

## **Terms and Conditions**

Unless otherwise agreed in writing the following terms and conditions shall apply.

### **Definitions**

In these conditions, the words and phrases below have the following meanings:

- a) "TRP and/or the Terminal" means Terminales Río de la Plata S.A., the Container and Passengers Terminal at Puerto Nuevo, Buenos Aires, and any land thereon or adjacent thereto leased or otherwise occupied by TRP for the purposes of the Services;
- c) "Terminal Manager" means any manager duly appointed from time to time by TRP to be in charge of any operation at or on the Terminal and shall include their deputies and/or assistants;
- d) "Customer" means any person to whom or on behalf of whom TRP provides any service whatsoever and any person using or entering upon the Terminal or using the Services or facilities thereof;
- e) "Goods" means any cargo of whatever nature;
- f) "Services" means all services and activities performed by TRP whether gratuitous or not;
- g) "Equipment" means any plant, machinery, container, package, case, pallet, vehicle, trailer, truck or wagon of any description which is not owned or leased by TRP and which is not cargo;
- h) "The System" shall mean the computer system used by Shipping lines, agents, forwarders, hauliers and TRP for customs clearance and inventory control of imports and exports and any electronic data system that may succeed it. For the purposes of these Conditions, "The System" also includes any additional electronic database or interactive services accessed via such computer system from time to time;
- i) "Ship" means any vessel, container ship, barge, lighter or other vessel of any description;
- j) "PIN Number" means the container security number issued by the System or created by the Customer or the Customer's agents or employees within the System for the release of containers;
- k) "VBS" means the Vehicle Booking System into which Customers, their agents and their employees enter the details of vehicles delivering or collecting Goods to or from the Terminal;
- l) Where the context permits, words in the singular shall include the plural and vice versa;

### **Application of these Conditions**

- a) These Conditions shall apply to all Services provided by TRP;
- b) The Customer hereby warrants that it is the owner of the Goods, the Equipment or Ship or that it is authorized by the owner and/or other persons interested in the Goods, the Equipment or the Ship to accept these Conditions not only for itself but also as agent for and on behalf of the owner or other persons interested therein.
- c) These Conditions shall contain the entire agreement and there shall be no variation unless expressly agreed by both parties in writing.
- d) These Conditions shall apply to the exclusion of any printed terms and conditions of any purchase order or other correspondence or documents issued by the Customer in connection with the Services unless expressly accepted in writing.
- e) Any notice to be given under this agreement must be given in writing to the registered office of TRP or the Customer or the branch or agency office of the Customer through which it has dealt with TRP in respect of the provision of the Services.

f) TRP shall, at its discretion, arrange for the Services or any part thereof, to be carried out by one or more sub-contractors or agents.

g) The expression "TRP" shall, where the context admits include their employees, agents and sub-contractors. The Customer agrees not to bring any claim or action against any employee, agent or sub-contractor of TRP.

h) If any legislation is compulsorily applicable, these Conditions shall, insofar as possible, be construed in accordance with such legislation. If any of these Conditions are found by any competent court or tribunal to be contrary to such legislation, these Conditions shall be varied only to the extent necessary to comply with such legislation.

i) Each sub-clause of these Conditions shall be construed severally.

j) Use of System shall be subject to the standard terms of use for the System.

### **Services Provided**

a) A Ship shall be deemed to have entered the Terminal when it berths at the Terminal. A Ship shall be deemed to have left the Terminal when its mooring lines are removed from the Terminal's berth.

b) Goods and Equipment shall be deemed to have been delivered to the Terminal in the following circumstances:

i) In the case of Goods and Equipment delivered by Ships, once the Goods and Equipment have left the Ship's tackle or have left the Ship having been lifted from the Ship by TRP's tackle;

ii) In the case of Goods and Equipment delivered by means other than Ships, once the Goods and Equipment enter the Terminal.

c) Goods and Equipment shall be deemed to have been delivered to the Customer:

i) In the case of Goods and Equipment to be delivered to a Ship, once the Goods and Equipment have been lifted by the Ship's tackle from the Terminal or once TRP's tackle has placed the Goods and Equipment on to the Ship and come clear of the Goods and Equipment;

ii) In the case of Goods and Equipment to be delivered to a road or rail conveyance, once the Goods and Equipment have been placed upon the road or rail conveyance.

d) Without prejudice to the Conditions herein, TRP reserves the right but is under no obligation to:

i) Remove Goods and Equipment immediately in the case of a hazard or danger to life, the environment or other property or other emergency and to dispose of such Goods and Equipment without notice;

ii) Open containers, inspect Goods or refuse to handle, move or otherwise deal with Goods or Equipment which in SCT's opinion appear to be or may become dangerous or hazardous to life, the environment or other property.

e) The Customer shall be responsible for the safe keeping of any PIN Number which is created by the Customer, its employees or agents or which is issued to the Customer, its employees or agents. If TRP releases or allows the release of the Goods or Equipment to a party who uses the correct PIN Number, TRP shall be under no liability whatsoever for such release unless the Customer can show that TRP was negligent in disclosing the PIN Number or releasing the Goods or Equipment without production of the correct PIN Number. The burden of proving that TRP was negligent in disclosing the PIN Number or releasing the Goods shall rest with the Customer.

f) The Customer shall be responsible for the safe keeping of any data, figures, passwords or other information of any nature entered within the VBS or any other computer or operating system used or operated by TRP and supplied to the Customer, its agents or employees which might be used to demand or otherwise facilitate the release of any Goods or Equipment from TRP. If TRP releases or allows the release of the Goods or Equipment to a party who uses correct data, figures, passwords or other information as entered within the VBS or such other computer or operating system, TRP shall be under no liability whatsoever for such release unless it can be shown that TRP was negligent in disclosing the data, figures, passwords or other information or in releasing the Goods or Equipment without proper

production of such data, figure, passwords or other information. The burden of proving that TRP was negligent in the disclosure or release shall rest with the Customer.

g) The Customer warrants that its servants (and those of any agents or independent contractors it may engage) are trained and competent to carry out the tasks at any time assigned to them in relation to the giving of any instructions to TRP or the inputting of any information into any electronic service or system operated, managed or utilised by TRP (which shall include, but not be limited to the VBS) whether such instruction or input of information is given in writing, verbally or by any electronic or any other means whatsoever. The Customer further and separately warrants that such persons have the full authority to give such instructions or input such information.

h) The Customer undertakes that it has complied with all relevant local, national and international legislation and regulations relating to the carriage, handling and movement of the Goods and TRP accepts no responsibility whatsoever for the failure of the Customer to comply with such local, national or international legislation or regulations or the consequences of such failure. The Customer hereby agrees to indemnify and hold TRP harmless from and against any failure to comply with any such legislation and regulations or the consequences of such failure.

i) Unless otherwise specified in writing to the Terminal Manager before the Goods or Equipment are delivered to the Terminal, the Customer warrants that any Goods, Equipment or Ship which it delivers, directs to or causes to be upon the Terminal:

i) are not dangerous to health, property or the environment or otherwise hazardous, poisonous or flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on the Terminal;

ii) are not toxic or liable to give off any injurious dust, gas, fumes, liquid or radiation;

iii) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Terminal;

iv) are not over-heated or under-heated or liable to become so while on the Terminal;

v) will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods or Equipment or Ship or the Terminal or the environment adjacent thereto or generally;

vi) require for their safekeeping no special protection (other than as may be agreed in writing between TRP and the Customer) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other Goods or from inflammability but will remain safe if left standing in the open or on the Terminal or in covered accommodation if agreed in writing with TRP;

vii) contain no unauthorized controlled drugs, contraband, pornographic or other illegal matter;

viii) are properly and sufficiently packed in accordance with all Government and Local Government Regulations, Laws and Bylaws (which, for the avoidance of doubt, is to include Legislation, Directives, Orders or other Regulations or Laws passed by any Court or legislative body thereof) from time to time applicable and the Codes of Conduct, practice directions and regulations of the International Maritime Organization and the Health & Safety Executive;

ix) are properly and sufficiently marked, accurately documented and labelled for all shipping, cargo handling, dispatch, customs and like purposes;

x) are properly marked with any warning as to the hazardous nature of any contents and the precautions to be taken in handling the same and (in the event of the escape of anything injurious there from) as may be necessary to ensure the safety and health of all persons likely to handle or come into contact with the Goods, Equipment or Ship;

xi) are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by TRP, its Equipment and employees;

j) The Customer warrants that it will immediately inform the Terminal Manager of any occurrence or incident which might affect the safe and efficient operation of TRP or other persons using the Terminal and take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience as may be required by TRP. Without prejudice to the foregoing, the Customer shall indemnify and hold TRP harmless from and against any costs, fines,

claims, indemnities or other losses of whatever nature arising from such occurrence or incident unless the occurrence or incident has been caused by the negligence of TRP.

k) All manifests, delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, Goods handling instructions and orders for any Services provided by TRP which are necessary for TRP's safe and efficient handling of the Goods, Equipment or Ship must be lodged with the Terminal Manager or entered on the System before the Services are required to be performed. Any order given verbally must be confirmed in writing as specified above.

l) TRP will exercise all reasonable dispatch in providing Services but will not be liable for any delay whatsoever, howsoever caused, unless agreed to the contrary in writing with TRP. If such agreement is reached, TRP's liability will be limited in accordance with Clause 5(d) below.

m) Goods and Equipment which for any reason whatsoever cannot be delivered at the time of delivery into the Terminal from a Ship or otherwise will be placed on the quays, or elsewhere within the Terminal at the expense of the Customer. TRP's charges, including quay rental, will be paid by the Customer. Details of TRP's charges will be provided to the Customer upon request.

n) The Customer will be solely responsible for complying with all formalities, procedures and regulations prescribed by Customs, Immigration, the Port Authority, PNA, SENASA or other statutory, Governmental or Local Governmental department which arise from or in relation to the Goods, Equipment or Ship. TRP will be under no liability for any acts or omissions of Customs, Immigration, Port Authority, PNA, SENASA or other statutory, Governmental or Local Governmental department whatsoever and howsoever arising.

o) All Goods and Equipment brought to the Terminal by road for shipment must be accompanied by a standard shipping note and any other documents necessary to complete customs clearance procedures and, where appropriate, a dangerous goods note, or the equivalent detailed information transmitted into the System.

p) All Goods and Equipment brought to the Terminal by rail for shipment must be accompanied by a standard shipping note and any other documents necessary to complete customs clearance procedures and, where appropriate, a dangerous goods note or the equivalent detailed information transmitted into the System not later than the arrival of rail wagons conveying such Goods. Prior notification must be given to the Terminal Manager to allow any necessary way to leave or other arrangements to be made with any operator of rail services into the Port of Buenos Aires.

q) Subject to alternative arrangements being agreed in writing with TRP any standard shipping note, dangerous goods note (where appropriate), temperature control document, entry into the System or other document accompanying the Goods or Equipment as required in paragraph 3(o) above must specify marks and number of packages, description of Goods, gross weight, any weight imbalances, cubic measurement, the name of any Ship or port to which the Goods are to be shipped (where appropriate), any special carriage or storage requirements of the goods and the name and address of the Customer or company to whom charges are to be rendered.

r) A standard shipping note or dangerous goods note in respect of Goods or Equipment of a dangerous, hazardous or poisonous nature must be clearly endorsed to that effect and the information entered into the System must include the IMDG Class and the number and the Goods and Equipment labelled in accordance with the prescribed statutory regulations.

s) The Customer warrants the accuracy of any information or documentation provided by or on behalf of the Customer and the Customer warrants the sufficiency of any packaging, marks, and information provided by or on behalf of the Customer. TRP shall not be obliged to inspect, check or verify any such information, documentation, packaging or marks and shall not be responsible for any errors or deficiencies therein or thereof.

t) The Customer shall provide TRP with all documentation which TRP may need to comply with the obligations imposed by any regulations, rules or requirements. Such documentation shall include, without limitation, material safety data sheets

#### **Charges, Expenses, and Liens**

a) Unless otherwise agreed in writing, all charges shall be paid:

- i) For services provided in relation to the berthing of Ships, within 7 days of the invoice date;
  - ii) All other charges, within 30 days of the invoice date.
- b) The Customer shall pay to TRP in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim, abatement or set-off.
- c) Where any invoice or part thereof remains unpaid after the due date, interest at the base rate of Banco de la Nación Argentina shall be paid on the outstanding balance.
- d) Notwithstanding any agreement by TRP to collect charges from any person other than the Customer, the Customer shall remain liable to TRP for payment of all charges when due.
- e) If the Customer fails to make any payment on the due date or if the Customer becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the Customer and/or the whole or part of the Customer's assets, or if the Customer makes any assignment for the benefit of, or composition with its creditors generally or is subject to an equivalent or analogous insolvency event in any jurisdiction:
- i) all and any sums owed by the Customer to TRP shall become immediately payable; and
  - ii) TRP may, without prejudice to any other right or remedy available to it, delay or withhold Services, refuse to provide Services or cancel any or all orders for Services with the Customer.
- f) TRP shall have:
- i) a general lien on all Goods, Equipment or Ships in TRP's possession to secure the payment by the Customer of all charges whatsoever due from the Customer to TRP;
  - ii) a particular lien on all Goods, Equipment or Ships in TRP's possession;
  - iii) Upon TRP exercising its lien hereof, storage charges shall apply to any Goods, Equipment or Ship held subject to the lien. Moreover, other charges such as, but not limited to, equipment demurrage and rental charges may accrue. Such storage charges and other expenses shall be for the account of the Customer and the Customer shall indemnify and hold TRP harmless from and against all and any such charges and expenses.
  - iv) Upon accounting to the Customer for any balance remaining after payment of any due sums and the costs of and associated with the storage, disposal and dealing with the Goods, TRP shall be discharged from any liability whatsoever in respect of the Goods, the Equipment or the Ship.
  - v) The notice period for the disposal or dealing with the Goods, Equipment or Ship in clause 4(g)(iv) above shall not apply where the Goods, Equipment or Ship are likely to perish, deteriorate or damage other Goods, Equipment or Ships or property or if TRP considers them to be a danger or hazard to life or the environment. In such circumstances, the right to dispose or otherwise deal with the Goods, Equipment or Ship shall arise immediately upon the sum becoming due. TRP shall take reasonable steps to notify the Customer its intention to deal with the Goods.

#### **Liabilities**

- a) TRP shall not be liable for any loss, damage, delay, error or omission whatsoever arising directly or indirectly from the following: -
- i) Act of God including, but not limited to, storm, tempest, flood or lightning strike;
  - ii) War or hostile military action, rebellion, riot or civil commotion;

iii) Orders of any government, governmental or quasi-governmental body, public, regulatory or local authority or body;

iv) Strike, lock-out or other industrial action;

v) Lack of or defective condition of packaging;

vi) Any act or omission of the Customer, consignor, consignee or other person interested in the Goods, Equipment or Ship or any person acting on behalf of any of them including their respective employees, agents and contractors;

vii) Any act, matter, event or circumstance occurring prior to the Goods or Equipment or Ship being delivered to the Terminal or subsequent to the Goods or Equipment or Ship leaving the Terminal;

viii) The nature of the Goods and/or Equipment and/or Ship exposing them to total or partial loss or damage due to breakage, rust, decay, desiccation, leakage, wastage, inherent or latent defect or vice or natural deterioration;

ix) Insufficiency or inadequacy of marks or numbers on the Goods and/or Equipment and/or Ship or the packaging of the Goods or Equipment;

x) Shortage of berthing space, labor, plant deficiency, fuel or power or insufficient depth of water at any berth or the approaches thereto;

xi) Any other cause or event which TRP is unable to avoid and the consequences of which SCT is unable to prevent by the exercise of reasonable care.

b) The Customer shall indemnify TRP against and hold TRP harmless from all and any claims, damage, losses and expenses arising from the following, except to the extent that they are due to the negligence of TRP:

i) The act, omission or instructions of the Customer, consignee, consignor or owner or other persons interested in the Goods and/or Equipment and/or Ship;

ii) The nature and/or defective condition of the Goods and/or Equipment and/or Ship;

iii) Any breach of any warranty or obligation given or owed by the Customer to TRP in these conditions or elsewhere;

iv) All duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority and/or any expenses incurred in complying with the requirements of any authority in relation to the Goods and/or Equipment and/or Ship;

c) In no circumstances whatsoever shall TRP's liability exceed:

i) In respect of damage to Ships and/or their gear, the cost of repair of the damage or the value of the Ship or gear, whichever be the lesser up to a limit of USD 5,000,000 (five million);

ii) In respect of damage to or loss of Equipment, the value of the Equipment or the cost of repairs, whichever be the lesser, up to a limit of USD 2,000,000 (two million) per incident;

iii) In respect of damage to or loss of Goods, the invoice value of the Goods, the cost of repair of the Goods, whichever be the lesser up to a limit of USD 2,000,000 (two million) per incident;

d) TRP's liability in respect of claims for any other losses whatsoever including but not limited to delay to Goods or Equipment and/or Ships howsoever arising shall not exceed TRP's charges in respect of those Goods and/or the Equipment and/or Ship which forms the subject of the claim.

(e) Under no circumstances shall TRP be liable for any consequential or indirect loss of whatever nature and howsoever arising including (but not be limited to) any loss of profit (whether direct or indirect), loss of market share,

loss of goodwill, loss of future or anticipated sales, loss of production or factory "down time", damages, costs or expenses incurred or payable by the Customer to any third party or any other indirect or consequential loss.

f) The limits of liability set out in (c) and (d) above shall apply unless TRP agrees in writing with the customer that the limits of liability shall be varied and TRP reserves the right to agree additional charges in the event that the Customer seeks such an increase in the limits.

g) TRP shall have no liability for damage, delay or other loss whatsoever to a Ship, Goods or Equipment arising before the Ship, Goods or Equipment enter the Terminal or after the Ship, Goods or Equipment leave the Terminal.

h) The Customer shall indemnify TRP against and hold TRP harmless from all and any claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of TRP under the terms of these Conditions whether or not such claims arise from the negligence or breach of duty of TRP, their servants or agents.

i) The limits and exclusions of liability herein shall apply to any claim made against TRP whether such claim be made in contract, tort, bailment or otherwise.

j) The Customer shall not make any claim against TRP where the value of the loss suffered by the Customer arising from the incident or event giving rise to the claim does not exceed USD 5,000 for (c) i) or USD 2,000 for (c) ii) and iii).

#### **Time Limits, Notices**

a) Any claim made against TRP shall be made in writing to TRP within the following periods:

i) In the event of damage or partial loss to any Goods, Equipment or Ship, within 7 days of such Goods, Equipment or Ship leaving the Terminal;

ii) In the event of total loss to any Goods, Equipment or Ship within 7 days of the date upon which the Customer ought reasonably to have discovered the loss;

iii) In all other cases, within 14 days of leaving the Terminal. Failure to make a claim within the above periods shall cause the claim to be absolutely barred unless the Customer can demonstrate that it was not possible to make the claim within the above periods but that the claim was made in writing to TRP as soon as reasonably practicable.

b) TRP shall, in any event, be discharged from all liability whatsoever, howsoever arising unless suit is brought, and written details thereof served on TRP within 12 months of the date when the event giving rise to the cause of action occurred.

#### **Jurisdiction**

a) These Conditions and any contract or other relationship subject thereto shall be governed by Argentinean law. Any dispute arising from or in relation to these Conditions or any relationship subject thereto (whether arising in contract or otherwise) shall be subject to Argentinean law.

b) The courts of Buenos Aires shall have exclusive jurisdiction over any dispute arising from or in relation to these Conditions or any relationship (whether arising in contract or otherwise) which is subject to these Conditions.