- (c) in respect of transshipment Containers (laden or empty) or Non-containerised Cargo the period which begins when the Container or Non-containerised Cargo is physically lifted off from one Ship's deck, hold or from the top of the Containers on one Ship and ends when the Container or Non-containerised Cargo is laid to rest on another Ship's deck, hold or on top of another container on another Ship;

"**Health and Safety Rules**" means the health and safety rules of the Terminal Operator notified to the User from time to time;

"**Liabilities**" means any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature;

"**Non-containerised Cargo**" means Cargo not contained in a Container, accepted for transport/carriage on a Ship which cannot be handled by means of normal use of a container spreader even with special attachments;

"**Out of Gauge Container**" means a Container where Cargo protrudes beyond the standard dimensions of the Container which must be handled with the use of special attachments to a container spreader;

"**Port Act**" – not applicable to this contract in Rijeka Port

"**SDR**" means Special Drawing Rights as defined by the International Monetary Fund;

"**Services**" means any services that are provided by or arranged by the Terminal Operator, including without limitation the handling of Containers and Cargo;

"**Tariff**" means the Terminal Operator's tariff of charges;

"**Terminal Operator**" means AGCT;



"TEU" means twenty feet equivalent unit and in calculating TEUs, a 20' Container comprises one (1) TEU and a 40' and a 45' Container each comprises two (2) TEUs respectively; and

"User" means (i) any person who receives or benefits from the Services, including, without limitation, the owner of, charterer (of whatsoever nature) of, or any other person who is or may become interested in a Ship calling at the Container Terminal, the Ship's master and any person who has control of the operation of such Ship, the owner or any other person who is or may become interested in the Cargo; (ii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; (iii) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Container Terminal; and (iv) any person who drives or operates such vehicle and any person who uses and/or enters the Container Terminal.

14.2 Port Act – This clause not applicable in this contract

15. SERVICES

15.1 The Terminal Operator will:

15.1.1 provide the Services subject to and in accordance with these Standard Conditions;

15.1.2 provide the Services using reasonable care and skill;

15.1.3 comply with all laws and regulations in force and applicable to the relevant Services;

15.1.4 obtain all necessary licences and permits required to operate as a terminal operator and provide the Services.

15.2 Subject to specific written instructions given by the User and accepted by the Terminal Operator in writing, the Terminal Operator reserves to itself complete freedom in respect of the means and procedures to be employed in the provision of the Services. The Terminal Operator may deviate from the User's instructions (whether or not accepted by the Terminal Operator) in any respect if the Terminal Operator considers it necessary in the interest of the User and the User shall reimburse the Terminal Operator with all reasonable expenses incurred thereby.

15.3 The Container Terminal operates [twenty four (24)] hours a day, every day throughout the year for Marine Operations.

15.4 Normal working hours are set out as below. Any Services required outside the normal working hours must be pre-agreed with the Terminal Operator and overtime rates will apply as per public tariff.

Monday to Friday 0630 – 2230hrs

Saturday 0630 – 1430hrs



16. SCOPE AND APPLICATION OF THESE STANDARD CONDITIONS

16.1 These Standard Conditions shall apply to:

16.1.1 all Services provided to the User;

16.1.2 the use by any User of the Container Terminal and/or the facilities at the Container Terminal;

16.1.3 all Ships which berth at the Container Terminal;

and shall also be binding for all Users who receive or benefit from the Services, use and/or enter the Container Terminal.

17. REQUEST FOR A BERTH

17.1 Berths will be provided on a first come first served basis, subject to any berthing arrangements agreed with other users of the Container Terminal.

The User shall give the Terminal Operator notice of its requirement to berth at the Container Terminal at least 48 hours, 24 hours and confirmed 12 hours before arrival.

17.2 If a Ship arrives at the Container Terminal within 2 hours of the agreed time of arrival, the Terminal Operator shall use reasonable endeavours to provide a berth within six (6) hours of the agreed time of arrival.

17.3 In respect of each Ship, the User shall also give the Terminal Operator all the relevant details of the Containers, Out of Gauge Containers and/or Non-containerised Cargo in respect of which the Services will be required at least 24 hours before the estimated time of arrival of the Ship (details to include number, type, weight and dimension). The Container Terminal and the User will agree the maximum number of moves required prior to the arrival of the Ship. Based on the agreed maximum number of moves, the Terminal Operator will allocate the Ship a berthing window during which the Services will be provided (in this Condition "**Berthing Window**"). The User shall procure that the Ship shall vacate the berth at the end of the Berthing Window.

18. USER'S OBLIGATIONS AND WARRANTIES

18.1 The User shall provide all the documents and information detailed in this Standard Agreement at least 24 hours before the estimated time of arrival of the Ship.

18.2 At all times when a Ship is berthed at the Container Terminal, the User shall ensure that the Ship:

18.2.1 provides adequate lighting and safe ingress and egress (for the Terminal Operator's personnel);

18.2.2 maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Terminal Operator to provide the Services;



- 18.2.3 maintains its engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth;
- 18.2.4 and its crew members adhere at all times to all Health and Safety Rules; and
- 18.2.5 complies with all applicable laws and legal requirements relating to them, the Cargo, the Containers, their activities and the use of the Container Terminal.
- 18.3 The User will be solely responsible for complying with all formalities, procedures and regulations prescribed by the relevant customs authority and any governmental authority or other agency having legal jurisdiction over the relevant matter and which arises in connection with the Cargo, Containers and/or the Ship and for obtaining all necessary licenses and authorisations required for the transportation, exportation or importation of the Cargo.
- 18.4 User's Warranties
- 18.4.1 The User warrants and represents that:
- (a) it is authorised to contract with the Terminal Operator on the terms of these Standard Conditions in respect of the Ship, the Cargo and the Containers, and that it is accepting these Standard Conditions not only for itself, but also as an agent for and on behalf of the owners of the Ship (if it is chartered by the User), Cargo and Containers or any other person who is or may become interested in the Cargo;
 - (b) all the documentation and information provided by the User or its representatives in relation to any Cargo and/or Containers is full and accurate;
 - (c) It has not failed to disclose any material information from the Terminal Operator. Information is material where had the Terminal Operator known of such fact at any stage of the negotiation, signing and execution of this Standard Agreement, the Terminal Operator would not have entered into this Standard Agreement.
- 18.4.2 In respect of all Cargo and Containers, the User warrants and represents that they:
- (a) are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Cargo and the Containers;
 - (b) are liable to give off any injurious dust, gas, fumes, liquid or radiation;
 - (c) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Container Terminal;
 - (d) are not over-heated or under-heated or liable to become so while at the Container Terminal;
 - (e) will not contaminate or cause danger, injury or pollution or damage to any person, the Container Terminal, any other cargo, equipment or ship or the environment adjacent thereto or generally;



- (f) require for their safekeeping no special protection (other than as may be agreed in writing between the parties) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other cargo or from inflammability but will remain safe if left standing in the open or in covered accommodation at the Container Terminal if agreed in writing with the Terminal Operator;
- (g) contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and
- (h) are fit for their intended purpose and are in a fit and proper condition to be handled or otherwise dealt with by the Terminal Operator.

18.5 Indemnity

18.5.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator, its employees, servants, agents, insurers or re-insurers as a result of or in connection with any of the following:

- (a) any breach by the User of the obligations, representations and/or warranties given in Condition 18;
- (b) the Terminal Operator acting in accordance with the User's instructions.

19. DANGEROUS CARGO

19.1 Except with the Terminal Operator's express prior consent in writing, the Terminal Operator will not accept to deal with Cargo which is or may become dangerous (whether or not so listed in international codes or manuals), inflammable, damaging, injurious (including radioactive materials), noxious or which are or may become liable to damage any property or person whatsoever. Where the Terminal Operator expressly accepts in writing to deal with Cargo of a dangerous nature:

19.1.1 the User shall promptly provide the Terminal Operator with such information as is necessary for it to perform its obligation in connection with such Cargo in accordance with all applicable laws, regulations and/or requirements, including without limitation information about the nature of the Cargo, the appropriate manner and method of storage, handling and transportation; and

19.1.2 the Container must be distinctly marked on the outside so as to indicate the nature and character of any such Cargo and so as to comply with all applicable laws, regulations and/or requirements.

19.2 If the User fails to provide such information and the Terminal Operator is unaware of the dangerous nature of the Cargo and the necessary precautions to be taken and if, at any time, it is deemed to be a hazard to life or property, it may be destroyed or rendered harmless, as circumstances may require, without compensation, and the User shall be liable for any and all Liabilities arising out the Services, the destruction or rendering the Cargo harmless. The burden of proof that the Terminal Operator knew the exact nature of the danger constituted by the carriage of the Cargo shall rest upon the User.



19.3 The User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any breach of the provisions of this Condition 19.

20. **TERMINAL OPERATOR'S RIGHTS**

20.1 The Terminal Operator may at any time inspect any Ship, vehicle, Cargo, Container, equipment or other property in the User's possession or control for the purposes of ensuring compliance with these Standard Conditions.

20.2 The Terminal Operator reserves the right to suspend the provision of any Services in the event of any breach of these Standard Conditions.

20.3 The Terminal Operator may refuse acceptance of damaged or distorted Containers or of any Container which in its opinion is in an unsatisfactory condition.

20.4 The Terminal Operator may refuse to handle any Container or Cargo with a weight which exceeds its stated weight or the safe working load of any cargo handling equipment. Should any of the Terminal Operator's cargo handling equipment be used in handling an overweight Container or Cargo, the User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any loss or damage to property or death or personal injury arising out of or caused by the handling of the overweight Container or Cargo.

20.5 The Terminal Operator may install and operate any surveillance device to protect the safety and security of its property and that of its customers and third parties and to assist in the investigation and/or prosecution of any illegal act or any alleged breach of these Standard Conditions.

21. **AGENT**

21.1 The User may, subject to prior notification in writing to the Terminal Operator, appoint an agent in writing in respect of the Services (in this Condition the "**Agent**"), in which event the User shall be deemed to have authorised the Agent to act on the User's behalf in respect of all matters hereunder including to pay to or receive from the Terminal Operator all sums due under these Standard Conditions unless the User notifies the Terminal Operator to the contrary at any time hereafter and:

21.1.1 the Terminal Operator shall be entitled at any time and from time to time hereafter, to act upon any instruction, request, notice or other communication from the Agent without prior reference to the User and to receive from and to pay to the Agent any sums due under these Standard Conditions (including any rebate);

21.1.2 any payment made by the Terminal Operator to the Agent pursuant to these Standard Conditions shall be held by the Agent in trust for the User and the receipt by the Agent of such payment shall be a full and sufficient discharge of the Terminal Operator in respect of such payment; and

21.1.3 the power granted to the Terminal Operator under Condition 21.1.1 above shall continue until the Terminal Operator receives written notice from the User to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Agent thereafter.

22. RATES AND PAYMENT

22.1 In consideration of the provision of the Services, the User will pay the charges calculated in accordance with the Tariff ("**Charges**").

22.2 Unless otherwise agreed in writing with the User, all Charges are payable in advance prior to the provision of the Services.

22.3 All Charges are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority which shall be paid by the User at the rate and in the manner prescribed by law.

For the avoidance of doubt, any and all taxes, fees, charges or other dues, including surcharges, interest, and penalties, imposed or charged by the relevant government, its instrumentalities or subdivisions in connection with the services contemplated and the contract price paid under this Standard Agreement shall be exclusively borne and paid for by the User, except for applicable income taxes which shall be for the account of the Terminal Operator.

22.4 All payments due from the User under these Standard Conditions shall be made in full without any set-off, abatement, restriction or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counter claim.

22.5 The Terminal Operator reserves the right to charge interest at a rate of 15% per annum calculated on a daily basis, on all amounts not received by the due date for payment.

22.6 Without prejudice to any other rights and remedies the Terminal Operator may have under these Standard Conditions or otherwise, the Terminal Operator shall have a general as well as a specific lien on the Cargo, the Containers and any documents relating thereto for all sums whatsoever due at any time to the Terminal Operator under these Standard Conditions or otherwise. To enforce and satisfy the Terminal Operator's lien, the Terminal Operator shall have the right, at the User's expense, to sell the aforementioned Cargo, Containers and documents by public auction or private treaty, without notice to the User and without any liability towards the User and to apply the proceeds in or towards the payment of such sums. The Terminal Operator shall, upon accounting to the User for any balance remaining after payment of any sum due to the Terminal Operator, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Cargo, Containers or documents.

22.7 The Terminal Operator may, at its option, require the User to post either of the following: Surety Bond or Cash Deposit to be held in Trust or a Bank Guarantee to secure its obligations with the Terminal Operator. Surety Bond should be from an Insurance Company accredited by the Terminal Operator for the amount to be agreed on a case by case basis.

23. LIABILITY

23.1 Ship

23.1.1 The Terminal Operator shall only be liable for loss of or damage to any Ship including its gear and all other equipment to the extent the same was caused by the gross negligence or

wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.

23.1.2 The Terminal Operator's liability under Condition 23.1.1 shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Ship and (b) [US\$5,000,000] per incident or series of connected incidents.

23.2 Containers

23.2.1 The Terminal Operator shall only be liable for loss of or damage to any Container to the extent the same was caused by the gross negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.

23.2.2 The Terminal Operator's liability under Condition 23.2.1 shall be limited to:

(a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Container; as per valuation by an independent surveyor.

23.3 Cargo

23.3.1 The Terminal Operator (or any other party for whom the Terminal Operator is responsible) shall be entitled to avail itself of the defences, limitations and exclusions of liability which are available to the User under the bill of lading or other transport documents, evidencing a contract of carriage, which has been issued in respect of the Cargo carried by the User.

23.3.2 Where no bill of lading or other transport document as aforesaid has been issued in respect of the Cargo, the Terminal Operator shall only be liable for loss of or damage to any Cargo to the extent the same is caused by negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible, and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Cargo; and (b) 2SDRs per kilo of gross weight of the Cargo lost or damaged.

23.4 Delay

23.4.1 The Terminal Operator accepts no responsibility whatsoever and howsoever arising (including negligence) with regard to any failure to adhere to any timeframe or any delay in the performance of the Services (including to Containers, Cargo or Ships).

23.4.2 Without prejudice to Condition 23.4.1, if the Terminal Operator is found liable for loss or damage caused by delay or if the Terminal Operator fails to adhere to the agreed timeframes under Condition 23.4.1, the Terminal Operator's liability for the same shall not in any circumstances whatever exceed a sum equal to the amount of the Charges in respect of the Services provided in relation to the relevant Containers, Cargo or Ships.



23.5 Exclusions

23.5.1 The Terminal Operator shall not be liable for loss of or damage to any Ship, Container or Cargo under the provisions of this Condition 23 unless the User can establish that the loss or damage was directly caused by the Terminal Operator or any other party for whom the Terminal Operator is responsible whilst (in respect of Cargo or Containers) the same was in the Custody of the Terminal Operator or any other party for whom the Terminal Operator is responsible. If the loss or damage was contributed to by the act or omission of the User or any other person, the Terminal Operator shall be exonerated from liability under Condition 23 to the extent that such act or omission contributed to the loss or damage.

23.5.2 The Terminal Operator shall not be liable for loss of or damage to any Ship, Container or Cargo under the provisions of this Condition 23 unless the Terminal Operator's cargo handling equipment was used.

23.5.3 Save as set out in Condition 23, the Terminal Operator shall not be liable for loss of or damage to any Ship, Cargo or Container howsoever arising (whether caused by negligence or otherwise).

23.6 General liability

23.6.1 Notwithstanding any other provision of these Standard Conditions, the Terminal Operator shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss in respect of all claims, losses or damages, whether arising from tort (including negligence), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Standard Conditions, performance or any failure or delay in performance of the Services or any obligation under these Standard Conditions (including delay to a Ship or Cargo) or termination of the Standard Agreement constituted by these Standard Conditions.

23.6.2 For any matter not specified above, a maximum liability of EUR 5,000 will apply.

23.6.3 Nothing in these Standard Conditions shall exclude or restrict the Terminal Operator's liability for death or personal injury caused by its negligence or any other act or omission, liability for which may not be excluded or limited under applicable law.

23.6.4 Any provisions to the contrary notwithstanding, the Terminal Operator shall not in any event be held liable for any loss or damage, whether direct or indirect, suffered by the User due to:

- (a) any warranty of the User proving to be false;
- (b) physical loss or damage except upon proof that such was due to the User's negligence;
- (c) delay or detention of other parties except when it is established that such delay or detention was due to the User's delay;



23.7 Applicability to actions in tort

23.7.1 The defences, exclusions and limits of liability provided for in these Standard Conditions shall apply in any action against the Terminal Operator whether the action be found in tort, bailment, contract, breach of express or implied warranty or otherwise.

23.8 Notification of claims

23.8.1 Any claim by the User against the Terminal Operator arising in respect of any Service provided for the User, or which the Terminal Operator has undertaken to provide must be made and notified in writing to the Terminal Operator within a reasonable time, but in any event within thirty (30) days from the date of the event or occurrence alleged to have given rise to a cause of action against the Terminal Operator.

23.8.2 The Parties agree that any claim not made and notified in accordance with Condition 23.8.1 shall be deemed to be waived and absolutely barred.

23.9 Time limit for claims

23.9.1 Notwithstanding the provisions of Condition 23.8, the Terminal Operator shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Service provided for the User, or which the Terminal Operator has undertaken to provide, unless legal proceedings be brought and written notice thereof given to the Terminal Operator within twelve (12) months from the date of the event or occurrence alleged to give rise to a cause of action against the Terminal Operator.

23.10 De-minimis

23.10.1 The User shall not be entitled to bring any claim howsoever arising (including negligence) unless and until the amount of any such individual claim exceeds US\$[500].

23.11 Indemnity for excess liability

23.11.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator, its employees, servants, agents, insurers or re-insurers as a result of or in connection with any claim made by any third party (including without limitation a claim made by the owner of the Cargo or any other person who is or may become interested in the Cargo or any customs authority) (in this Condition a "**Third Party Claim**"):

- (a) when the Third Party Claim arises from or in connection with the Services (whether caused by the Terminal Operator's negligence or otherwise); and
- (b) to the extent the Third Party Claim exceeds the Terminal Operator's liability to the User under the Standard Conditions.

23.12 Without prejudice to any other provisions of these Standard Conditions, the User shall incorporate into the bill of lading and other transport documents evidencing contracts of carriage issued in respect of Cargo carried by the User, a clause to the effect that while acting in the course of or



pursuant to these Standard Conditions, the Terminal Operator shall be entitled to the benefit of all provisions or clauses in the bill of lading or other transport document to the extent such provisions and clauses benefit the User, but no further, and the Terminal Operator for itself and any party for whom it is responsible hereby accepts such benefit.

23.13 The Terminal Operator authorises, empowers and directs the User to act, and the User hereby agrees to act, as the Terminal Operator's trustee and/or agent for the limited purpose only of complying with Condition 23.12.

24. **INSURANCE**

24.1 The Terminal Operator is under no obligation to maintain property insurance for Containers, Cargo or Ships.

24.2 The Terminal Operator shall, at its own expense, procure and maintain policies of insurance covering:

24.2.1 any liabilities assumed by it under these Standard Conditions; and

24.2.2 any requirements by law, including public and third party liability.

25. **FORCE MAJEURE**

25.1 Neither party shall be liable to the other for any loss or damage to any Cargo, Container or Ship, delay or non-performance of its obligations under these Standard Conditions to the extent that such delay or non-performance is due to any acts of God, flood, severe weather condition, storm, tempest, epidemic, pandemic compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light), criminal acts, computer viruses, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), shortages of labour, materials and services and inability or delay in obtaining supplies, and other events beyond a party's reasonable control ("Force Majeure").

25.2 Force Majeure shall not include, among other things:

(a) lack of funds for the performance of any obligation hereunder;

(b) fluctuations in the relevant exchange rate; and

(c) ordinary or extraordinary inflation.

25.3 Notwithstanding the foregoing, the User shall pay the reasonable cost of any services and/or facilities provided to User by the Terminal Operator during any such period of forced inactivity, for any vessels of User in berth, and the cost of watching personnel and such other employees as may be required to accommodate and protect the vessels and Cargo of User, provided that User has agreed to accept such services in writing in advance.



25.4 The Parties will consult with each other and take all reasonable steps to minimize the losses of any Party resulting from Force Majeure.

26. **CONFIDENTIALITY**

26.1 The parties undertake that they shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 26.2.

26.2 Each party may disclose the other party's Confidential Information:

26.2.1 to its employees, officers, agents, representatives or professional advisers who need to know such information for the purposes of carrying out the party's obligations under these Standard Conditions;

26.2.2 any information which have become part of the public domain or becomes generally known to the public; and

26.2.3 as may be required by law, court order or any governmental or regulatory authority.

26.3 If either party breaches this Condition 26, the other party shall have the right to immediately obtain an injunction to prevent the further disclosure of any confidential information, in addition to any other right it may have at law or otherwise.

26.4 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under these Standard Conditions.

27. **ASSIGNMENT AND SUB-CONTRACTING**

27.1 The Terminal Operator may assign any or all of its obligations under these Standard Conditions.

27.2 The User may not assign, novate or otherwise dispose of its rights or obligations under these Standard Conditions or any part thereof without the prior written consent of the other party (such consent not to be unreasonably withheld or unduly delayed).

27.3 The Terminal Operator may sub-contract any part of its obligations under these Standard Conditions.

28. **GENERAL PROVISIONS**

28.1 These Standard Conditions (together with any document expressly incorporated by the parties (if any)) comprises the entire Standard Agreement between the parties with respect to the provision of the Services and any representations or statements whether made orally or written elsewhere are hereby excluded (including without limitation where such representations or statements were made negligently) provided always that this Condition shall not exclude or limit any liability or any right which any party may have in respect of pre-contractual statements made or given fraudulently supersedes all previous Standard Agreements and arrangements between the parties with respect to the provision of the Services. If the User's documentation contains terms or conditions additional to



or at variance with these Standard Conditions every such additional or varying term or condition shall be of no effect.

- 28.2 The User acknowledges that it does not enter into these Standard Conditions in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of these Standard Conditions and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 28.3 If any provision of these Standard Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, then these Standard Conditions will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Standard Conditions, valid and enforceable. If a court declines to amend these Standard Conditions as provided herein, the invalid, illegal or unenforceable provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if these Standard Conditions had been executed with the invalid, illegal or unenforceable provision eliminated.
- 28.4 In the event of any such severance as described in Condition 28.3, the parties will negotiate in good faith with a view to replacing the provisions so severed with legal and enforceable provisions that have similar economic and commercial effect to the provisions so severed.
- 28.5 The failure of either party to insist upon strict performance of any provision of these Standard Conditions, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by these Standard Conditions.
- 28.6 A waiver of any breach of contract shall not constitute a waiver of any subsequent breach of contract.
- 28.7 No waiver of any of the provisions of these Standard Conditions shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Condition 28.13.
- 28.8 Except as expressly stated in these Standard Conditions, no right or remedy conferred upon any party by these Standard Conditions shall be exclusive of any other right or remedy howsoever arising and all such rights and remedies shall be cumulative.
- 28.9 Any modification, variation, amendment or addition to these Standard Conditions must be in writing and signed by a duly authorised representative of each party.
- 28.10 Any party for whom the Terminal Operator is responsible shall have the benefit of the exclusions of liability contained in, and shall have the right to enforce, the provisions of these Standard Conditions.
- 28.11 Except as stated in Condition 28.10, a person who is not a party may not enforce, or otherwise have the benefit of, any provision of these Standard Conditions.
- 28.12 The Terminal Operator is an independent contractor under these Standard Conditions. Nothing in these Standard Conditions shall be construed or interpreted to constitute a partnership, association or



joint venture between the parties, or to make one party an agent or representative of the other party. Neither party shall hold itself out as an agent of or in a joint venture with the other party. The User shall have no authority to act on behalf of the Terminal Operator, and the Terminal Operator shall have no authority to act on behalf of the User, except to the extent necessary for the Terminal Operator to accomplish its obligations under these Standard Conditions.

28.13 Notices which serve to alter or revise the terms of or to terminate the Standard Agreement constituted by these Standard Conditions, or notices in respect of claims or legal actions or which otherwise have a material impact on these Standard Conditions shall be in writing in English and served to the registered office of the other party by:

28.13.1 registered mail, or courier service, and shall be deemed served if sent by courier, on the date and at the time of signature of the courier's delivery receipt, or if sent by registered mail, 9:00 am on the fifth (5th) day after posting; or

28.13.2 fax (confirmed without undue delay by courier service or registered mail), and shall be deemed served when the sender receives one or more transmission reports showing the whole of the notice to have been transmitted to the correct fax number.

28.14 These Standard Conditions and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Croatia.

28.15 Any claims or dispute relating to or in connection with this Standard Agreement, which the Parties are unable to settle on an amicable basis shall be settled and resolved with finality by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). The place and seat of arbitration shall be in London, England. The language to be used shall be English. Notwithstanding such arbitration, nothing shall prevent the Parties from obtaining any provisional order or remedy from the courts of Croatia in order to protect its rights and interests in the immediate period.

28.16 The Terminal Operator shall be entitled to bring legal proceedings against the User in the courts of Croatia or in any other jurisdiction (including jurisdiction(s) where the User has a place of business or assets) and legal proceedings by the Terminal Operator in one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.

SECTION 3: SERVICE SPECIFICATION

Except as otherwise specifically provided in this Contract, AGCT shall provide its services and perform its functions at the Container Terminal in accordance with this Standard Agreement, in an efficient, economical and prudent manner subject to the general and reasonable direction and instructions of the User, or its duly authorized representatives, and in accordance with sound operating practices of the relevant industry. AGCT shall provide the following services at the Container Terminal:

I Berth

AGCT will grant to the User the use of a berth within the Container Terminal area, based on first come - first served basis. Main Line Operators with prior agreed berthing windows will take priority.

ETA (Estimated Time of Arrival) to be advised by the User in 48 hours, 24 hours and confirmed 12 hours before arrival.

II Adequate yard space for hauling, sorting, storing and handling Containers carried or to be carried in the User's services.

III Vessel stowage planning, co-ordination of physical discharge and loading.

IV All necessary equipment, materials and supplies as may be reasonably contracted for or requested by the User or their designated Agents necessary for carrying out the agreed functions.

V The User may provide AGCT with schedules of their operations from time to time, and AGCT shall provide its services accordingly so as to enable the User to fully meet and comply with such schedules.

2.2 As required by the User, AGCT shall, at the User's sole cost and expense, arrange for the following services at the Container Terminal for the Containers moving in the User's services:

I All receiving and delivering of Containers (gate function), and chassis on behalf of the User. A Container inspection for apparent external order and condition will be made each time equipment is interchanged. Entry of Container information into computerised marine stowage systems.

II All release of Containers for and on behalf of the User shall be done only to parties evidencing or demonstrating the right to receive such Cargo. Documentation shall be kept by AGCT stating to whom Cargo is released and based on which documentation.

For this purpose, AGCT may refuse to release the Containers in case the authority of the parties acting for and on behalf of the User is not evidenced by sufficient documentation.

III Preparation of vessel loading/unloading sequence sheets, vessel stow plans and other required documentation.

IV Mounting/dismounting of Containers from stack to rail/truck or from rail/truck.



- V Discharge or loading of Containers between vessel and dock, transporting them to/from vessel's side to/from container storage area and stack, as required.
 - VI Storage of import and export Containers (full and/or empty) and reefer containers.
 - VII Plugging/unplugging, electricity supply and supervision/monitoring of reefer containers.
 - VIII All labour and supervision necessary or related to the rendition of services by AGCT under this contract.
 - IX All machinery, cranes and equipment necessary for efficient performance of stevedoring and terminal operation.
 - X AGCT is to supply main line/slotcharter/barge/feeder vessel upon completion of Cargo work with complete cargo plan/bay list, out of gauge manifest, reefer manifest, hazardous cargo manifest and other reports as may be requested or required.
 - XI Rigging of ships gear, opening/closing of hatch covers, removal and reloading of hatch covers on main line vessels as per User's request.
 - XII Provide security including proper gate system at the relevant sites. The intent of this service is to provide ordinary watching functions and to serve as a deterrent measure to prevent pilferage, theft and/or fire.
- 2.3 Data and reports will be prepared by AGCT on mutually agreed terms.
- 2.4 The User will provide AGCT with dock receipts, load lists and other such printed or electronic forms as AGCT may reasonably and specifically request in the discharge of AGCT's obligations.
- 2.5 The User shall provide such data lists and information required for AGCT to perform its functions, which may include, but not limited to:
- I A ship's discharge and loading plan not later than 24 hours before arrival of the ship, to which reasonable modifications can be applied up to 6 hours before commencement of operations. Changes thereafter will imply shut out to be charged by AGCT.
 - II. Responsibility for a timely delivery of all export containers up to 8 hours before a vessel's arrival, including nomination of vessel voyage and port of discharge, so that AGCT, under all circumstances, will be able to maintain a continuous and uninterrupted production and timely planning. AGCT recognises the User's special requirements for transshipment containers and will co-operate fully with the User to ensure timely loading of such transshipment containers.
- 2.6 When requested in writing by the User, AGCT will perform extra services at the best of its ability, at rates charged to the User in accordance with the Public Tariff unless otherwise agreed in writing prior to the activity being performed.



2.7 HEALTH AND SAFETY RULES

Both Parties agree to follow all local and International Health and Safety regulations as laid down in Local and International Guidelines.

AGCT will maintain a Health and Safety Policy to ensure compliance.

Any representative (for example - employee, contractor, third party, crew member, etc.) who is permitted on the terminal on behalf of the User must comply with the AGCT Health and Safety rules. Upon failure to comply, AGCT reserves the right to ask the individual to exit the terminal.



SECTION 4: CHARGES

Public Tariff applies unless agreed separately in writing.