

**Association of Inland Container Depot Operators
Standard Trading Conditions**

1. Interpretation

- 1.1 The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate.
- 1.2 At the discretion of the Company, the context clearly indicates a contrary intention, words importing any one gender shall include other gender, singular shall include the plural and vice versa and natural persons shall include entities recognized in law and vice versa.
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely:
- a) "ACDO" means the Association of Inland Container Depot Operators an association incorporated under the Companies Act No.17 of 1982 (bearing Registration No.GA729) and having its registered address at 117, Hunupitiya Lake Road, Colombo 2.
 - b) "Conditions" mean these Standard Trading Conditions.
 - c) "Container" means any container, transportable tank or flat rack, used to transport goods and constructed to ISO standards or recommendations or those of a similar recognized classification society.
 - d) "Container Depot Services" means the services morefully set out in Clause 2.1.
 - e) "Container Operator" means any person engaged in the business of container terminal services, container depot services and container freight station operations in the Republic as defined in the Licensing of Shipping Agents (Amendment) Act No. 18 of 2002.
 - f) "Container Trailer" means a trailer constructed for the purpose of carrying Containers.
 - g) "Company" means a member of ACDO who is providing the Services as a Container Operator to the Customer.
 - h) "Customer" means any person, at whose request or on whose behalf the Company undertakes any of the Services.
 - i) "Dangerous Goods" means such goods that are or may become of a dangerous, noxious, hazardous, inflammable, radioactive or damaging nature as well as goods that are liable to taint or affect other goods.
 - j) "Documents" means any communication, file agreement, document invoices, list, cheque, bill notice for or any other the other written document in whatever form (electronic, paper or other and including any original or copy thereof) which is used or provided in connection with the services.
 - k) "Depot" means a Container depot duly approved by the relevant regulatory authority and operated by the Company as a depot operator to store containers.
 - l) "Container Freight Station" means a facility where freight shipments are consolidated or deconsolidates and staged between transport legs.
 - m) "Export Goods" mean Goods delivered to the Company for containerization.
 - n) "FCL" means Full Container Load which is a Container containing Import Goods or Export Goods for 1 consignee or which is shipped under 1 ocean bill of lading.

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- o) "Force Majeure" means any act of God, earthquake, fire, flood, terrorist attack, embargo, civil riots, wars of revolutions, epidemics, quarantine restrictions, freight embargoes or other event beyond the reasonable control of the party claiming Force Majeure.
- p) "Goods" mean any cargo, packing, pallets.
- q) "Import Goods" mean containerized Goods delivered to the Company.
- r) "ISO" means International Organization for Standardization.
- s) "Loss" means physical loss arising out of damage, theft or any other cause whatsoever whilst under the custody of the Company.
- t) "LCL" means Less than Container Load.
- u) "Owner" means Owner of the Container or Goods.
- v) "Person" means a natural person, statutory body, company incorporated in terms of the law in force in the Republic, a firm, partnership, close corporation or association.
- w) "Republic" means the Democratic Socialist Republic of Sri Lanka.
- x) "Services" means the Container Depot services or Container Freight Station activities morefully described in Clause 2.

2. The Services provided by the Company

- 2.1 In respect of Container Depot:
 - 2.1.1 Container condition surveys.
 - 2.1.2 Report the status of the Container to the Customer.
 - 2.1.3 Damaged Container repair estimation.
 - 2.1.4 The handling, storing, cleaning and repairing of Containers.
 - 2.1.5 Pre-trip inspections of refrigerated Containers.
 - 2.1.6 Container rigging and conversions.
 - 2.1.7 Facilitating inspection of Containers by 3rd parties.
- 2.2 In respect of Container Freight Station:
 - 2.2.1 Receipt of Goods in compliance with Export Goods delivery instructions.
 - 2.2.2 Examination and reporting of the condition of the Goods.
 - 2.2.3 Packing, handling and loading of Goods into Containers.
 - 2.2.4 Receipt, handling and checking of Documents.
 - 2.2.5 Storage of laden Containers.
 - 2.2.6 Arrange customs examination.
 - 2.2.7 Transportation of the laden Container to port and attend to the relevant documentation at port and the Customs Department.

3. Obligations of the Customer

- 3.1 The Customer warrants that it is either the Owner or the authorized agent, contractor and/or subcontractor of the Owner and that it is duly authorized to accept and is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner.
- 3.2 The Customer shall provide the Company 24 hours advance notice, sufficient and executable instructions and/or information as may be necessary for the Company to provide timely and professional services as may be required by the Customer in an error free manner. Such information shall include but not be limited to Container requirement, timelines for the delivery

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of Containers and the Goods and information relating to the dispatch of Containers with special deadlines for delivery.

- 3.3 The Customer warrants that, at all times the description and particulars that shall be provided to the Company from time to time shall be complete, correct and accurate.
- 3.4 The Customer warrants that the Goods to be handed over to the Company shall be properly packed and labeled in keeping with the standards and regulations of the ISO and shall not include any Dangerous Goods of any manner whatsoever.

4. Special instructions with regard to the Goods and the Services

- 4.1 The Customer shall ensure that it does not transport any Dangerous Goods to or within the premises of the Depot nor load any Dangerous Goods within such premises. The Company shall be entitled to refuse to load or lease out Containers or accept Containers at the Depot which have been loaded with Dangerous Goods, unless by prior agreement in writing and with the prior approval of the relevant regulatory authority for such purpose. Such refusal shall result in the Dangerous Goods being removed immediately from the Depot at the Customer's sole risk and expense.
- 4.2 If, at the discretion of the Company, the Customer is in breach of the above clause the Customer shall be unconditionally liable for all loss or damage caused by or in connection with the Dangerous Goods, howsoever arising, whether or not caused by the negligence or otherwise of the Company or its employees, agents, contractors and/or sub-contractors, and shall forever defend, indemnify and hold the Company harmless against all penalties, claims, loss, damages, costs (including but not limited to legal costs on the attorney and own Customer scale) and expenses whatsoever arising in connection therewith and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other Person in whose custody they may be at the relevant time.
- 4.3 If, at any time after the Company agrees to accept Dangerous Goods, and upon inspection, in the sole opinion of the Company they constitute a risk to other Goods, property, life or health, they may without notice to the Customer, be destroyed or otherwise dealt with so as to remove such risk, at the sole risk and expense of the Customer.
- 4.4 The Customer undertakes not to tender for transportation any goods which require temperature control without previously giving at least 2 days written notice to the Company of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer.
- 4.5 The Company shall not be liable for any loss of or damage to the Goods caused by non-compliance with the aforesaid clause.

5. General Indemnities

- 5.1 The Customer shall indemnify the Company against all liability, loss, damage, claims, penalties, costs or expenses arising from:
 - 5.1.1 The nature of the Goods, unless such liability, loss, damage, claims, penalties costs or expenses arising out of the Company's own negligence.
 - 5.1.2 The Company acting in accordance with Customer's instructions.
 - 5.1.3 Any breach of warranty or obligation by the Customer.
 - 5.1.4 Any negligence on the part of the Customer.

6. Damaged Containers/cargo/property and limitation of liability

- 6.1 Any miss-release of an empty Container due to the negligence of the Company may be compensated based on the actual cost of transport or to a maximum value of LKR.20,000.00, whichever is less, provided the Company is informed of same in writing within 24 hours of such release taking place.
- 6.2 The Company shall not be responsible for any loss, damage, delay, loss of market, indirect or consequential loss, mis-delivery, costs, expenses, accident and/or injury of whatsoever nature or kind and howsoever sustained or occasioned and whether to property or persons of the Customer except as specified hereinafter.
- 6.3 If the physical loss or damage of the type as specified below was caused by the willful default or gross negligence of the Company then, and in that event only, the Company shall be liable therefore, but in no cause exceeding the financial limits set out in those sub-paragraphs respectively:
- 6.3.1 In respect of physical loss or damage to Containers and/or ancillary assets of the Customer (including trailers, and chassis) while in the custody of the Company, the Company shall pay the depreciated or market value of the Container whichever is less or such ancillary assets or the reasonable costs of repair, whichever is the lesser.
- 6.3.2 The liability of the Company shall not exceed in the aggregate Sri Lanka Rupees Two Hundred and Fifty Thousand (LKR 250,000/=) for any one accident or occurrence or series of accidents or occurrences arising from one event.
- 6.4 Any claims which are made by the Customer from the Company pursuant to clause 6.3 above shall comply with the following procedure
- 6.4.1 The Customer shall notify the Company in writing of such claim within Fourteen (14) days of the relevant incident.
- 6.4.2 The Customer shall comply with all requirements and procedures of the Company and of its insurers with regard to the processing of claims.
- 6.5 For the avoidance of doubt it is hereby specifically acknowledged by the Customer that the processing of any claim by the Company or its insurers shall not of itself amount to an admission of liability on the part of the Company and/or its insurer

7. Service Charges

- 7.1 The Customer shall be liable to the Company for the payment of all amounts due to the Company for Services rendered by the Company and such payments shall, where applicable, be made in accordance with the Service Charge Schedule.
- 7.2 The Customer shall pay to the Company all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- 7.3 When an amount is overdue by the Customer, the Company shall charge an interest for the overdue amount and the Customer would be obligated to pay the amount, inclusive of the interest charged.
- 7.4 The Customer shall be obliged to pay all and any costs incurred by the Company in complying with all and any statutory requirements and regulations, notices, requirements of a competent authority or order of court, including storage, movement, permanent removal or

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destruction of infested or contaminated Containers or Goods or the treatment of the Company's employees, agents, contractors or sub-contractors or premises or any other persons or premises as a result of any infestation or contamination arising from such Containers or Goods, and the Customer waives any claims it may have against the Company for loss of or damage to property or injury to persons, arising directly or indirectly from such infestation or contamination and indemnifies the Company against any claims in this regard made by any other Person, except where and only to the extent attributable to the negligence of the Company or its employees.

8. Rights and Liberties

- 8.1 The Company shall be entitled, without notice to the Customer, and except insofar as has been otherwise agreed in writing, to enter into any contracts on behalf of itself or the Customer for the purpose of performing the Services.
- 8.2 The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not incur any additional liability thereby.
- 8.3 The Company shall have the option to refuse acceptance of any Container or any instructions and/or transport any Container(s) or provide any direct or ancillary services requested by the Customer / an agent, in case such Container, as per the Company, is deemed unsafe for transportation, storage, or to handle and/or which in the Company's professional judgment, would cause injury or loss of life to Company staff and/or any third party and/or damage the Company's equipment, and/or cause Loss or damage to any property. It being agreed however that the reasons for such refusal to execute instructions shall be submitted to the Customer and laid down with the reason/s for such action to be taken.
- 8.4 If delivery of the Goods or any part thereof is not taken by the Customer at the Depot and/or where the Company, or any Person whose services the Company makes use of, is entitled to call upon the Customer to take delivery thereof, the Company or such other Person shall be entitled to store the Goods in the open or under cover at the Depot at the sole risk and expense of the Customer.
- 8.5 The Company shall be entitled to sell or dispose of the Goods at the expense of the Customer in the event the Goods are not collected within 30 days of being delivered to the Depot and/or the Goods have perished, deteriorated or altered and as a result would cause an inconvenience to the Company.
- 8.6 All the Goods as well as all Documents relating to the Goods shall be subject to a special and general lien or pledge and may be held by the Company in any place by the Company or any other authorized agent of the Company as security either for monies due in respect of such Goods or for other monies due to the Company by the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.

9. General Liability

- 9.1 Unless provided otherwise, the Company shall not be liable for any claims which are in any way related to;
 - 9.1.1 insufficiency with the packing or labeling of the Goods, except in the situation where such services are provided by the Company,
 - 9.1.2 the weight, measurements, contents, quality, defect or description of any of the Goods,

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- 9.1.3 handling, loading, stowage or unloading of the Goods by the Customer or any Person acting on its behalf, unless the Company takes the responsibility to do so,
 - 9.1.4 inherent vice of the Goods, defective conditions or the weight of the Container being in excess of the maximum permitted weight,
 - 9.1.5 any cause which the Company could not have prevented by the exercise of reasonable diligence,
 - 9.1.6 where the performance of their obligations is prevented by an event of Force Majeure,
 - 9.1.7 breakdowns or failure of any handling equipment of the Company where the Company has taken all possible and available methods to rectify /substitute to provide alternate equipment within the time given by the Customer, or;
 - 9.1.8 breakdowns of, accident to, failure of, interruption of or reduction of the main electrical supply and other utilities to the Company, even though the Company is under no obligation to have available any auxiliary power supply.
- 9.2 Notwithstanding anything to the contrary contained in these Conditions, the Company shall not be liable for any loss or damage to property other than the Goods themselves; any indirect or consequential loss or damage; loss of profit; delay or deviation arising from any cause, including but not limited to the Company's negligence, in any degree, or breach by it of any of these Conditions.

10. Insurance

All insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.

11. Miscellaneous

- 11.1 The defenses and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action is brought forward in contract or delict.
- 11.2 No variation of these Conditions shall be binding on the Company unless embodied in a written document and duly authorized by ACDO. Any purported variation or alteration of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Conditions by the Customer.
- 11.3 If any provision of these Conditions is unenforceable, then ACDO shall be entitled to elect that such provision shall be severed from the remaining provisions of these Conditions.
- 11.4 New provisions, if need be will be drafted and be included in these Conditions by ACDO.

12. Jurisdiction and Law

These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to laws of the Republic and the exclusive jurisdiction of the Courts of the Republic.