



**NAMIBIAN PORTS AUTHORITY**  
**STANDARD CONDITIONS OF SERVICE**

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**IMPORTANT NOTICE**

THESE STANDARD TERMS AND CONDITIONS APPLY BETWEEN THE NAMIBIAN PORTS AUTHORITY ("NAMPORT") AND EACH CUSTOMER WHO USES NAMPORT'S SERVICES OR FACILITIES AT THE PORTS OF WALVIS BAY OR LÜDERITZ OR ANY OTHER DESIGNATED PORT.

NO TERM OR CONDITION AT VARIANCE WITH THESE STANDARD TERMS AND CONDITIONS SHALL APPLY OR BE BINDING ON NAMPORT UNLESS EXPRESSLY AGREED IN WRITING AND SIGNED BETWEEN NAMPORT AND THE CUSTOMER.

NAMPORT RESERVES THE RIGHT TO VARY THESE STANDARD TERMS AND CONDITIONS FROM TIME TO TIME, AND SUCH VARIATIONS SHALL BE BINDING ON THE CUSTOMER.

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## 1. Definitions

1.1 In these Conditions, unless the context indicates otherwise:-

- 1.1.1 “**Act**” means the *Namibian Ports Authority Act, 1994*, and includes any regulations made thereunder;
- 1.1.2 “**Cargo**” means any goods, merchandise, or property of whatsoever description, whether or not within a container, in respect of which Namport provides or is requested to provide any Services;
- 1.1.3 “**Claim**” includes any demand, dispute, legal proceedings, cause of action or assertion of liability for any specific performance or Losses or Damages, whether based on breach of contract (specifically the breach of these Conditions), delict or other recognised legal cause;
- 1.1.4 “**Conditions**” means this document and includes its Schedules;
- 1.1.5 “**Customer**” means any person who, by itself or through its officers, employees or agents –
- (a) agrees to use the Services of Namport; or
  - (b) avails itself of any Service actually provided by Namport; or
  - (c) delivers or brings Cargo or Plant onto the Premises, or whose Cargo or Plant howsoever come to be on the Premises,

and, where applicable, the term includes a reference to any persons who, in connection with the business or affairs of any of the persons contemplated in (a), (b) or (c) above, visit the Ports or any Premises;

- 1.1.6 “**Dangerous Cargo**” includes any Cargo which is radio-active (within the meaning of the *Atomic Energy and Radiation Protection Act, 2005* or the International Maritime Dangerous Goods Code or any relevant international convention), a hazardous substance (within the meaning of the *Hazardous Substances Ordinance, 1974* or any relevant international convention), toxic, noxious or which poses any risk to people, property or the environment due to its chemical or physical properties and/or poses a risk of personal injury or patrimonial loss to any person or property;
- 1.1.7 “**Dangerous Work**” means any work or activity which poses a risk of personal injury or patrimonial loss to any person, including, without limitation, work or activity in which a source of ignition is used or can be produced, such as welding, cutting or grinding;
- 1.1.8 “**Losses or Damages**” includes losses or damages of any nature, whether personal (death or injury) or patrimonial, direct or indirect, pecuniary or non-pecuniary, and specifically includes losses or damages on account of delays, standing time or demurrage or mobilisation costs;
- 1.1.9 “**Namport**” means the Namibian Ports Authority as established in terms of section 2 of the Act;

- 1.1.10 “**Operating Procedures**” means any and all requirements or procedures by law or otherwise applied by Namport in respect of its operation and management of the Ports or any Premises, including, without limitation, all mandatory or applicable national or municipal laws and all of Namport’s regulations, policies, administrative or standard operating procedures and safety and security standards of whatsoever nature;
- 1.1.11 “**Parties**” means Namport and the Customer, and “**Party**” means either Namport or the Customer, as the context may indicate or require;
- 1.1.12 “**Plant**” means any vehicle, trailer, machine or container, cranes, gantry equipment and other lifting equipment;
- 1.1.13 “**Port**” means, as the case may be, the Walvis Bay port or the Lüderitz port, as defined in schedule 1 to the Act and any other port in Namibia and “**Ports**” shall include all the ports ;
- 1.1.14 “**Port Captain**” means, in respect of each of the Ports, the person appointed in that position in terms of the Act;
- 1.1.15 “**Premises**” means any land or buildings under control of Namport, whether or not situated in a Port;
- 1.1.16 “**Reasonable Time**” in the absence of an express or fixed time established by the Parties, any time which is not manifestly unreasonable under the circumstances.
- 1.1.17 “**Schedules**” means the documents annexed hereto, being –
- (a) **Schedule 1** – Port Access Permit which relates to the Standard Terms and Conditions for Visitors of the Walvis Bay port and the Lüderitz port;
- 1.1.18 “**Services**” means the provision by Namport of any of the activities or facilities referred to in clause 4.1;
- 1.1.19 “**Tariffs**” means the administrative charges and service fees which Namport is entitled to charge and publishes from time to time pursuant to the provisions of the Act; and
- 1.1.20 “**Vessel**” includes any ship, boat, raft, platform or craft of any class or description however navigated or propelled.

## 2. Interpretation

- 2.1 In these Conditions, unless the context indicates otherwise -
- 2.1.1 expressions in the singular also denote the plural, and *vice versa*;
- 2.1.2 pronouns of any gender include the corresponding pronouns of the other genders;
- 2.1.3 a reference to these Conditions includes any amendment, variation or replacement thereof, as contemplated in clause 3.6;

- 2.1.4 a reference to a person includes a reference to any natural person, association of persons or legal entity of any kind, whether incorporated or not;
- 2.1.5 where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 2.1.6 time is a reference to Namibian time as per the *Namibian Time Act, 1994*, and the following construction shall apply to time matters:-
- (a) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day, and if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
  - (b) if the time for performing an obligation under these Conditions expires on a day that is not a Business Day, time will be extended until the next Business Day;
  - (c) a reference to a “year” means a period of 12 (twelve) consecutive months;
  - (d) a reference to a “month” is a reference to a calendar month, and more specifically, (i) in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month, and (ii) in any other context, one of the twelve months of the calendar;
  - (e) a reference to a “day” is a reference to any calendar day;
  - (f) a reference to a “**Business Day**” is any day other than a Saturday, Sunday or public holiday in Namibia.
- 2.2 Clause headings appear in these Conditions are for reference purposes only and shall not be employed in the construction of the subject matter.
- 2.3 Any provision of these Conditions imposing a restraint, prohibition, or restriction on the Parties shall be so construed that the Parties are not only bound to comply therewith, but are also obliged to procure that the same restraint, prohibition, or restriction is observed by any third party engaged by, acting under the authority or with the consent of the Parties.
- 2.4 Any substantive provisions contained in a definition clause shall create substantive obligations.
- 2.5 These Conditions and any agreement for the provision of Services shall be construed in accordance with the laws of Namibia.

### **3. Application and Status of Conditions**

#### Application

- 3.1 These Conditions apply between Namport and every Customer, to the exclusion of any other terms and conditions at variance herewith (including but not limited to any standard terms and conditions of trade that may usually be applied or be purported to be applied by the Customer, which the Customer is deemed to having waived).
- 3.2 Without derogating from the generality of clause 3.1, these Conditions specifically apply to all Vessels calling at the Ports and all the activities of the Customer taking place in the Ports or on any Premises.
- 3.3 For terms and conditions at variance with these Conditions to apply and be binding on Namport, Namport and the Customer are required to expressly record such varying terms and conditions in writing and under their signatures.

#### Applicability of Act

- 3.4 Any provisions of the Act in conflict with these Conditions shall at all times prevail over the provisions of these Conditions.
- 3.5 Nothing contained or implied by these Conditions will constitute any limitation whatsoever on the rights of Namport to exercise any of its statutory powers in terms of the Act or otherwise under law, and Namport expressly reserves the right and shall be entitled to exercise any or all of such statutory powers in connection with the operation of the Ports for the purposes of what Namport in its final discretion determines to be appropriate for proper and safe operation and management of the Ports in the best interest of Namport and its other Customers.

#### Amendment of Conditions

- 3.6 Namport may, in its sole discretion, amend these Conditions from time to time, and any such amendment shall become binding on the Customer as from the date of notification of such amendment to the Customer or on the date of publication on Namport's website [www.namport.com.na](http://www.namport.com.na), whichever date is the earlier.

#### Continuing Responsibility of Customer

- 3.7 Nothing contained or implied by these Conditions will affect the Customer's absolute responsibility for the proper and safe navigation, operation and management of the Vessel or any Plant.

### **4. Services**

#### General

- 4.1 Namport may agree to provide any of the following services or facilities to the Customer –
  - 4.1.1 berthing and dry-docking of vessels;
  - 4.1.2 leasing of land;

- 4.1.2 tug, towage and pilotage services;
- 4.1.3 mooring, unmooring and lines services;
- 4.1.4 storage, warehousing, sorting, loading, off-loading and handling of Cargo;
- 4.1.5 embarking or disembarking of passengers;
- 4.1.6 fuelling and lubrication;
- 4.1.7 supply of electricity, water or other amenities;
- 4.1.8 waste disposal;
- 4.1.9 such other services or facilities as it is authorised to provide in terms of the Act or normally associated with port operations,

(the “**Services**”, as defined).

#### Availability

4.2 Namport shall provide the Services, and the Customer agrees that the Services will be provided by Namport always subject to –

4.2.1 the availability to Namport of such –

- (a) space at the Ports or its Premises (including, for the avoidance of doubt, berthing and storage space); and
- (b) goods, services, facilities, infrastructure and operational staff,

as may be required to be sourced, be made available or be employed by Namport for the purposes of providing the Services, and the Customer shall have no Claims whatsoever against Namport where such space, goods, services, facilities, infrastructure or operational staff are not reasonably available to Namport or become unavailable for any reason whatsoever;

4.2.2 the provisions of the Act and the acts, orders, regulations, or requirements of any lawful authority or any person purporting to act on behalf of any such authority; and

4.2.3 any overriding priorities or considerations of Namport, as determined by Namport in its final discretion, necessary to ensure the proper and safe operation and management of the Ports in accordance with the laws of Namibia or Namport’s legal duties.

#### Confirmation of Orders

4.3 Namport shall not be obliged to perform any Services ordered or requested by the Customer until such order or request for Services has been confirmed in writing by the Customer (or any owner or agent of the Vessel) –

4.3.1 to the satisfaction of Namport; and

4.3.2 in compliance with Namport's relevant Operating Procedures.

4.4 If the Customer fails to provide the written confirmation pursuant to any applicable Namport requirements as contemplated in clause 4.3, Namport shall not be responsible or be liable to the Customer, and the Customer shall have no Claim whatsoever against Namport arising from -

4.4.1 any misinterpretation of the Customer's unconfirmed order by Namport's operational staff; or

4.4.2 any consequent failure by Namport to provide or complete the Services actually ordered or requested by the Customer,

but the Customer shall be liable to remunerate Namport for the Services actually rendered pursuant to such unconfirmed order.

#### Manner of Providing Services

4.5 Notwithstanding any particular instructions by the Customer, Namport reserves the right and shall be entitled to perform the Services in such a fashion as it under the circumstances regards as appropriate.

### **5. Operations**

#### Admission to Port and Sequence of Handling

5.1 No Vessel shall be admitted into Port (or be allowed to berth), no Plant and Cargo shall be brought onto any Premises without prior arrangement between Namport and the Customer.

5.2 Vessels moored and Plant brought onto Premises will be handled in such order as determined by Namport in its sole discretion.

#### Hours of Work

5.3 Namport shall not be obliged to perform its Services outside its normal working hours, which Namport will make available to the Customer on written request. Namport may, from time to time, and in its discretion, vary its normal working hours.

5.4 If Namport agrees to perform its Services outside normal working hours, Namport shall be entitled to levy additional fees and charges to the Customer.

#### Special Conditions – Berthing

5.5 At all times subject to the provisions of clause 4.2, Namport shall use all reasonable endeavours to provide a berth for the Customer's Vessel on a date convenient to the Customer's sailing schedule, but Namport shall be under no liability for the consequences (direct or indirect), if any, if for any reason Namport is unable to provide for a berth requested by the Customer.

- 5.6 Namport, in its final discretion, may refuse to allow a Vessel to berth or moor, may at any time instruct a Vessel to cease loading or unloading, or may require a Vessel to leave from alongside the berth (and anchor sufficient distance away from the berth so as to allow another vessel to have unrestricted access to berth and moor at the berth) upon notice from Namport to the Customer if -
- 5.6.1 in Namport's opinion –
- (a) the Customer does not have sufficient insurance cover as required by these Conditions;
  - (b) the Vessel, its master or crew are not ready or capable of loading or unloading the Cargo;
  - (c) no suitable berth is available for the Vessel;
- 5.6.2 the Vessel, its master or crew are unable or refuse to work the particular hours Namport requires for the loading or unloading the Vessel;
- 5.6.3 the Customer performs or attempts to perform Dangerous Work contrary to the provisions of clause 8.6;
- 5.6.4 the Customer is in material breach of these Conditions.

#### Special Conditions – Cargo and Containers

- 5.7 Namport agrees to receive, handle, store and deliver all Cargo and the containers in which it is contained as received by Namport and in accordance with Namport's normal receiving, handling, storage and delivery procedures. Accordingly, to the extent that Namport receives any Cargo or container which is damaged at the time of such receipt, Namport shall be under no obligation or duty of care to the Customer (whether in contract, in delict or other recognised legal cause) to –
- 5.7.1 salvage or secure such Cargo, or to provide for any special storage or handling arrangements to prevent any or any further deterioration of the Cargo or the container; or
- 5.7.3 repair or secure such container, or provide another suitable container.
- 5.8 In the circumstances contemplated in clause 5.7, Namport shall not be liable to the Customer for any further deterioration of or Losses or Damages to the Cargo and the container, and, more specifically, Namport shall in any event not be liable for any deterioration of or any Losses or Damages to the Cargo or its container which is directly attributable or arises as a consequence of such existing damages, and the Customer shall not be entitled to make any such Claim against Namport in this regard.

## **6. Remuneration**

- 6.1 The Customer shall be liable to pay to Namport all administrative charges, service fees and taxes as are provided for and applicable in terms of the provisions of the Tariffs or which Namport is required to collect from the Customer in terms of the applicable revenue laws of Namibia.



- 6.2 All payments to be made to Namport shall be made in Namibian Dollars.
- 6.3 Namport, acting in its sole discretion, may review and amend the Tariffs from time to time, in accordance with the provisions of the Act.
- 6.4 Namport shall issue the Customer with relevant tax invoices for the Services or administrative charges or taxes. Unless otherwise agreed between Namport and the Customer in writing -
- 6.4.1 administrative charges (such as ships dues) shall be due and payable before the Customer's Vessel leaves the Port;
- 6.4.2 charges for Services shall, in the absence of special credit arrangements agreed to by Namport in writing, be due and payable within 10 (ten) Business Days from dispatch of the invoice to the Customer.
- 6.5 Namport shall be entitled to charge the Customer interest on any overdue amounts at the prime overdraft rate charged by Namport's bankers from time to time plus 2% (two percent), such interest to be compounded monthly in arrears. In the event of a dispute relating to such applicable interest rate, a certificate in writing by a manager or accountant of Namport's bankers shall be *prima facie* evidence of such applicable interest rate.
- 6.6 All amounts due by the Customer to Namport in respect of any Services rendered by Namport shall be paid by the Customer in full and free of any set-off or any deductions (whether for bank charges, exchange or otherwise). The Customer shall not be entitled to withhold any payment due to Namport, nor to make any deduction or set-off against such payment for any reason whatsoever.

## **7. Namport's Rights and Obligations**

### Access to Vessels

- 7.1 Namport shall allow the Customer (including, for the avoidance of doubt, the Customer's officers, employees, agents or authorised visitors) reasonable access to the Vessel, Plant or relevant Premises, as may be necessary or required by the Customer in the course of Namport delivering the Services or delivering or receiving the Cargo.
- 7.2 Access by any of the persons contemplated in clause 7.1 to the Ports and any Premises shall be subject to strict compliance with Namport's Standard Terms and Conditions for Visitors of the Walvis Bay port and the Lüderitz port or any other designated port.

### Responsibility for Cargo

- 7.3 Subject to the provisions of these Conditions, Namport shall be responsible for Cargo from the time it has received it until the time it has handed it over to the consignee or any person whom the Customer has authorised it to be handed to.

### Instructions

- 7.4 For the purposes of these Conditions, Namport shall reasonably be entitled to –
- 7.4.1 accept that any person acting or purporting to act for and on behalf of the Customer has been duly authorised thereto by the Customer; and
  - 7.4.2 rely on any written instruction given or purportedly given by the Customer, its officers, agents or employees.
- 7.5 Namport may refuse to execute any instructions if it is not satisfied that such instructions have validly been given by or on behalf of the Customer, but nothing contained or implied in this clause 7.5 shall render Namport subject to any duty to the Customer to enquire about or establish the authenticity or correctness of instructions purported to be given by or on behalf of the Customer.

### Disposal of Cargo

- 7.6 Namport shall be entitled to sell or otherwise dispose of perishable Cargo if such Cargo is insufficiently addressed, marked or so unidentifiable that Namport is unable to determine to whom such Cargo should be delivered or be made available for collection, or such Cargo is not collected by the consignee. Namport may do so without any notice to the Customer, sender, owner or consignee of the Cargo.
- 7.7 Namport shall be entitled to sell or otherwise dispose of all non-perishable Cargo if such Cargo is insufficiently addressed, marked or so unidentifiable that Namport is unable to determine to whom such Cargo should be delivered or be made available for collection, or such Cargo is not collected by its consignee; provided that Namport shall not sell such non-perishable Cargo until it has given notice of its intention to so sell or dispose the Cargo in a Namibian daily newspaper, and the Cargo or its consignee are still unidentified, or the consignee still fails to collect the Cargo within 21 (twenty one) days from the publication of such notice.
- 7.8 All charges and expenses arising in connection with the sale or disposal of the Cargo shall be payable by the Customer or, in the event of a sale, be set-off from the proceeds of such sale. Payment or tender of the net proceeds of the sale following deduction of such charges and expenses and all other amounts due to Namport under these Conditions shall discharge Namport from all liability to the Customer and any other person in respect of the Cargo so sold or disposed of.

### Lien

- 7.9 Namport may, in relation to any amounts due and payable by the Customer to Namport, and irrespective of whether such amounts arise from or in relation to the provision of the Services or any other cause of action or circumstances, exercise a lien over all Cargo and Plant of the Customer in Namport's possession, which lien shall continue until such time as the Customer has made payment of the amounts due or has made appropriate security arrangements to the satisfaction of Namport.

7.10 Nothing contained or implied in clause 7.9 shall operate as or be construed as constituting any limitation whatsoever on any of the rights of Namport, whether under the laws of Namibia or any other applicable jurisdiction, to attach the Vessel, Cargo, Plant or other property of the Customer for the purposes of founding or strengthening jurisdiction, establishing security (whether for costs or for the principal claim by Namport against the Customer) or any other purpose recognised by law.

## **8. Obligations of the Customer**

### **General Obligations**

8.1 The Customer shall be obliged to strictly comply with any and all of Namport's Operating Procedures.

8.2 At the date of issue of these Conditions, Namport's Operating Procedures require compliance with the following laws, regulations, policies and standards, which can be obtained from Namport's website [www.namport.com.na](http://www.namport.com.na):

8.2.1 Safety, Health, Environmental and Quality ("SHEQ") Policy;

8.3 It shall be the duty of the Customer to acquaint itself with the contents of Namport's Operating Procedures.

8.4 The Customer shall be obliged to strictly comply with all reasonable directions, orders or instructions given by Namport, its Port Captains, pilots or other authorised officials or other regulatory authority, and the Customer shall be responsible to ensure that the Vessel's master and crew comply therewith. Without limiting the foregoing, the provisions of this clause 8.4 specifically apply to any instructions given by Namport in relation to the navigation, positioning and orientation of the Vessel in Port, berthing, mooring, loading and unloading the Vessel.

8.5 The Customer shall not within the Ports or on any Premises conduct any work or activity which –

8.5.1 is illegal, noxious or offensive, or

8.5.2 causes a nuisance to or interferes with the activities of other vessels in the Ports or Customers of Namport; or

8.5.3 interferes with the shipping or navigation in the Ports; or

8.5.4 involves or results in the dumping or spillage of any radio-active, toxic, hazardous or dangerous waste; or

8.5.5 may adversely affect Namport's insurance policies.

### Dangerous Work

- 8.6 The Customer shall not within the Port limits or on any Premises carry out any Dangerous Work without having obtained the prior written approval of Namport, and any such Dangerous Work shall only be performed subject to any terms and conditions stipulated by Namport.

### Dangerous Cargo

- 8.7 The Customer shall ensure strict compliance with all applicable national legislation as well as international conventions applicable to Dangerous Cargo, including, without limitation, the safe containerising, packing, handling and labelling thereof.
- 8.8 The Customer shall give Namport at least 72 (seventy two) hours advance notice (prior to the Vessel's or any Plant's arrival at the Port or any Premises) of the existence of Dangerous Cargo.
- 8.9 The Customer shall promptly on written demand by Namport remove or cause the removal of all Dangerous Cargo from the Ports or any Premises, without any further recourse to Namport.
- 8.10 Should the Customer fail to strictly comply with the provisions of clause 8.9, Namport shall be entitled to –
- 8.10.1 take all precautions that the circumstances may require, including, when the Cargo poses an imminent danger to any person or property, destroying the Cargo, rendering it innocuous or disposing of it by any other lawful means, without liability for payment of compensation for Losses or Damages to the Customer; and
- 8.10.2 be reimbursed by the Customer for all costs incurred by Namport in taking the measures referred to in clause 8.10.1.
- 8.11 Namport may refuse to handle Cargo which it regards as Dangerous Cargo, if, in the final determination of Namport, such handling could expose persons or property to a risk of Losses or Damages, and the Customer shall have no Claim against Namport in this regard.

### Insurance

- 8.12 The Customer shall be obliged to hold and maintain, with reputable insurers of international standing, such third party and related liability insurance as –
- 8.12.1 is sufficient to cover all of the Customer's obligations, warranties and indemnities and potential liabilities (whether to Namport or any third party) under these Conditions; and
- 8.12.2 to insure itself against such risks and for such sums as would normally be taken out by a prudent vessel operator,
- and in any event to a level of cover of not less than the Namibian Dollar (NAD) equivalent of US\$ 10 000 000 – 00 (Ten Million United States Dollars) in respect of any one incident or series of incidents from the same cause, unless an

agreement at variance with this clause 8.12 and referred to in clause 3.3 has been entered into between Namport and the Customer.

8.13 The Customer shall provide proof to Namport of such insurance as and when requested to do so. All insurance policies shall allow a claim to be made related to these Conditions, and shall expressly provide that they are irrevocable and may not be cancelled whether for non-payment of premiums or other cause unless Namport has been given 30 (thirty) days advance notice by the insurers or the Customer.

## **9. Force Majeure**

9.1 Namport shall not be liable for any breach of its obligations to provide the Services or under these Conditions to the extent that its performance of such obligations is delayed, hindered or prevented by force majeure.

9.2 Force majeure means any event, circumstance or condition (or number of events, circumstances or conditions or any combination thereof) which Namport cannot control or alleviate, or which is not reasonably practicable for Namport to control or alleviate.

9.3 Without limiting the generality of clause 9.2, force majeure includes any one or more of the following:

9.3.1 acts of God;

9.3.2 war (whether declared or undeclared), civil war, threat of war, act of public enemy, blockade, revolution, riot, insurrection, public demonstration, civil commotion, invasion or armed conflict;

9.3.3 sabotage or acts of vandalism, criminal activity, criminal damage or the threat of such acts;

9.3.4 extreme or unusual weather or environmental conditions (including unusual conditions of the sea or tidal conditions, such as, but not limited to insufficient depth of water), tsunami, lightning, earthquake, flood, wind, storm, fire, landslip, natural disasters and phenomena including meteorites and volcanic eruptions;

9.3.5 any strike, lock-out or other industrial action, whether or not involving the employees of Namport;

9.3.6 scarcity of labour, plant, machinery, fuel or power;

9.3.7 an outbreak and continuance of epidemic, famine or plague,

9.3.8 interruption of the electricity and water supply to Namport;

9.3.9 acts, orders, regulations, or requirements of any lawful authority or any person purporting to act on behalf of any such authority;

9.3.10 late receipt of Cargo or governmental clearances from customs or other governmental authorities;

9.3.11 inherent vice of the Cargo;

- 9.3.12 vermin, insects, fungal attack, rot or corrosion;
  - 9.3.13 heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light);
  - 9.4 If Namport is unable to carry out any or all of its obligations under these Conditions due to an event or circumstance of force majeure, these Conditions shall remain in effect but:
    - 9.4.1 the obligations that Namport is unable to perform shall be suspended for a period equal to the duration of the event or circumstances of the force majeure; and
    - 9.4.2 any corresponding obligations of the Customer owed to Namport shall likewise be suspended for a period equal to the event or circumstances of force majeure;
- provided that as soon as practicable after the occurrence of the event or circumstance which constitutes force majeure the Parties shall discuss how best to perform their obligations in terms of these Conditions, and the Parties shall continue such discussions in regular intervals of not less than (2) two weeks.
- 9.5 In the event of any circumstance of force majeure continuing for a period of 60 (sixty) days or more, Namport shall be entitled to terminate its agreement with the Customer by giving written notice to the Customer to that effect, in which case the Customer shall have no Claims against Namport arising from such termination.

## **10. Limitation of Liability**

### **General**

- 10.1 Namport's liability to the Customer, and any Claim by the Customer, its officers, employees, agents or contractors for Losses or Damages, whether on account of breach of contract (including these Conditions) or in delict, shall be limited in accordance with the provisions of this clause 10.

### **Exclusion of Liability**

- 10.2 Namport shall not be liable for any Losses or Damages incurred or suffered by the Customer, its officers, employees, visitors, agents or contractors, nor shall the Customer, its officers, visitors, employees, agents or contractors make any Claim against Namport –
  - 10.2.1 to the extent that the provisions of the Act limit the liability of Namport (such as under section 23 of the Act); or
  - 10.2.2 to the extent that the provisions of these Conditions limit the liability of Namport; or
  - 10.2.2 where such Losses or Damages are incurred or suffered -

- (a) in circumstances or as a consequence of any event of force majeure;
- (b) in circumstances or as a consequence of the Customer being in breach of any of its obligations under these Conditions (whether or not Namport has cancelled this Agreement or not) and, more specifically, the Customer having failed to comply with Namport's Operating Procedures.

#### Vessel and Plant

10.3 Namport shall not be liable to the Customer for any Losses or Damages caused to the Customer's Vessel or Plant in Port or on the Premises unless such Losses or Damages were directly caused by the gross negligence or wilful misconduct of Namport, its officers, employees, agents or contractors.

#### Cargo

10.4 Namport shall not be liable to the Customer for any Losses or Damages to the Customer's Cargo, unless such Losses or Damages were directly caused by the negligence of Namport, its officers, employees, agents or contractors.

#### Limitation of Liability - General

10.5 If the Customer proves that any Losses or Damages (for which Namport is liable in terms of these Conditions) have been caused by the direct negligence (or, as the case may be, the direct gross negligence or wilful misconduct) of Namport, its officers, employees, agents or contractors, Namport's liability, to the extent of such negligence (or gross negligence or wilful misconduct, as the case may be), will be the lesser of –

10.5.1 the market value of any property lost; or

10.5.2 the reasonable costs of repair of such property,

and, in any event, at all times be subject to the limitations contained in clauses 10.6, 10.7, 10.8, 10.9, 10.10 and Namport's insurers Liability Limits..

#### Limitation of Liability – Consequential and Pure Economic Loss

10.6 Namport will under no circumstances be responsible or be liable to the Customer, nor will the Customer make any Claim against Namport for Losses or Damages which constitute any loss of market, consequential, indirect or pure economic loss or loss of profits.

#### Limitation of Liability – Delays and Demurrage

10.7 Namport will under no circumstances be responsible or be liable to the Customer, nor will the Customer make any Claims against Namport for –

10.7.1 Losses or Damages suffered or incurred by the Customer on account of any delay or interruption in the handling of the Vessel or Plant, or in receiving Cargo or delivering them to or out of the Ports or any Premises;  
or

10.7.2 payment or refunding demurrage, standing time or any other compensation for the loss of use of any vessels or vehicles or for their not being ready in time.

#### Limitation of Liability – Monetary Limits

10.8 Namport's total liability to the Customer for any Losses or Damages (whether in relation to one or several causes of liability) shall further be limited and in no circumstances exceed –

10.8.1 an absolute total amount of N\$ 75,000,000.00; or

10.8.2 the maximum indemnity provided to Namport by its insurers in relation to such Losses or Damages,

whichever amount is the lesser.

#### Limitation of Liability – Notification of Claims

10.9 Namport shall not be liable for any Losses or Damages suffered or incurred by the Customer, nor shall the Customer be entitled to make any Claim against Namport for such Losses or Damages unless the Customer has given Namport written notification of such Losses or Damages before the Cargo has been removed from the Ports or the Premises or, in circumstances where the Losses or Damages can only reasonably be established on delivery of the Cargo, within 72 (seventy two) hours of such delivery.

#### Liability Limits Available to Third Parties

10.10 The Customer shall be deemed to having severally conferred to Namport's employees, officers, agents and contractors the benefit of all defences and limitations of liability available to Namport in terms of these Conditions.

#### Indemnity

10.11 To the extent that any employee, officer, agent or contractor of the Customer has suffered any Losses or Damages in connection with the Services provided by Namport and makes any Claim against Namport in circumstances where Namport's liability is limited in terms of these Conditions, the Customer shall indemnify and hold Namport harmless, to the fullest extent allowed by law, against–

10.11.1 any amount that Namport may be ordered by a competent court to pay to such employee, officer, agent or contractor in excess of such limitation of liability under these Conditions; and

10.11.2 all costs (including legal costs) incurred by Namport in defending or dealing with such Claim.

10.12 The Customer shall indemnify and hold Namport harmless, to the fullest extent allowed by law, against any and all Losses or Damages which Namport may incur or suffer as a consequence of the Customer –

10.12.1 breaching these Conditions; and



10.12.2 any negligent act or omission committed by –

- (a) the Customer, its employees, officers, agents, contractors and visitors, or
- (b) the Vessel, its master or crew;
- (c) the Plant or its operators.

## 11. **General**

### Governing Law

11.1 These Conditions are governed by, and shall be construed in accordance with the laws for the time being in force in Namibia.

### Severability

11.2 In the event that any of the terms of these Conditions are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which will continue to be valid and enforceable. In such circumstances, the Parties agree to meet and review the provisions which are invalid, unlawful or unenforceable, with a view of amending these Conditions in a manner as to achieve the same object of the invalid, unlawful or unenforceable provision.

### Breach

11.3 Without detracting from or limiting any of the remedies available to Namport in terms of these Conditions, in the event of the Customer breaching any of these Terms and Conditions, and the Customer failing to remedy such breach within 2 (two) Business Days of a written notice given by Namport to the Customer to that effect, Namport shall be entitled to cancel any agreement for the provision of Services, such cancellation –

- 11.3.1 absolving Namport from any obligation to the Customer to perform or complete the Services;
- 11.3.2 to be without prejudice to Namport's rights to claim for Losses and Damages suffered or incurred by Namport on account of such breach; and
- 11.3.3 to be without prejudice and not affecting Namport's rights under these Conditions, specifically, but not limited to the provisions of clauses 1, 2, 3.5, 3.6, 3.7, 7.4, 7.7, 7.8, 7.9, 7.10, 8, 9, 10 and 11.

### No variation

11.4 No variation of these Conditions shall be valid unless reduced to writing and signed by or on behalf of each of the Parties.

### Entire Agreement

- 11.5 These Conditions constitute the full and complete consensus between the Parties in relation to its subject matter and the provision of the Services by Namport, and supersede all prior negotiations, understandings and agreements with respect thereto.

### No Waiver

- 11.6 No leniency, extension of time or indulgency allowed by either Party to the other Party shall be interpreted to constitute a waiver of such Party's rights under these Conditions.

### No Cession or Delegation

- 11.7 No Party shall cede or delegate or purport to cede or delegate its rights or obligations under these Conditions without the prior written consent of the other Party, or where expressly provided for herein.

### Third Parties

- 11.8 Save as otherwise provided in these Conditions, a person who is not a party to these Conditions shall have no rights to enforce any provision of these Conditions.

### Communications and Notices

- 11.9 Any notice or other communication under or in connection with these Conditions shall be in writing in the English language and shall be delivered personally or sent by pre-paid mail or by telefax to the Party due to receive the same at its address as set out in these Conditions or to such other address, as either Party may specify by notice in writing to the other.
- 11.10 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:
- 11.10.1 if delivered personally, when left at the address referred to in clauses 11.11 or 11.12 respectively;
  - 11.10.2 if sent by mail other than air mail, 5 (five) business days after posting it;
  - 11.10.3 if sent by telefax, on completion of its transmission.
- 11.11 All communications and notices to Namport shall be in writing and be addressed to:

No 17, Rikumbi Kandanga Road, Walvis Bay

P.O. Box 361, Walvis Bay, Namibia

Telefax: + 264 – 64 – 208 22 15

E-mail: [info@namport.com.na](mailto:info@namport.com.na)

- 11.12 All communications and notices to the Customer shall be in writing and shall be dispatched/transmitted to the address (physical address, postal address, telefax and e-mail) nominated by the Customer in writing:
- 11.13 The Parties choose the physical addresses as set out in clause 11.11 and 11.12 as their *domicilii citandi et executandi* for all purposes under these Conditions whether in respect of payment of money, the service or delivery of court or arbitration process, notices or other documents or all other communications.
- 11.14 Any notice or communication required or permitted to be given in terms of these Conditions will be valid and effective only if it is in writing, but, where, in terms of these Conditions, any communication is required to be in writing, the term "writing" will include communications by telefax and e-mail.
- 11.15 Any Party may by written notice to the other Party change its telefax number, e-mail address or the address chosen as its *domicilium* address, to another telefax number, address which is not constituted exclusively by a post office box address; such change will become effective on the 5<sup>th</sup> (fifth) business day from the deemed receipt of the notice by the addressee.
- 11.16 Any notice to a Party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium* address will be deemed to have been received on the 5<sup>th</sup> (fifth) business day after posting (unless the contrary is proved).
- 11.17 Any notice to a Party delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* will be deemed to have been received on the day of delivery (unless the contrary is proved).
- 11.18 Any notice to a Party sent by telefax to its chosen telefax address or e-mail address, will be deemed to have been provided, unless the contrary is proved at 12h00 noon of the 1<sup>st</sup> (first) business day following the issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the notice.
- 11.19 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

#### Dispute Resolution

- 11.20 Any disputes which may arise out of or in connection with these Conditions and the Services provided by Namport to the Customer shall be referred to arbitration in terms of the Namibian *Arbitration Act, 1965*, to be finally resolved by arbitration, which is subject to the conditions set out hereinafter.
- 11.21 No Party shall be precluded from applying for or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending a decision of the arbitrator.

- 11.22 The arbitration shall be held in Windhoek, Namibia in a summary manner, in accordance with the rules determined by the Arbitrator. It is the intention of the Parties that it shall not be necessary to observe or carry out either the usual formalities or procedure, unless the arbitrator directs otherwise.
- 11.23 The arbitration shall be held immediately with a view of being completed within 21 (twenty one) Business Days after it is demanded.
- 11.24 The arbitration shall be held in terms of the applicable Namibian arbitration laws.
- 11.25 If within 7 (seven) Business Days after arbitration has been demanded unanimous agreement can not be reached between the Parties on the identity of the arbitrator, then the arbitrator shall be a legal practitioner with not less than 15 (fifteen) years practical experience in private practice appointed by the President for the time being of the Law Society of Namibia at the request of either of the Parties.
- 11.26 The arbitrator shall decide the matter submitted to him according to the laws of Namibia, which shall include the aspect of costs of the arbitration.
- 11.26 The Parties irrevocably agree that the decision in the arbitration proceedings shall be final and binding on the Parties, and shall be carried into effect by all the Parties and may be made an order of any court of competent jurisdiction in Namibia.

## **12. Review and Approval**

- 12.1 These Conditions shall be reviewed on an annual basis.
- 12.2 These Conditions was approved and adopted by the Board of Directors on this **9<sup>th</sup>** day of **April 2015**.

**SCHEDULE 1**

**STANDARD TERMS AND CONDITIONS FOR VISITORS OF  
THE WALVIS BAY PORT AND THE LÜDERITZ PORT**

Indemnity Agreement

"I,.....the undersigned, having been given permission to enter the property managed by the Namibian Ports Authority ("Namport") and recognising the inherent hazards that exists on the premises of this nature hereby acknowledge that I enter the said property entirely at my own risk and that I shall have no claim against the Namport or any of its employees in the event of any loss, accident or injury whether such loss, injury, accident or damage is a result of any negligent act or omission on the part of Namport or any of its employees or independent contractors or as a result of the use of defective materials or equipment by Namport or any human or mechanical error, default or failure occurring on the said property or whether such accident or injury or damage occurs from any cause whatsoever, nothing at all excepted".

**General**

Speed restriction in the harbour area is 40 km/h. No vehicle is allowed on the quayside without special permission. The road ordinances are applicable in the harbour area and parking is only permitted on the parking zones provided.

This permit is not transferable and is issued subject to regulations imposed by Namport in order to conform with the Namibian Ports Authority Act, Act 2 of 1994.

As regards control of access, the following are brought to your attention:

- (a) Any person entering the harbour area shall be subject to the search of his person and or any container and or vehicle / passenger under his control.
- (b) The search may be conducted on entry to and or departure from the harbour area.
- (c) Refusal to undergo a search shall entitle Namport to refuse such a person entry to and or exit from the harbour area.
- (d) No firearm or ammunition will be allowed in the harbour area.

Signature

Date