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# **TERMINAL SERVICES CONTRACT**

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**BETWEEN**

**PT Terminal Petikemas Surabaya**

**AND**

**Any Client  
utilising the services provided by the  
Operator**

**1st September 2007**

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This Agreement, together with all schedules and appendices attached hereto and made part hereof (**Agreement**) is made and entered into at the Port(s) of Surabaya (**Port**) between:

PT Terminal Petikemas Surabaya of Jl. Tanjung Mutiara 1, Surabaya, 60177 Indonesia,  
(**Operator**)

AND

Any Clients, Lines and/or Parties utilising the Terminal and/or services provided by the Operator  
(**collectively the Customer**)

Use of the Terminal and/or the Operator's services by any Customer indicates de facto acceptance of this Agreement. In the event that this document is unsigned it shall remain in force until modified by the Operator.

## 1. BACKGROUND

1.1 The Operator supplies the Services.

1.2 The Customer requires the Services.

1.3 This Agreement:

- (a) defines those Services the Operator will supply to Vessels owned, chartered, operated, leased or otherwise under the control of the Customer at the Port; and
- (b) states the terms on which the Operator will supply and the Customer will acquire those Services.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Agreement:

**Agreed Vessel Schedule** means the vessel schedule set out in Schedule 4.

**Agreement** means this agreement, inclusive of all schedules hereto, subject to such modifications as may be agreed in writing by the Parties in accordance with clause 28.1.

**Berth or Terminal** (as the case may be) means such wharf area contained within the Port presently owned, leased, operated or managed by the Operator and any other wharf area within the Port which the Operator may in the future own, lease or have access to, together with adjacent areas in which Containers or Cargo are received, handled and stored for the purpose of loading onto or discharging from a Vessel.

**Berthing Window Plan** means the berthing window plan relating to the Services communicated by the Operator to the Customer under clause 6.2(a) and described more fully in Schedule 4.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business in Surabaya, Indonesia.

**Cargo** means any goods, merchandise or other property whatsoever, whether or not in a Container, in respect of which the Operator provides the Services.

**Claim** means any claim by any person for loss or damage arising out of or relating to any or all of the Cargo, any Vessel or Vessel's equipment, the Services or any delay or other failure in supplying the Services pursuant to this Agreement.

**Commencement Date** means 1<sup>st</sup> September 2007, being the date on which the provision of Services pursuant to this agreement shall commence in accordance with clause 4.1.

**Commencement Service Date** means the date when the Customer give their consent on the provision of this Agreement by signing this Agreement or by providing their consent and acceptance through electronic contract

**Confidential Information** of a Party means the following information in any form:

- (a) the terms and conditions contained in this Agreement (which is Confidential Information of each Party); and
- (b) information of a confidential nature which is communicated by or on behalf of that Party to another Party, before or after the date of execution of this Agreement including, without limitation, information relating to the financial or trading position of the first-mentioned Party and practices, techniques, processes, trade secrets and know-how relating to the operation of the Terminal (being Confidential information of the Operator) or of a Vessel (being Confidential information of the relevant Line).

**Container** means any container, flat, bolster or other unit conforming with ISO dimensional standards for international shipping which is owned, leased or controlled by the Customer.

**Customer's Visitors** means all employees, agents, subcontractors and any other person whom the Customer may direct or invite to enter the Terminal.

**Dispute** means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or tort, or in negligence relating to the performance or non-performance of this Agreement.

**EDIFACT** means the United Nations standards for Electronic Data Interchange for Administration, Commerce and Transport.

**Export Receival Advice (ERA) and/or Pre Receival Advice (PRA)** means the declaration of the shipper or packer in respect of the Container or Cargo being shipped.

**Facility Security Plan** means the security plan established by the Operator in relation to the operation of the Terminal.

**Force Majeure Event** affecting a Party means anything outside that Party's reasonable control, including without limitation, fire, flood, drought, storm (or other adverse weather conditions), lightning, act of God, peril of sea or air, explosion, radioactive or chemical contamination, sabotage, accident, embargo or trade restriction, blockade, labour dispute, strike or shortage, civil commotion, curfew, act of war, actual or threatened act of terrorism, pressure waves caused by aircraft or other devices, meteorites, epidemic, plague, quarantine or expropriation, confiscation or nationalisation of terminal assets by government authority.

**Insolvency Event** means in relation to any Party:

- (a) the appointment of a receiver, administrator, liquidator, provisional liquidator or any kind of external administrator to that Party or any of its assets or business;
- (b) the entering into of any arrangement or compromise between that Party and its creditors for delay for payment of its debt ;
- (c) that Party ceasing to be able to pay its debts as and when they fall due; or
- (d) that Party ceasing to carry on its business in the ordinary course.

**ISPS Code** means the International Ship and Port Facility Security Code forming part of the Safety of Life at Sea (SOLAS) Convention of the International Maritime Organisation.

**Liability Ceiling Amount** has the meaning given to that term in Schedule 2.

**Liability Floor Amount** has the meaning given to that term in Schedule 2.

**Lines** means the shipping lines represented by the entity or entities comprising the Customer under this Agreement and **Line** shall have a corresponding meaning.

**Minimum Term** means the period of two (2) years running from the Commencement Service Date as specified in Clause 4.1.

**Party** means a party to this Agreement and includes that party's successors, legal, personal representatives, and permitted assigns and **Parties** shall have a corresponding meaning.

**Performance Standards** means the specified standards to which the Operator and Customer are required to perform their respective obligations under the terms of this Agreement, as may be varied by the Parties in accordance with clause 8.4.

**Port** means the Port of Tanjung Perak, East Java, Indonesia.

**Records** means records of the type referred to in clause 8.5.

**Representative** of a Party means the representative of that Party appointed under clause 8.1(a).

**Services** means the stevedoring or terminal services more fully described in Schedule 1.

**Tariff** means the list of charges as set out in the Port Tariff issued by PT (Persero) Pelabuhan Indonesia III and in the Tariff Memorandum of PT Terminal Petikemas Surabaya.

**Vessel** means any vessel within the contemplation of clause 5.

**Vessel Operator** means the operator in control of any Vessel at the Port.

**Website** means official website of the Operator with following domain name [<http://www.tps.co.id/>]

**Working Day** means the day and evening shifts on any day between Monday and Friday (inclusive) but excludes all night shifts, weekends, public holidays and closed port days even if worked by the Operator. Working hours of the Container Freight Station will remain

at the discretion of the Operator. Note that on Fridays, all work ceases between 11:00 hrs and 13:00 hrs. Documentation Centre working hours includes Saturday 0800hrs to 1200hrs.

## **2.2 Interpretation**

In this Agreement unless the contrary intention appears:

- (a) a reference to a part, clause, schedule, annexure or appendix is a reference to a part or clause of or schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix;
- (b) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty four (24) hours later; and
- (i) a reference to United States Dollars (US\$) means the lawful currency of the United States of America and Rupiah (Rp) means the lawful currency of the Republic of Indonesia.

## **3. CONSORTIA/ALLIANCES**

Subject to the limits of liability of the Customer set out in this Agreement, each of the Lines shall be jointly and severally responsible for performance of the obligations of the Customer under this Agreement including, without limitation, liability for amounts payable to the Operator in relation to the Services provided to, or breach by, an individual Line.

## **4. TERM**

### **4.1 Basic Term**

This Agreement shall take effect from Commencement Service Date and remain in effect for the Minimum Term, subject to earlier termination in accordance with clause 18.

### **4.2 Extended Term**

Upon the expiry of the Minimum Term, the Agreement shall, unless notice of termination has been served by the Operator prior to expiry of the Minimum Term, continue for a period of one (1) year (Extended Period) and the terms of this Agreement shall continue to bind the Parties subject to adjustment of tariffs in accordance with Part 13 (which shall apply from the expiry date of the Minimum Term)

### **4.3 Provision of Services**

During this Agreement:

- (a) the Operator must supply the Services to the Customer; and
- (b) the Customer must acquire the Services exclusively from the Operator and pay for them at the tariff rates prescribed in Part 13

## **5. VESSELS**

### **5.1 Which Vessels**

The Vessels governed by the provisions of this Agreement will be those Vessels owned, chartered, operated or leased by the Customer and notified in writing by the Customer to the Operator, prior to the Commencement Service Date of this Agreement or from time to time during the term of this Agreement (including, without limitation, the vessels specified in Schedule 4).

The Customer shall inform the Operator at least ten (10) days prior to the arrival of any new vessel that is to berth at the Terminal. The Customer shall provide the general arrangement of the new vessel and any other appropriate information at least seven (7) working days prior to the vessel's arrival at the Terminal.

### **5.2 Vessel Warranty**

The Customer warrants and undertakes to ensure that the Vessels notified in accordance with clause 5.1 are operated in compliance with all applicable laws of Indonesia and international standards with respect to safety, stability, seaworthiness, fitness for purpose and security including, without limitation, regulations introduced pursuant to the ISPS Code.

### **5.3 Reserved Right**

Upon the commencement of this Agreement, the Vessels operated by the Customer are those Vessels disclosed in Schedule 4. If during the term of the Agreement, the Customer introduces any Vessel not originally disclosed in Schedule 4, the Operator reserves the right to review the Performance Standards in relation to that Vessel.

### **5.4 Provision of Information**

The Customer must provide to the Operator the general arrangement plan of any Vessel and any other pertinent information in accordance with the requirements of clause 9.1.

### **5.5 Berthing of Vessel**

The Customer must berth the Vessel so as to best aid maximum productivity of Cargo transfer. The Operator must study the Cargo plan provided by the Customer and, after taking into account the configuration of the wharf cranes, the physical constraints of the Vessel, any pilotage restrictions and wind and tidal constraints, must specify on which side the Vessel should be berthed. If the Vessel can be worked equally well from either side it shall be berthed so as to minimise tug costs for the Customer.

The Customer (via the Vessel's command) may, but shall not be obliged to, comply with the Operator's berthing instructions. However, if the Customer elects not to so comply, the Operator reserves its rights to vary Performance Standards.

## **6. OPERATOR'S OBLIGATIONS**

### **6.1 Provision of Services**

The Operator must supply the Services to the Customer:

- (a) in accordance with Schedule 1;
- (b) in a safe and efficient manner;
- (c) in accordance with any lawful and reasonable directions given from time to time by the Customer within the scope of this Agreement; and
- (d) in compliance with all applicable standards, awards, laws and regulations (including without limitation, Port Authority regulations, collective bargaining agreements and any awards and laws applicable to the Operator's employees and applicable regulations introduced pursuant to the ISPS Code).

### **6.2 Operations**

The Operator will at all times during the term of this Agreement provide the Customer with:

- (a) details of the Berthing Window Plan;
- (b) cranes, labour and handling equipment necessary for the loading and discharging operations provided for in clause 7.1(i), so as to ensure that the Containers and Cargo of the Customer are handled in a safe and efficient manner;
- (c) suitable handling and storage areas based on the frequency of calls and the volumes to be handled as notified to the Operator, together with gate operations for the receipt and delivery of Containers by road or, where a separate link is in existence, by rail;
- (d) proper care and control of the Customer's Containers and Cargo while under the Operator's control, including the checking of container seals and prompt reporting of any loss of or damage to such Containers and Cargo of which the Operator is aware;
- (e) Vessel planning services PROVIDED THAT the Customer has instructed the Operator to provide such services in accordance with the stowage plan approved for the purpose by the Customer's central stowage planning office;
- (f) a bay plan and a working sequence for acceptance by the Vessel's command prior to the commencement of operations PROVIDED THAT the Customer complies with requirements of clause 9.1.(f) and (j); and

(g) regular reports (in compliance with EDIFACT standards and communicated electronically) of Containers and Cargo loaded or discharged and of Container and Cargo movements into and within the Terminal in accordance with the Customer's requirements PROVIDED THAT the Customer complies with the provisions of clause 7.1(m) and (j).

### **6.3 Inspection & Equipment**

The Customer may, upon reasonable notice, inspect any equipment used to supply the Services. Such inspection must take place at a time suitable to all relevant Parties.

## **7. CUSTOMER'S OBLIGATIONS**

### **7.1 The Customer must:**

- (a) Provide its acceptance for term and condition as provided under this Agreement by direct execution or by giving an approval as provided in the Website.
- (b) not use anyone else to supply any Services to Vessels within the Port for the term of this Agreement;
- (c) guarantee that any Container used by the Customer is in compliance with all applicable laws of Indonesia and international standards, including but not limited in respect to safety, stability, worthiness, fitness for purpose and security
- (d) promptly pay all invoices issued in accordance with clause 10;
- (e) promptly perform each task allocated to it in Schedules 4, 5 and 6 (if any);
- (f) comply with the Operator's Berthing Requirements described in Schedule 4;
- (g) provide regular sailing schedules and notification of ETAs of Vessels in accordance with Schedule 4;
- (h) submit to the Operator not later than 24 hours before the Vessel arrives one (1) complete set of Cargo documentation as is necessary for the orderly and efficient discharge/loading of that Vessel.

Such documentation shall include, without limitation;

- i. A complete and up-dated container stowage plan. The status, together with the respective gross weight, shall be shown against the individual container to be handled;
- ii. A list of all containers to be discharged for subsequent delivery from the terminal upon which stowage position, holding temperature (if applicable), commodity, size, over dimensional, height, type, gross weight, status, port of discharge, transport mode and IMO code shall be shown against each individual container number;
- iii. A detailed heavy lift or break-bulk cargo summary showing quantity, weight, measurement, type of cargo, packing, stowage, IMO codes, special lifting requirements and any other requirements and relevant information;
- iv. Full information and required documentation on hazardous cargo;

Any alteration to the information contained in the documentation after presentation to the Operator and any additional services requested by the Line shall be advised by the Line on a "Special Services Requisition" (SSR) form provided by the Operator and approved by the Operator.

- (i) arrange for the delivery of Containers or Cargo to the Berth in accordance with the cut-off procedures described in Schedule 5 and supply not later than twenty four (24) hours before commencement of any loading, information sufficient to enable the Operator to provide the Services, including, without limitation;
  - i. Accurate booking lists;
  - ii. Bay plans and stowage plans;
  - iii. Upon delivery of the container to the terminal the Line shall provide the container serial number, commodity, size, type, weight, quantity, Port of Discharge and IMO code;
  - iv. Details of carrying temperatures for refrigerated cargoes are to be advised to the Terminal Operator prior to delivery.

Note that weight declared in export documentation will be used for yard allocation and vessel stowage purposes. Containers will only be weighed to check if they are overweight.

Any alteration to the information contained in the documentation after presentation to the Operator and any additional services requested by the Line shall be advised by the Line on a "Special Services Requisition" (SSR) form provided by the Operator and approved by the Operator.

- (j) confirm to the Operator within two (2) Business Days after receipt by the Customer, the accuracy of actual ship working information provided by the Operator to the Customer for invoicing purposes. Absence of a response from the Customer will be deemed an acceptance of the information provided, and any dispute with respect to the information must be resolved by the relevant Parties within two (2) Business Days of first receipt;
- (k) pay excess storage charges which accrue beyond the free storage period in respect of export Containers, as described in Schedule 3;
- (l) confirm to the Operator, not later than the time of receipt of Containers/Cargo by the Operator in its yard, the Customer's instructions in relation to the loading or otherwise of such Containers/Cargo (including a lashing plan);
- (m) manage and control the movement of Vessels and/or related Vessel equipment within the Port with all due care and skill such that the Vessels do not cause any damage to the Terminal or persons or property on or in the vicinity of the Terminal; and
- (n) provide, at its own cost, all materials necessary for securing containers and/or other Cargo on board the Vessel and provide the Operator with the appropriate lashing plan of the securing of any containers and/or other Cargo loaded by the Operator. The Operator shall not be responsible for the security of any lashing materials that may be left at their Terminal from time to time.
- (o) ensure that all lashing gear (including stacking cones and twist-locks) conforms to international standards, is in good working order and is fitted in a consistent manner.

- (p) use its best endeavours to ensure that :
  - i. Containers and/or cargo have been packed and stowed in accordance with best practice;
  - ii. The weight of containers does not exceed the load limit of the container and is evenly distributed;
  - iii. That the container and/or cargo packing is in every way safe and complies with the Indonesian and relevant international safety rules, regulations and lawful requirements;
  - iv. That all containers shipped have valid ACEP stickers or CSC plates.
- (q) undertakes that all lawful, and statutory requirements in relation to the Cargo made by any approved body or authority, are observed by the Customer, its servants and/or agents.
- (r) arrange delivery of import containers, to their best ability, within the free period as per the Tariff schedule. Should import containers remain in the Operator's terminal beyond the free period the consignee shall pay the excess storage charge applicable in the Tariff.

## **8. PERFORMANCE STANDARDS AND RELATIONSHIP ISSUES**

### **8.1 Appoint Representative**

The Customer and the Operator must:

- (a) each appoint and maintain, for the term of this Agreement, a suitable full time employee to represent it and to supervise the performance of its obligations **(Representative)**;
- (b) each ensure its Representative regularly meets with the other's Representative to discuss the progress of this Agreement; and
- (c) if reasonably requested by the other, replace its Representative.

### **8.2 Laws to Override**

Each Party acknowledges that the standards, awards, laws and regulations referred to in sub-clause 6.1(d) (**laws**) regulate how the Operator can perform the Services. The specifications of the Services, including without limitation the Performance Standards, must allow the Operator to comply with, and are subject to, those laws.

### **8.3 Interdependence of Performance Standards**

The Parties acknowledge that the Operator's ability to meet its Performance Standards is dependant upon the Customer meeting its Performance Standards. Accordingly, the Operator shall not be in breach of its performance obligations in servicing a particular Vessel if its ability to meet Performance Standards has been adversely impacted by a failure by the Customer to meet its Performance Standards.

#### **8.4 Review of Performance Standards**

At least once during each 12 month period, the Representatives must:

- (a) review the Performance Standards;
- (b) consider whether the Performance Standards should be varied; and
- (c) if the Parties agree to vary the Performance Standards, ensure they are varied by a document signed by all Parties;

provided that if no such variations are agreed, the existing Performance Standards shall continue to apply.

#### **8.5 Maintenance of Records**

Each Party must maintain records sufficient to enable verification of compliance with its obligations under this Agreement and, where reasonably required by the other party, shall provide copies of such records (or reasonable access, as appropriate, during normal working hours) for the purposes of such verification.

### **9. SERVICE ISSUES**

#### **9.1 Notification**

Each Party must notify the other Parties promptly after becoming aware of anything that is likely to, or will, result in a delay in, or failure of, any Services, specifying at least:

- (a) the nature and cause of the problem; and
- (b) the steps being taken to minimise the impact of the problem.

#### **9.2 Resolution**

If any Party considers that the problem will result in an inability to provide the Services or a failure to meet the Performance Standards, then:

- (a) the Representatives of the Operator and Customer must discuss the problem (either in person or by telephone conference) promptly (and in any event within 5 Business Days) after receipt of notice under clause 9.1; and
- (b) the Representatives must use their reasonable efforts to resolve the problem as quickly as possible.

### **10. PAYMENT OBLIGATIONS**

#### **10.1 Payment of Tariff**

In consideration of the provision of the Services by the Operator in accordance with the terms of this Agreement, the Customer shall pay to the Operator the tariff rates prescribed by Schedule 3. Any changes in tariff as reasonably notified shall thereafter become a part of this Agreement from the date of such formal notification.

Schedule 3 states the current tariff rates the Customer must pay to the Operator under this Agreement. The Operator will, upon the request of the Customer, price any individual Service which does not have a corresponding tariff rate under Schedule 3.

The Tariff is exclusive of harbour dues, pilotage, tug hire, and any other charges which the Customer customarily pays.

Except as otherwise specified, the Tariff covers 24-hour operations, 7 days per week for ship working and container yard operations. In respect of Port holidays special working arrangements will be notified seven (7) days in advance.

## **10.2 Taxes**

The tariff rates stated in this Agreement are exclusive of all applicable taxes (value added taxes, withholding taxes or any other tax ,fee or charge whatsoever, levied by the Government of the Republic of Indonesia and/or other authorised authority). Where such tax is payable in respect of the provision of the Services under this Agreement, then the Operator is entitled to recover that amount from the Customer. In that event the Operator must provide the Customer with a compliant tax invoice or other documentation with respect to the amount of tax charged.

## **10.3 Basis of Invoicing**

Promptly after each Vessel call, the Operator will invoice the Customer for all amounts owing under this Agreement for Services supplied in respect of that Vessel, specifying how those amounts have been calculated.

## **10.4 Terms of Payment**

The Customer shall at all times maintain an appropriate Letter of Credit or Bank Guarantee in favour of the Operator covering the costs of servicing those vessels handled in a normal week. The Customer must pay each Operator invoice without set off or counterclaim within ten (10) days (***Credit Period***) after its date.

## **10.5 Disputed Invoices**

If the Customer disputes any amount stated in an invoice provided in accordance with clause 10.3, the Customer must notify the Operator within the Credit Period and the relevant Parties must seek to resolve the dispute as quickly as possible. The Customer must pay the non disputed amount of the invoice within the Credit Period. In the event that the relevant Parties cannot resolve the dispute informally, then they must follow the dispute resolution procedure in clause 22 to resolve the dispute.

## **10.6 Interest on Overdue Amounts**

The Operator may charge the Customer interest on any overdue amount, calculated daily at SIBOR 30 day rate charged on the due date plus 5%, from the due date until the date of payment.

# **11. TARIFF REVIEW**

The tariff rates stated in Schedule 3 (***Existing Rates***) shall apply until amended by the tariff regulatory authority appointed in law for the purpose of tariff fixation (clause 10.1).

## **12. LIABILITY OF OPERATOR**

### **12.1 Liability**

The Operator shall indemnify and keep indemnified the Customer (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the Agreement by the Operator or any tort action or omission of the Operator (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such loss or damage is caused by a breach of this Agreement or tort action or omission constituting negligence or wilful misconduct by the Customer (or any of its employees, officers or agents).

### **12.2 Liability Cap**

Subject to the provisions of clause 16.3, the liability of the Operator under this Agreement arising out of any single incident or series of incidents arising from a common cause shall not exceed the Liability Ceiling Amount.

### **12.3 Liability Floor**

The Customer shall make no claim against the Operator for an amount less than the Liability Floor Amount

### **12.4 No Liability**

Notwithstanding the generality of clause 14.1, the Operator shall not be liable for any loss or damage to a Container or Cargo, death or personal injury to the extent that such loss, damage, death or injury is caused by or contributed to by defective protection or packing, latent or natural wastage or contamination of Cargo, failure or malfunction of refrigerated container equipment or refrigerants or defective or malfunctioning twistlocks of the Customer.

## **13. LIABILITY OF CUSTOMER**

### **13.1 Liability**

The Customer shall indemnify and keep indemnified the Operator (and its employees, officers and agents) and PT (Persero) Pelabuhan Indonesia III, in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the Agreement by the Customer or any tort action or omission of the Customer (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such loss or damage is caused by a breach of this Agreement or tort action or omission constituting negligence or wilful misconduct by the Operator (or any of its employees, officers or agents).

### **13.2 Himalaya Clause**

The Customer:

- (a) must include in all its contracts of carriage for Containers or Cargo, provisions whereby every sub-contractor of the Customer (including the Operator and each of the Operator's sub-contractors):

- (i) shall have the benefit of any provision in such contract which limits the Customer's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and the Operator hereby appoints the Customer as its agent only for the purpose of making this inclusion in its contracts; and
  - (ii) shall not be liable to any party other than the Customer in relation to such carriage or Cargo and, without prejudice to the liability of the Operator to the Customer under this Agreement, the Customer hereby indemnifies the Operator and each of the Operator's sub-contractors and shall hold them harmless against any claim by a third party relating to such carriage or Cargo; and.
- (b) acknowledges that one of the Operator's promises to its sub-contractors is that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer and accordingly agrees that:
- (i) the exclusions and limitations of the Operator's liability in Parts 14 and 16 of this Agreement benefit the Operator's sub-contractors, all employees and agents of the Operator or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and
  - (ii) for the purposes of this sub-clause (b) only, the Operator enters into this Agreement as agent for all such persons who shall be treated as if they were parties to this Agreement.

### **13.3 Liability Cap**

Nothing in this Agreement shall be construed as a waiver by the Customer of its right to limit its liability for personal injury or property damage by establishing a limitation fund under an applicable international convention or national law governing the liability of owners and/or operators of seagoing ships. The liability of the Customer to the Operator shall, subject to clause 14.3, be limited to the greater of any relevant amount prescribed by such limitation fund or the Liability Ceiling Amount per incident or series of incidents arising from a common cause.

### **13.4 Liability Floor**

The Operator shall make no claim against the Customer for an amount less than the Liability Floor Amount.

## **14. GENERAL LIABILITY PROVISIONS**

### **14.1 No Other Liability**

In addition to any applicable legislation and subject to clause 14.3, this Agreement states:

- (a) the entire liability of the Parties to each other; and
- (b) the extent of each Party's liability for any Claim.

For the avoidance of doubt, the limitations of liability stated in this Agreement shall not prejudice the rights of any Party to pursue any remedy available at law including, without limitation, application for an order for specific performance or injunctive relief to enforce the terms of this Agreement.

#### **14.2 Claim notification periods**

No Claim may be pursued by either the Operator or the Customer (**claimant** for the purpose of this clause) against the other (**recipient** for purposes of this clause) unless:

- (a) the recipient has been advised in writing of the event or events giving rise to the Claim within seven (7) days of their occurrence; and
- (b) formal notification of such Claim, in the form of written demand or commencement of proceedings, setting out all relevant details of the Claim is received by the recipient within one (1) year of the occurrence of such event or events.

#### **14.3 Non-Excludable Condition**

The Parties do not exclude or limit the application of any provision of any statute (such as an implied condition or warranty) to the extent that such exclusion would contravene that statute or cause any part of this Agreement to be void.

#### **14.4 Exclusions from Liability**

Subject to clause 14.3, the Operator and Customer exclude all liability to each other for any loss or damage which is either:

- (a) caused by a Force Majeure Event; or
- (b) consequential or indirect loss or damage whether arising in contract, tort, statute or otherwise even if:
  - (i) the Parties knew they were possible; or
  - (ii) they were otherwise foreseeable,

including, without limitation, loss of profits, market, interest or hire, fiscal loss or loss on currency exchange and damage suffered as a result of claims by any third person (other than claims by such third person for direct loss or damage to Cargo, death or personal injury caused by the Operator or Customer).

#### **14.5 Fundamental Breach**

The provisions of this Part 14 apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

### **15. INSURANCE OBLIGATIONS**

#### **15.1 Operator**

The Operator must at all times during the term of this Agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent terminal operator and in any event to a level of cover not less than the maximum limit of liability prescribed by clause 12.2, including, but not limited to, liability insurances in respect of the Operator's negligence;
- (b) provide evidence of the currency of such insurance coverage upon the Customer's request.

## **15.2 Customer**

The Customer must at all times during the term of this Agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent shipping operator, charterer or owner and in any event to a level of cover not less than the maximum limit of liability prescribed by clause 13.3, including, but not limited to, P&I Club insurances; and
- (b) provide evidence of the currency of such insurance coverage upon the Operator's request.

## **16. SECURITY AT BERTH**

### **16.1 Vessel at Customer's Risk**

The Operator will not be responsible for the security or safety of any Vessel while tied up alongside a Berth.

### **16.2 Stowaways**

The Operator will not be liable for any loss or damage suffered or incurred by the Customer (including, without limitation, any fines or penalties or the payment of expenses by the Customer on account of care, lodging, medical attention, security and repatriation) arising from the presence on board Vessels of stowaways, or other unauthorised personnel.

### **16.3 Compliance with Security Requirements**

The Customer shall comply with all applicable laws and regulations pertaining to security requirements and the Facility Security Plan. The Operator shall have the right to refuse berthing and/or labour assignment to the Customer in the event of the Customer's non-compliance with any of such laws and regulations or the Facility Security Plan. If a Vessel is at berth at the time of such non-compliance, the Customer 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 Operator.

### **16.4 Costs of compliance with Security Requirements**

The Operator shall be entitled to recoup from the Customer all costs arising from security related legislation or other industry requirements.

## **17. ACCESS TO BERTH**

In accordance with the Facility Security Plan, the Operator shall allow reasonable access to the Customer and the Customer's Visitors, upon reasonable request, to attend at any Berth for the purpose of carrying out the business and agency requirements of the Customer relating to the Services supplied by the Operator to the Customer, subject to such persons observing all requirements of the Facility Security Plan and all safety regulations and standing instructions which may be operative at that time. The Customer will be fully liable for the acts and omissions of the Customer's Visitors while those persons are present at the Terminal and shall indemnify and keep indemnified the Operator in respect of any loss or damage suffered or incurred as a consequence of any such act or omission.

## **18. TERMINATION**

### **18.1 Termination for Cause**

A party in this Agreement may terminate this Agreement with immediate effect by giving notice to the other Parties if:

- (a) another Party breaches any material term of this Agreement capable of remedy (including without limitation an obligation to pay) and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- (b) another Party repeatedly breaches any term of this Agreement and fails to demonstrate, within 60 days after receiving notice requiring it to do so, to the first party's reasonable satisfaction, that similar breaches will not recur; or
- (c) any event referred to in clause 18.22 happens to another Party whether or not notified as required by clause 18.2

provided that, where the Customer comprises more than one Party and one of the Parties comprising the Customer is the second party, the Operator (i) shall be the only Party entitled to give such notice; and (ii) may, at its election, terminate this entire Agreement or contractual relations solely with such second party (without prejudice to the continuation of this Agreement between the Operator and the remaining Parties comprising the Customer).

### **18.2 Duty to Notify**

A Party ( effected party) must notify the other party immediately if:

- (a) the effected party disposes of the whole or any part of its assets, operations or business other than in the normal course of business (except a voluntary liquidation for the purpose of amalgamation or reconstruction if the new company assumes all of the effected party's obligations under this Agreement on terms satisfactory to the Operator); or
- (b) an Insolvency Event occurs in relation to the effected party.

### **18.3 All Rights Preserved**

Termination of this Agreement under this clause 18 shall be without prejudice to the accrued rights and obligations of the Parties under this Agreement, including, without limitation, the right of the Operator to be paid all accrued fees and charges then outstanding under this Agreement and the obligations of confidentiality imposed on all Parties.

## **19. AFTER TERMINATION**

### **19.1 Cargo Returned Against Payment**

Promptly after termination (which expression shall include, for the purposes of this Part 19, expiry of the term of this Agreement):

- (a) the Operator must return to the Customer, at the Customer's expense and upon fulfilment of the Customer's payment obligations under sub-clause 19.1(b), any Containers or Cargo in the Operator's or its subcontractors' possession or control; and

- (b) the Customer must pay the Operator for all Services supplied up to and on termination.

### **19.2 Return of Confidential Information**

Following termination, each Party (**first party**) must, promptly following receipt of a written request from another Party (**second party**) return to the second party all Confidential Information of the second party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the second party) in the first party's possession or control.

### **19.3 Clauses Survive**

Clauses 3, 12, 13, 14, 15, 18.3, 19, 21, 22 and 23 continue to bind the Parties after termination of this Agreement.

## **20. FORCE MAJEURE EVENT**

### **20.1 Obligations Suspended**

If a Party is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event affecting that Party, then that Party's obligation to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event. If the Operator so requires the vessel shall be moved from the berth at the Customer expense.

### **20.2 Notification**

Within a reasonable period following the occurrence of a Force Majeure Event, the Party affected by it must notify the other Parties of the Force Majeure Event and the extent to which the notifying Party is unable to perform its obligations under this Agreement.

## **21. CONFIDENTIAL INFORMATION**

### **21.1 Use of Confidential Information - Rule**

Each Party:

- (a) undertakes to use the Confidential Information of the other Parties solely for the purposes of performing its obligations under this Agreement; and
- (b) except as permitted under clause 21.2, must ensure that it maintains, and that its officers and employees maintain, the confidentiality of all Confidential Information of the other Parties.

### **21.2 Use of Confidential Information - Exception**

A Party (**first party**) may disclose Confidential Information of another Party (**second party**) to a third party, to the extent that:

- (a) such Confidential Information becomes public knowledge or the first party receives such information from another person in circumstances which do not involve any breach of any obligation of confidence owed to the second party;
- (b) the second party consents in writing to such disclosure;

- (c) such disclosure is required in order to enable the first party to perform its obligations under this Agreement in accordance with applicable regulations (including, without limitation, prevailing port authority, harbour master, customs or security procedures); or
- (d) such disclosure is otherwise required by applicable law or stock exchange regulation.

### **21.3 No Public Announcements**

No public announcement of any kind shall be made by any Party in relation to the subject matter of this Agreement without the consent of the other Parties as to the form, content and timing of the announcement, subject to any overriding statutory or regulatory obligations of disclosure imposed by law or the rules of any stock exchange.

## **22. DISPUTE RESOLUTION**

### **22.1 Duty to Notify**

A Party claiming that a Dispute has arisen must notify the other Parties.

### **22.2 Nomination of Authorised Personnel**

Within 5 Business Days after a notice is given under clause 22.1, each Party must nominate in writing to the other Parties a senior employee (other than its Representative) authorised to settle the Dispute on its behalf.

### **22.3 Resolution of Dispute**

During the 15 Business Days after a notice is given under clause 22.1 (or if the Parties agree a longer period, that longer period) each Party's nominee must use his or her best efforts to resolve the Dispute.

### **22.4 Arbitration**

1. If a resolution of Dispute cannot be achieved by procedure as provided on Clause 22.3, the Parties shall settle finally such dispute through a binding arbitration by a three (3) member arbitration board. The arbitration board shall hold its sessions in Jakarta in the Indonesian language and in accordance with the arbitration rules of the Badan Arbitrase Nasional Indonesia (Indonesian National Arbitration Agency) / BANI.
2. The board of arbitration may not amend this Agreement, and the Parties hereto state that the arbitrators are bound by strict rules of law in making a decision and are not entitled to render a decision ex aequo et bono. The arbitral award made and granted by the board of arbitration shall be final and binding upon the Parties.
3. The expenses of the arbitrators will be shared equally by the Parties; each Party shall otherwise be responsible for the costs and attorney's fees incurred by it.

## **23. RELATIONSHIP BETWEEN THE PARTIES**

This Agreement does not create a relationship of principal and agent (except for the limited purpose stated in clause 13.2) or partnership between the Operator and the Customer.

## 24. REPRESENTATION AND WARRANTIES

The Parties represent and warrant to each other that (except as expressly disclosed in this Agreement) each of the following statements is true and correct.

- (a) **(status)** it is a corporation duly incorporated and validity existing under the related prevailing law.
- (b) **(power)** it has the power to enter into and perform its obligations under this Agreement to carry out the transactions contemplated by this Agreement and to carry its business as now conducted or contemplated.
- (c) **(corporate authorization)** it has taken all necessary action to authorize the entry into and performance of this agreement and to carry out the transactions contemplated by this Agreement.
- (d) **(binding power).** This Agreement is valid and binding obligation enforceable in accordance with its terms.
- (e) **(transaction permitted).** The execution and performance by it of this agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
  - (i) A law or treaty or judgment, ruling, order or decree of a government or governmental authority or agency binding on it;
  - (ii) Its memorandum or articles of association or other constituent documents; or
  - (iii) Any other documents or agreement which is binding on it or its asset.

## 25. NOTICES

### 25.1 Notification

A Party notifying or giving notice under this Agreement must notify:

- (a) in writing;
- (b) addressed to the address of the recipient specified on the first page of this Agreement or as varied by notice given in accordance with this clause; and
- (c) left at or sent by post or facsimile to that address.
- (d) By email through appointed email address

### 25.2 Receipt

A notice given in accordance with clause 25.1 will be taken to have been received:

- (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
- (b) if sent by post, 3 Business Days after posting; and

- (c) if sent by facsimile on a Business Day at the recipient's address, on the date of transmission, or if sent on a non-Business Day at the recipient's address, on the next Business Day (in both cases as long as the sender's facsimile machine records a successful transmission).
- (d) If sent by email on a Business Day at the recipient's email address, on the date of delivery, or if sent on a non-Business Day at the recipient's email address, on the next Business Day (in both cases as long as the email facility records a successful delivery).

## **26. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the laws of the Republic of Indonesia and each Party submits to the non-exclusive jurisdiction of the courts of the Republic of Indonesia.

## **27. GENERAL**

### **27.1 Waiver and Modification**

No waiver of any breach of these provisions will be effective unless such waiver is in writing and signed by each Party to this Agreement against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. No alteration or amendment to any such obligation will be effective or enforceable unless made in writing in an agreed format and signed by all Parties to this Agreement.

### **27.2 Counterparts**

This Agreement may be signed in any number of counterparts with the same effect as if the separate signatures or executions were on the same agreement.

### **27.3 Further Assurance**

Each Party agrees, at its own cost and expense, upon the request of the other Parties, to do and execute or cause to be made done or executed all such acts, instruments, assurances and writings as may be reasonably necessary or desirable to perfect or give effect to the provisions of this Agreement and to use all reasonable endeavours to cause third parties to do likewise.

### **27.4 Severability**

If any provision of this Agreement shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of this Agreement shall not be affected and the remainder of this Agreement shall continue in full force and effect.

### **27.5 Strict Compliance**

In the absence of express provision to the contrary, failure or omission by a Party to this Agreement at any time to enforce or require strict or timeous compliance with any provision of this Agreement or any related document shall not impair the ability of that Party to exercise the rights and remedies it otherwise has in respect of a breach of any such provision.

### **27.6 No Merger**

None of the provisions of this Agreement will merge in or upon the execution of this or any other agreement, document, act, matter or thing and will continue to remain in full force and effect for so long as is necessary to give effect to the provisions of this Agreement.

### **27.7 Assignment of Rights**

No Party may assign its rights under this Agreement without the prior consent in writing given by the other Parties (which may be granted or withheld entirely at the discretion of such other Parties).

### **27.8 Entire Agreement**

What is expressed in this Agreement is the entire agreement between the Parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the Parties, including without limitation, any letter of intent or proposal.

### **27.9 Term Prevail**

This Agreement together with any schedules attached hereto forms the integral part of this Agreement, which contain the entire Agreement. In the event of any inconsistency between this Agreement and the schedules, the provisions of this Agreement shall prevail.

### **27.10 Costs**

Each Party must bear its own costs and out of pocket expenses (including legal costs) incurred in relation to the negotiation and execution of this Agreement.

### **27.11 Waiver of Sovereign Immunity**

If any Line is owned, directly or indirectly, in whole or in part by any country, state or sovereign or is an authority, agency or instrumentality of any country, state or sovereign, such Line hereby waives any and all rights, immunities and defences to which it may be entitled in that capacity under any sovereign immunity legislation or similar law including, without limitation, any immunity from pre-judgment seizure, arrest or attachment.

## **28. ACCEPTANCE OF TERMS AND CONDITIONS**

Acceptance of the Customer by way of direct execution or through facility that is provided in the Website, indicates acceptance of the entire Terms and Conditions under this Agreement.

## **SCHEDULE 1**

### **SERVICES**

#### **1. RECEIVAL/DELIVERY & LOADING/DISCHARGING**

##### **1.1 Receival and Delivery**

The Operator will provide the following services to the Customer:

- (i) delivery of import Containers/Cargo at the Terminal (during normal working hours) and all clerical work and reporting associated with such delivery in accordance with the receival and delivery procedures described in Schedule 5;
- (ii) receival of export Containers/Cargo within the delivery period agreed between the Customer and the Operator in accordance with the cut-off procedures described in Schedule 5;
- (iii) storage for export Containers/Cargo received and not loaded following the completion of Vessel operations in accordance with the provisions contained in Schedule 3;
- (iv) storage for import Containers/Cargo following the completion of Vessel operations in accordance with the provisions contained in Schedule 3;
- (v) implementing arrangements at the discretion of the Operator for acceptance/delivery of Containers/Cargo outside normal receival and delivery hours described in Schedule 5.

##### **1.2 Loading and Discharging**

The Operator will provide the following services to the Customer:

- (i) movement of Containers from Vessel's cell or deck to wharf or vice versa. Lashing and unlashng of deck Containers and Cargo, where patent lashing fittings only are used;
- (ii) movement of Containers from wharf to stacking area or vice versa;
- (iii) checking and confirming Container numbers,
- (iv) reporting of Container movements out of/into the Vessel;
- (v) stowage planning based upon instructions from the Customer's central stowage planning office including but not limited to:
  - (1) accessing the incoming electronic bay plan and retransmitting the completed electronic bay plan immediately upon operations being completed; and
  - (2) providing the Vessel with the final bay plan data by hard copy and diskette, in accordance with the existing standard, not less than six (6) hours prior to scheduled departure subject always to all export Containers being received not less than twelve (12) hours prior to scheduled departure. If for any reason a diskette cannot be provided containing the final Cargo departure condition, a

summary by way of total weights, vertical and longitudinal movements shall be provided to the Customer within the same time constraint.

## **2. RESTOWS**

The Operator may restow containers at the request of the Customer or to improve operational efficiency. Where the Customer requests a restowage, it shall pay the rate described in Schedule 3 for the restowage of Containers on board Vessels (whether shift on board or discharge, land and return).

## **3. TEMPERATURE CONTROLLED AND VENTILATED CARGO AND CONTAINERS**

### **3.1 General Provision**

Refrigeration facilities limited to the available facilities within the terminal, the Operator undertakes to provide suitable refrigerated container facilities, including power, power outlets and facilities to service the Customer's refrigerated containers and their contents within the areas directly under the control of the Operator.

For Containers requiring refrigeration or forced ventilation at the Terminal the Operator will provide the following services to the Customer.

### **3.2 Refrigeration of Integral Containers**

- (a) Connecting and disconnecting the power supply;
- (b) Furnishing electrical outlets and recording the power consumed;
- (c) Setting temperatures in accordance with the set points notified on the Export Receival Advice and monitoring the temperature settings displayed on the reefer units daily whilst in the Terminal and after receival or prior to delivery;
- (d) Reporting of faults, variations between Export Receival Advice set point and Container set point, and machinery malfunctions (including abnormal temperature variations as nominated and provided by the Customer) to the Customer promptly upon discovery;
- (e) Where applicable, establishing and monitoring of fresh air exchange and humidity settings as stated on the Export Receival Advice.

### **3.3 Ventilated Containers (Fantainers)**

The Operator will provide the following services to the Customer:

- (a) Connecting and disconnecting the power supply;
- (b) Furnishing electrical outlets, distribution boards and recording the power consumed;
- (c) Checking the fan (i.e. exhaust) is operating when connected to the power; and
- (d) Monitoring of equipment whilst in the Terminal and promptly reporting any faults to the Customer on discovery.

### **3.4 Operator Excused from Liability**

The Operator will not be liable in respect of:

- (a) any failure of or interruption in the supply of electrical power to the Containers referred to in clauses 3.2 to 3.3 (inclusive);
- (b) any failure or malfunction of such Containers or any associated equipment;
- (c) any claim in respect of a Container or Cargo where the Operator has properly performed all its obligations under this Agreement; or
- (d) damage caused to Cargo should incorrect temperature advice have been provided on the relevant documentation or equivalent electronic message received.

### **4. DANGEROUS, HAZARDOUS AND OBNOXIOUS CARGO**

- 4.1** The Operator shall not be obliged to handle Cargo that is prohibited by any of the standards, awards, laws and regulations referred to in sub-clause 6.1(d) of this Agreement and applicable Indonesian and International Laws and Regulations (**laws**).
- 4.2** Subject to section 4.1 of this schedule, with respect to Cargo listed as restricted by the Customer, the Customer agrees to the arrangements contained in Schedule 6 for handling such restricted Cargo.
- 4.3** Subject to sections 4.1 and 4.2 of this schedule, with respect to all dangerous or hazardous Cargo, the Operator may impose charges to recover extra costs incurred, including costs for labour delay time, and special insurance or handling procedures required by laws or industry good practice.

## SCHEDULE 2

### SPECIFIC LIABILITY TERMS

1. Liability Ceiling Amount US\$ 15,000,000

The liability of the Operator shall not exceed the financial limits set out in this schedule for the specified category of loss or damage provided that the maximum liability of either the Operator or the Customer arising out of any single incident or series of related incidents or series of incidents shall not in any case exceed the above-stated Liability Ceiling Amount.

- 1.1 In the case of damage to a Vessel a maximum of US\$ 10,000,000 arising out of any single incident or series of related incidents.

- 1.2 In the case of physical loss or damage to a Container, or a Container and its ancillary equipment the depreciated value or the reasonable cost of repairs whichever is less subject to limits of:

20' Dry Container	US\$ 2,000 per Container
40'/45' Dry Container	US\$ 5,000 per Container
20' Integral Container	US\$ 15,000 per Container
40'/45' Integral Container	US\$ 30,000 per Container
20' metre Tank Container	US\$ 25,000 per Container

- 1.3 In the case of physical loss or damage to Cargo – the Line's liability to its customer under its Bill of Lading or other contract of carriage to a maximum of:

- (a) in the case of containerised Cargo: US\$ 75,000 per Container.  
(b) in the case of break bulk or non-containerised Cargo: US\$ 50,000 arising out of any single incident.

- 1.4 In the case of any other equipment owned or operated by the Line not previously referred to in this clause the reasonable cost of repair or the depreciated value thereof whichever is less subject to a limit of US\$ 25,000.

- 1.5 Provided always that for the purposes of sub clauses 1.2 to 1.4, the Operator shall not in any case be required to pay for loss or damage arising out of any single incident or series of related incidents in one event an amount greater than US\$ 200,000.

- 1.6 The Operator shall be exempt from liability for damage to goods caused by or contributed to by insufficient protection or packing as determined by an independent surveyor.

2. Liability Floor Amount US\$1,000

### **SCHEDULE 3**

#### **TARIFF RATES**

Port Tariff issued by PT (Persero) Pelabuhan Indonesia III and in the Tariff Memorandum of PT Terminal Petikemas Surabaya.

## SCHEDULE 4

### BERTHING REQUIREMENTS

All Vessels and barges using Berths controlled by Operator within the Port will be subject to the Terminal Berthing Code as follows:

- (1) Vessels operating to a fixed day arrival schedule may be allocated a Berth Window up to one month in advance by the Operator.

The Line shall provide the Operator with information as to the proposed Vessel schedule and the anticipated container interchange by the 23<sup>rd</sup> of each month for the following month and shall undertake to notify the Operator as soon as possible as to any proposed alteration to either schedule or interchange.

A Vessel must depart at the agreed Berth Window time unless the Operator has delayed completion of servicing the Vessel or unless agreed otherwise by the Operator. In the event a Vessel having completed Cargo operations is unable to depart due to engine breakdowns, or for any other reason which is outside the control of the Operator, then the Vessel may remain at the Berth if agreed by the Operator. In the event the Berth is required to service another Vessel, then the "delayed" Vessel must be removed by the Vessel Operator to an alternative berth within the Port, or to the anchorage. All costs associated with a delay in departure or moving of a Vessel, as mentioned in this paragraph, are to be at the expense of the Vessel Operator and/or Customer and/or Representative.

- (2) At least seven (7) days prior to ship's arrival, the Representative will advise Operator:
  - (a) Estimated Time of Arrival ("ETA") of the nominated Vessel;
  - (b) Estimated container exchange including a breakdown of import and export Containers.

Details of information requirements are set out in the Operator's Users Guide and within this Agreement.

Based on this advice, the Operator will allocate a Berth Window, at its sole discretion having taken into account the ETA, container exchange and the number of quay gantry cranes likely to be used. The Berth Window may differ to the one allocated in (1) above.

- (3) Seventy two (72) hours prior to the Vessel arrival the Representative will update Operator with the latest ETA and advise of any alterations to the estimated container exchange.
- (4) Provided the ETA remains the same, or is within four (4) hours of the Berth Window previously allocated, then the Berth Window will remain as originally allocated.

Should there be a delay of more than four (4) hours then Operator will identify a new Berth Window by :

- (a) retention of the original Berth with an adjusted Berth Window period; or
- (b) allocation to a different Berth using a new Berth Window period; or
- (c) waiting Berth availability.

- (5) Twenty-four (24) hours prior to arrival the Representative will advise Operator of the final ETA pilot station.
- (6) Should a Vessel, after arrival at the pilot station be delayed due to other ship/Vessel movements the Berth Window will be adjusted accordingly.
- (7) A Vessel will be permitted to remain and work on the Berth for up to four hours beyond the Berth Window provided there is good reason for doing so. The late receipt of export containers is not considered a valid reason to exceed the Berth Window time.
- (8) Each party bears its own costs in the event additional costs are incurred as a result of a Vessel not meeting planned arrival and departure schedules as follows:
  - (a) if an inward Vessel is delayed and arrives later than planned then the costs of Operator's manpower and equipment allocated to that Vessel but not used is for the account of Operator;
  - (b) if an outward Vessel is delayed in completing container and lashing activities after port services have been booked then any costs of such delays are to the account of the Customer and/or Vessel Operator and/or Representative.
- (9) Vessels will generally be required to vacate the Berth within two hours of completing operations. Where, however, Operator has no immediate need for the berth then every effort will be made by Operator to accommodate requests by the Representative to remain on the Berth for an agreed period.
- (10) Barges will not be allocated a Berth Window – where possible priority will be given to working a barge in order to connect with a main line Vessel.

## SCHEDULE 5

### RECEIVAL AND DELIVERY ARRANGEMENTS

#### 1. NORMAL RECEIVAL AND DELIVERY TIMES

Normal receipt and delivery times are defined as Working Days. Other times may be arranged by agreement.

#### 2. CUT-OFF PROCEDURES FOR EXPORT CARGO RECEIVALS

- (a) The "Cut-off" day for all Vessels will be 9 hours before the advised Vessel ETA for cargo late receipt and 6 hours before the advised Vessel ETA for documents.
- (b) The Receipt Period for each Vessel will be in the period of 96 – 9 hours before the advised Vessel ETA. Commencement of the Receipt Period will be declared by the Operator based on the ETA of the Vessel. The Receipt Period will be less than 96 hours in the event that the advice of the Vessel's ETA is given less than 96 hours before the Vessel's arrival.
- (c) Once a Cut-off is declared it will not be altered. Exception is fully on discretion of Operator.
- (d) The Receipt Period will apply to all receipts for the Vessel including those through the Terminal gates, the Terminal rail siding plus all transshipment Cargo whether over the Operator's berths or handled through a competitor's facility.
- (e) Cargo received into the Terminal for another Vessel and which is received outside the agreed Receipt Period for the subject Vessel cannot be automatically swapped between Vessels. Such alteration in receipt will be subject to agreement between the Parties as to the costs involved whether direct or indirect, e.g. handling charges and delay costs, with charges being made to the different Vessels respectively.
- (f) Only in very special circumstances will arrangements be considered for late receipts, and these must be agreed before the agreed Cut-off.
- (g) Requests for late receipts made before Cut-off will be subject to agreement between the Parties as to the costs involved, whether direct or indirect, e.g. handling charges and delay costs, with charges being made to the different Vessels respectively. No guarantee will be given that such late receipts will be accepted.
- (h) For consortiums where more than one operator is involved, the Operator will only agree receipt arrangements, regardless of whether they are normal, late or special receipts, with the Vessel Operator.
- (i) The Customer and Operator can vary the above procedure by mutual agreement.

## SCHEDULE 6

### DANGEROUS, HAZARDOUS AND OBNOXIOUS CARGO RULES

#### Part I – Dangerous and Hazardous Cargo

1. For the purposes of these rules “Dangerous Cargo” means all cargo defined as dangerous by; any statute, statutory instrument or order, any regulation or any recommendation made by any governmental or semi-governmental authority or by any local by-law relating to the handling, storage or carriage of such cargoes; likewise all cargo which although not so defined, is known to have properties likely to endanger life or property.
2. There shall apply to dangerous cargo tendered to the Operator:
  - a) The provisions of the Decrees of Directors of PT (Persero) Pelabuhan Indonesia III and PT Terminal Petikemas Surabaya and any subsequent amendments.
  - b) Other relevant acts and regulations as laid down by the Government of the Republic of Indonesia.
  - c) All provisions relating to the carriage of cargo by road, rail or sea contained in any statutory instrument or order made pursuant to the above acts or in any international convention or agreement or otherwise, regulations and recommendations made by any government or other public authority and local by-laws.

The Customer shall be responsible for ensuring that all provisions referred to in this clause are complied with.

3. Dangerous cargo shall not be presented to the Operator unless its permission has first been obtained. For this purpose applications for permission should be made by submitting to the Operator copies of the prescribed statutory forms stating clearly the nature of the cargo, the flashpoint, if any, the method of packing and any other material details which may be required by the Operator or by any lawful authority pertaining to the carriage of dangerous cargo.
4.
  - a) Any dangerous cargo which is presented to the Operator without permission first being obtained from the Operator may be refused. If cargoes are not correctly described and are subsequently found to be “dangerous cargoes”, the Operator reserves the right to have them removed forthwith at the expense of the Customer.
  - b) Containers and receptacles containing dangerous cargo must be in a sound condition and comply with the provisions referred to in Clause 2 above. Any which are found on examination to be of defective construction, damaged, leaking, corroded or with closures in any unsatisfactory condition, or defective in any other way, may, at the discretion of the Operator, be rejected.
  - c) Shipping containers containing dangerous cargo shall be clearly marked with an approved label indicating the nature of the hazard to which the substance gives rise and the identity of the cargo and all packages must be marked in accordance with the provisions referred to in Clause 2 above.

5.
  - a) If any dangerous cargo causes damage, loss or injury to any person or property the liability of the Customer and the Operator therefore respectively shall be determined in accordance with the provisions of the conditions of offer to which this Schedule is attached.
  - b) The Customer hereby indemnifies and shall keep indemnified the Operator whether or not negligent or in breach of contract against any liability of whatsoever nature and howsoever arising from non-compliance by the Customer, its servants, agents or sub-contractors (and any employee thereof) with any of the provisions referred to in Clause 2 above.

## **Part II – Obnoxious Cargo**

1. For the purpose of these rules “Obnoxious Cargo” means any of the following kinds of cargo, which are not included in the category of dangerous cargo:
  - a) Substances that can cause discomfort to or adversely affect personnel handling them.
  - b) Substances which may taint other cargo or containers in close proximity.
  - c) Substances that may damage other cargo by contact or by shifting, for example, carbon, graphite, white pigments, greases or other “dirty” cargo.
  - d) Hygroscopic or deliquescent cargo or cargo in a moist or wet condition such as hides.
  - e) Cargo liable to infestation by insects, mites, weevils or grubs or any other cause which may require fumigation.
  - f) Cargo of liquid or of semi-solid state and cargo liable to liquefy with a rise in temperature such as reasonably could be foreseen.
  - g) Any other cargo which in the opinion of the Operator are likely to adversely affect other cargo or to present any special difficulties in handling.
2.
  - a) Any obnoxious cargo which is presented to the Operator without permission first being obtained from the Operator may be refused. If cargo is not correctly described and is subsequently found to be obnoxious cargo the Operator reserves the right to have it removed forthwith at the expense of the Customer.
  - b) Containers and receptacles containing obnoxious cargo must be in sound condition. Any which are found on examination to be of defective construction, damaged, leaking, corroded or with doors or tarpaulins in an unsatisfactory condition or defective in any other way may, at the discretion of the Operator, be rejected.
3. If any obnoxious cargo causes damage, loss or injury to any person or property the liability of the Customer and the Operator therefore respectively shall be determined in accordance with the provisions of the conditions of offer to which this Schedule is attached.