

# GENERAL TERMS AND CONDITIONS:

## ➤ FORWARDING CONDITIONS

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### 1 APPLICABILITY OF THE FORWARDING CONDITIONS

- 1.1** Unless Impala and the Customer agree otherwise in writing, these Forwarding Conditions, as amended from time to time (the "Forwarding Conditions") apply to and are incorporated into all agreements for the provision of forwarding and related services by Impala and/or where a Commercial Agreement incorporates the "Forwarding Conditions" or "Impala GTCs" or "Impala General Terms".
- 1.2** The Customer shall be deemed to have notice of the Forwarding Conditions where Impala has advised the Customer in any document of a means by which the Customer may access a copy of these Forwarding Conditions (including by requesting a physical or electronic copy from an Impala Group entity, by following a hyperlink and/or by visiting a particular web address).
- 1.3** The Customer appoints Impala as its forwarding agent. The Customer agrees that (and acknowledges that the Customer will be bound by) additional terms and conditions may be imposed by a carrier or warehouse operator covering carriage and storage of the Customer's Goods.

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### 2 DEFINITIONS AND INTERPRETATION

- 2.1** In these Forwarding Conditions:

"Agreement" means collectively (i) the latest valid written agreement for the provision of Services by Impala to any other Person (the "Commercial Agreement"), and (ii) these Forwarding Conditions;

"Auditor" means any of the following who is exercising the Customer's rights under this Agreement to inspect the Goods: (a) the Customer; (b) a Regulatory Authority which has responsibility for the regulation or governance of any of the activities of the Customer; and (c) the agents and representatives of the Customer or such Regulatory Authority;

"Business Day" means a day other than a public holiday when commercial banks are open for commercial business in (a) the jurisdiction in which Impala is providing the Service; or (b) in the case of any written communication regarding these Forwarding Conditions, in Geneva (Switzerland);

"Charges" means all of the fees, expenses and costs payable to Impala by the Customer pursuant to the Agreement for, or in connection with, the provision of the Services, and shall include any additional costs or fees which may be imposed as a result of any change in law or regulation;

"Commercial Agreement" has the meaning set out in the definition of "Agreement";

"Confidential Information" means all commercially sensitive information and data of a confidential or proprietary nature not in the public domain relating to the business, products, finances, prospects or activities of the Party in question which is given to, generated by, or otherwise comes into the possession of the other Party in the course of the negotiation or performance of the Agreement, whether before or after the date of the Agreement;

"Customer" means any Person with whom Impala has entered into an Agreement in respect of the provision of Services and/or to whom Impala has agreed to provide the Services pursuant to an Agreement;

“Customer Data” means all data relating to the Customer which is processed, stored, generated, or capable of access by, or which otherwise comes into the possession of Impala including (without limitation) Customer Personal Data;

“Customer Personal Data” means personal data relating to employees, directors or customers and any other personal data for which the Customer is the data controller;

“Data Protection Laws” means (i) GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in England; and (ii) to the extent GDPR is no longer applicable, any successor legislation to the GDPR or the Data Protection Act 2018;

“GDPR” means the General Data Protection Regulation of the European Union (Regulation (EU) 2016/679);

“Forwarding Conditions” means the forwarding conditions of Impala stipulated herein and “Forwarding Condition” will mean one or any of them;

“Goods” means the goods in respect of which the Services will be provided by Impala pursuant to the Agreement;

“Impala” means the Impala Group entity which has concluded the Agreement, being the entity set out in the written order confirmation from Impala to the Customer in which instructions are accepted;

“Impala Group” means Impala Terminals Switzerland S.à r.l. and its Subsidiaries;

“Person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), or government or governmental entity or organisation;

“Regulatory Authorities” means all governmental, statutory or regulatory bodies and any other competent authorities in any jurisdiction having responsibility for the regulation or governance of any of the activities of the Customer;

“Services” means all services agreed to be provided by Impala to the Customer concerning the forwarding of goods, plus all related services, including the provision of any advice or information whatsoever, pursuant to the Agreement;

“Subsidiary” means an entity which is controlled directly or indirectly by Impala Terminals Switzerland S.à r.l. For these purposes, “control” of any entity means:

- (a) having the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of that entity;
  - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that entity; or
  - (iii) give directions with respect to the operating and financial policies of that entity with which the directors or other equivalent officers of that entity are obliged to comply; or
- (b) holding beneficially more than 50 per cent. of the issued share capital or other equity ownership interest of that entity (excluding any part of that issued share capital or other equity ownership interest that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

“Taxes” means all taxes, duties, imposts, levies and other similar charges (and any related interest and penalties) howsoever designated or imposed relating to the Goods or the Services;

“VGM” means the verified gross mass of a container carrying cargo;

“Working Hours” means 08:30hrs to 17:30hrs local time on a Business Day or as applicable in the location of Impala's offices (as identified in the notice provisions of the Agreement) unless Impala advises otherwise in writing.

**2.2** Unless the context otherwise requires, in these Forwarding Conditions:

2.2.1 any gender includes all genders; the singular includes the plural and vice versa; and a reference to a person includes firms, partnerships, LLPs, associations, corporations, and bodies corporate;

2.2.2 a reference to a Party includes its permitted successors and assigns and a reference to any enactment, order, regulation, code, standard, policy or other instrument shall be construed as a reference to the same as amended, replaced, consolidated or re-enacted from time to time;

- 2.2.3 a reference to these Forwarding Conditions (or any part thereof) or to any other document shall include any permitted variation, amendment, or supplement to such document and a reference to any clause, schedule, appendix or paragraph is a reference to such clause, schedule, appendix or paragraph of the Agreement;
- 2.2.4 headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of these Forwarding Conditions; examples which follow the word "including" (or similar) shall be construed as illustrative and shall not limit the interpretation of the term or concept of which they purport to be examples; and any obligation not to do anything shall include an obligation not to suffer, permit or cause that thing to be done; and
- 2.2.5 A reference to writing or written includes communications dispatched by e-mail, SMS or instant messaging service to the relevant address as indicated for such purpose in the Agreement.
- 2.3 Impala may amend, vary or supplement the Forwarding Conditions at any time by giving notice thereof to the Customer. Any such amendment, variation or supplement shall take effect as from the date specified in the notice or in the absence of a specified date, as from the date of such notice.

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### **3 AMENDMENT OR DISAPPLICATION OF THE WAREHOUSING CONDITIONS**

- 3.1 Any variation to or disapplication of all or any part of the Forwarding Conditions or the Commercial Agreement will be void unless expressly agreed to in writing by Impala.
- 3.2 Any additional or different terms or conditions proposed by the Customer before or after conclusion of the Agreement, whether in a proposal, purchase order, acknowledgement, acceptance or otherwise, are rejected and will not apply to or form part of, or amend any part of, the Agreement, unless expressly assented to in writing by an authorised representative of Impala, notwithstanding any statement at any time by the Customer that any act or failure to act by Impala constitutes acceptance of any different or additional terms or conditions.
- 3.3 The Customer acknowledges that Impala is not a common carrier and Impala handles the Goods subject to these Forwarding Conditions.
- 3.4 Subject to Clause 3.2 above, in the case of any inconsistency between the provisions of the Commercial Agreement and these Forwarding Conditions, the Commercial Agreement shall prevail.
- 3.5 In the case of any inconsistency between the provisions of the Agreement and law, the Agreement shall, to the extent permitted by law, prevail. If, however, such inconsistent provision of law is compulsorily applicable and may not be dis-applied or prevail by agreement of Impala and the Customer, the relevant provision of law shall prevail, but only to the extent strictly necessary for compliance with such law and the remaining provisions of the Agreement shall continue to apply unaffected.

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### **4 OWNER OF GOODS, TITLE AND CLAIMS TO GOODS**

- 4.1 The Customer expressly represents and warrants for the benefit of Impala (which representations and warranties shall be deemed to be repeated by the Customer on each day for the duration of the Agreement) that:
- 4.1.1 the Goods are not the subject of any claim, criminal or regulatory investigation or legal proceedings;
- 4.1.2 it is the uncontested legal and beneficial owner of, or the authorised agent of the uncontested legal and beneficial owner of the Goods, and has authority to accept these conditions not only for himself, but also if applicable as agent for and on behalf of the owner of the Goods and all other Persons who are or may thereafter become interested in the Goods.
- 4.2 The Customer shall notify Impala of any sale by the Customer to a third party of all or part of the Goods covered by an Agreement, and shall procure the agreement in writing to the Forwarding Conditions by any buyer of Goods. Notwithstanding any such sale and agreement, the Customer remains fully responsible to Impala for performance of the Customer's obligations under an Agreement.

- 4.3** Without prejudice to Clause 4.1, Impala will have the right to enforce the Forwarding Conditions not only against the Customer but also against the sender and/or consignee and/or owner of the Goods to the extent permitted by law.
- 4.4** All rights of ownership and title over the Goods will be established and verified by the Customer, or between Customer and its client or other third party. It is acknowledged and understood that Impala has no responsibility or liability with respect to any conflicting claims arising out of a dispute contesting rights of ownership or title to the Goods.

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## **5 SUB-CONTRACTING**

- 5.1** Impala will be entitled to sub-contract its obligations to perform the Services, in whole or in part, to any third party on such terms and conditions as Impala deems appropriate in its sole and absolute discretion and without notice to the Customer.
- 5.2** Impala acts only as forwarding agent. Where the transportation of the Goods and ancillary services are carried out by carriers and other third parties, the Customer will bear all risk relating thereto.
- 5.3** The Customer may not subcontract the performance of any of its obligations under an Agreement without the prior written consent of Impala. Where the Customer is granted consent to subcontract, it shall retain primary liability under an Agreement for all acts and omissions of its subcontractors or agents acting on its behalf.

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## **6 METHODS, PROCEDURES AND ROUTES**

- 6.1** Subject to the express written instructions by the Customer, Impala will be entitled at its sole and absolute discretion to decide on the means, route and procedure to be followed in the handling, storage, transporting and/or forwarding of the Goods.
- 6.2** Notwithstanding the foregoing, Impala will be at liberty to depart from the Customer's express instructions (even if initially accepted and acted upon) if, in the opinion of Impala, it is at any stage necessary or desirable, or in the Customer's interest, to do so or the instructions from the Customer would be in breach of any applicable law.

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## **7 WAREHOUSING / STORAGE / PACKING OF THE GOODS / CONTAINERS**

- 7.1** Impala may warehouse or store the Goods at any place at the sole and absolute discretion of Impala, pending the forwarding or delivery of the Goods, and all expenses incurred in the warehousing or storage of the Goods will be payable by the Customer. Unless expressly agreed in writing, Impala shall not be under any obligation to guard or arrange security for the Goods at any time.
- 7.2** Except where Impala is instructed in writing by the Customer to pack the Goods and Impala has accepted such instructions in writing, the Customer warrants and agrees that all the Goods have been properly and sufficiently packed and Impala will not be liable for any loss, damage or expenses whatsoever incurred or suffered by the Customer or any third party as a result of the flawed, faulty and/or insufficient packing of the Goods. In the event of any failure by Impala to accept such instructions from the Customer in writing or by performance by the date requested for such packing to occur, such instructions will be deemed to have been rejected by Impala.
- 7.3** Without prejudice to the generality of Clause 7.2 above, if a container has not been packed or stuffed by Impala, Impala will not be liable for loss of or damage to the contents thereof if caused by:
- 7.3.1** the manner in which the container has been packed or stuffed;
- 7.3.2** the unsuitability of the contents for transportation in containers;

- 7.3.3 the unsuitability or defective condition of the container, provided however Impala may be liable for loss or damage to the contents thereof, if, and only if, the container was supplied by or at the direction of Impala, and it is proven finally in a court of law having jurisdiction that (i) the unsuitability or defective condition arose as a result of the negligence of Impala or (ii) the container was inspected by the Customer or owner or Persons acting on behalf of either of them and deemed acceptable for transit; or
- 7.3.4 the container not being properly sealed at the commencement of any transportation.
- 7.4 Where Impala is instructed to provide a container and such instructions are accepted by Impala, as evidenced in writing or by Impala's shipment of the Goods in a container provided by it, Impala is not under an obligation to provide a container of any particular type or quality.
- 7.5 The Customer warrants for the benefit of Impala that it has complied with all laws and regulations relating to the nature, condition, packing, handling, fumigation, storage and transportation of the Goods.

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## **8 INSTRUCTIONS; DOCUMENTS TO BE PROVIDED TO IMPALA**

- 8.1 The Customer will ensure that all instructions, information and documents required to be provided to Impala for the safe receipt and dispatch of the Goods by Impala are (a) complete, accurate, up-to-date and adequate, and (b) are promptly provided to Impala in writing sufficiently in advance of the date by which the Services are to be performed..
- 8.2 The Customer will be liable for and shall indemnify the Indemnitees in respect of any and all fines, penalties, expenses, loss, damages or costs (including all legal costs on a full indemnity basis) suffered or incurred by Impala arising from or in connection with: (a) the provision of inaccurate, incomplete, out-of-date, obscure and/or inadequate instructions, information and/or documents; and/or (b) any failure to furnish any instructions, information and/or documents; and/or (c) any failure to furnish any instructions, information and/or documents in time.
- 8.3 Impala will not be obliged to provide a confirmation of the receipt of the Goods in the absence of a requirement to do so set forth in any of the instructions, information and documents referred to in Clause 8.1 above, which has been accepted by Impala. Any receipt issued shall not be a negotiable or transferrable instrument and shall not be considered as confirming the description, quality, condition or weight of the Goods received by or under the control or possession of Impala.

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## **9 ACCURACY OF DESCRIPTION OF THE GOODS AND QUALITY OF THE GOODS**

- 9.1 The Customer warrants and is bound by the accuracy, correctness, completeness and truth of all descriptions, values, particulars, markings and/or information furnished to Impala in respect of the Goods for any purposes whatsoever, including without limitation customs clearance. Impala will be entitled to rely on such description, specification, particulars and/or information as to the contents, measurements, nature, quality, weight, number, serial numbers, marks, value or other particulars of the Goods, even if the Goods should have been counted, weighed or measured in the presence of any of Impala's agents or servants and even if such agents or servants could by any means have discerned the contents, weight, measurement, nature, quality, serial numbers, marks, value or other particulars of the Goods.
- 9.2 The information and particulars in respect of the Goods to be provided by the Customer shall include a complete and accurate statement setting out (i) the description, content, origin, nature, properties, quality, measurement, quantity, origin, serial numbers, marks, value, number of packages, gross weight, VGM (if applicable), and all other particulars (including any hazardous properties or substances within the Goods and any special storage or transport or movement requirements due to the nature of the Goods) and (ii) all other particulars, terms, documentation and information in respect of the Goods which, had they been known to Impala at the time of the conclusion of the Agreement, may have influenced Impala's decision whether or not to enter into the Agreement and/or the terms and conditions on which Impala was prepared to enter into the Agreement. The Customer will separately state the weight of any package which exceeds 3000 kilogrammes. Without prejudice to its other legal rights and entitlements, Impala shall be entitled to increase its Charges should incorrect, inaccurate, incomplete or misleading information be provided by or on behalf of the Customer in respect of the Goods.

- 9.3** Impala will not be considered to be and will not act as an expert in relation to the nature, quality or other particulars of the Goods and will not be required or be obliged to provide any notification to any party whatsoever in relation to the same.
- 9.4** Impala will be under no obligation to ensure that the samples of the Goods are identical with or match the Goods as described by the Customer or that the Goods conform with the description of the Goods provided by the Customer or to make any declaration with respect to the nature, value or purpose of delivery of the Goods.
- 9.5** The Customer will be liable for and shall indemnify the Indemnitees in respect of any and all fines, penalties, expenses, losses or damages suffered or incurred by Impala, its sub-contractors, employees, agents and any third parties arising from or in connection with: (a) the provision of incorrect and/or inaccurate, and/or misleading and/or incomplete description, particulars, markings and/or information in respect of the Goods, including inaccuracies or omissions in or in respect of the leading marks, numbers, quantity, weight, gauge, measurement, properties, contents, nature, origin, quality or value of the Goods, and/or (b) defects in the Goods and/or its containers or packing which have not been notified to Impala before the parties entered into an Agreement.

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## **10 TALLYING / WEIGHING / MEASURING OF THE GOODS**

- 10.1** All operations including superintending, sampling, taring, tallying, weighing, calculating VGM, measuring and receiving the Goods under judicial survey, will be undertaken only on the Customer's specific instructions and all costs thereof and relating thereto will be payable by the Customer and, if first paid by Impala, will be reimbursed to Impala by the Customer forthwith upon demand.
- 10.2** Where Impala agrees to undertake weighing for the purposes of calculating VGM, give a weight for the purposes of calculating VGM or give a VGM declaration in relation to containerised Goods, Impala will do so at the sole risk and expense of the Customer, and the Customer will fully indemnify the Indemnitees against any and all consequences of the same in accordance with Clause 21 below.
- 10.3** Notwithstanding Clause 10.1 above, Impala will be entitled, but not obliged, and the Customer hereby authorizes Impala to take any action with respect to the Goods that Impala in its sole and absolute discretion considers to be necessary and/or in the Customer's interest, at the Customer's expense and risk.

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## **11 DELIVERY / LOADING / UNLOADING**

- 11.1** A statement by the Customer as to the time of delivery of the Goods will not be binding on Impala and Impala will not be taken to guarantee and gives no representation or warranty as to the arrival time of the Goods, the means of transport or the availability of berths. All timings are subject to change without notification. Time is not of the essence in performance of the Services by Impala.
- 11.2** Goods will be delivered to Impala and loaded for forwarding during Working Hours and Impala will not be obliged to receive or deliver Goods, or to provide or perform any other Services, outside Working Hours. If the Customer requests any Services to be executed outside Working Hours, Impala will be at liberty to decide whether to do so or not at its sole and absolute discretion. The Customer will bear any extra costs and Charges which may be notified to it by Impala for any Services provided outside of Working Hours.
- 11.3** In the event that the loading and/or unloading time under any bill of lading and/or charterparty in respect of the Goods is inadequate regardless of the cause, all costs resulting therefrom, including without limitation any demurrage charges will be borne by the Customer, notwithstanding that Impala was the party that accepted or entered into the bill of lading and/or charter party from which such aforesaid costs arise.
- 11.4** Any additional expenses of an exceptional nature, including without limitation any higher wages arising from the loading and/or unloading of the Goods outside the Working Hours are not included in the Charges, unless specifically stipulated in writing and agreed to by Impala, and all such expenses will be borne by the Customer in addition to the Charges.

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## 12 SALE OR DISPOSAL OF THE GOODS

- 12.1** Without prejudice to Impala's other rights and remedies under the Agreement and at law, Impala shall be entitled (but not obliged) to sell or dispose of:
- 12.1.1 any Goods which are perishable which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable to enable delivery, without any notice to the Customer.
- 12.1.2 non-perishable Goods which in the opinion of Impala cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Customer or the consignee of the Goods or for any other reason, upon giving fourteen (14) days' notice in writing to the Customer.
- 12.2** All Charges and/or additional costs and expenses arising in connection with the storage, sale or disposal of the Goods will be borne by the Customer and may be deducted from the proceeds of sale. Impala will then account for any balance due to the Customer and such accounting will be the deemed delivery of the Goods to the Customer.

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## 13 HAZARDOUS AND OTHER GOODS

- 13.1** The Customer will notify Impala in writing, accompanied by an accredited material safety data sheet clearly stating the International Maritime Organisation class of the Goods, before delivery to Impala of any Goods (a) of an explosive, flammable, corrosive, noxious or dangerous nature, or (b) any Goods which may possibly cause damage to, or be detrimental to (i) the safety, utility or integrity of the container or form of transport (or any part of it) or (ii) other goods, or (c) which are classified as dangerous or hazardous goods by any laws or regulations. Goods of a hazardous nature include goods likely to harbour or encourage vermin or other pests. Impala shall be entitled to reject such Goods or to make acceptance of such Goods subject to such special terms, conditions and arrangements as Impala sees fit in its sole and absolute discretion.
- 13.2** Except under special arrangements previously agreed to in writing by Impala, Impala will not accept or handle:
- 13.2.1 any noxious, dangerous, radioactive, hazardous or inflammable or explosive goods or any goods which, in the opinion of Impala, is likely to cause damage to any person or property whatsoever, as determined by Impala in its sole and absolute discretion; and/or
- 13.2.2 any precious or sensitive goods including but not limited to precious stones, jewellery, antiques, paintings, high value classic or sports cars.
- 13.3** If Impala agrees, in its sole and absolute discretion, to handle such Goods, the Customer agrees that they will be accompanied by a full declaration of their nature and contents and properly and safely packed and clearly and indelibly labelled to show the hazardous nature of their contents in accordance with all applicable laws and regulations. The Customer will indemnify the Indemnitees from and against any and all fines, penalties, expenses, losses or damages suffered or incurred by Impala by reason of the Customer's failure to so declare and mark the nature of such Goods. The attention of the Customer is directed to the laws and regulations imposing criminal or civil penalties for failure to properly declare, mark and package such Goods.
- 13.4** If Goods which fall within Clause 17.1 (a)-(c) above, are accepted by Impala, they may nevertheless be destroyed, redelivered or otherwise dealt with by Impala, or any other Person in whose custody they may be at the relevant time, as it sees fit in its sole and absolute discretion without prior notice to, or liability to, the Customer or any third party, in order to avoid or mitigate any actual or perceived risk to other goods, property, life or health.
- 13.5** Should the Customer deliver Goods which fall within Clause 17.1 or Clause 17.2 to Impala, or cause Impala to handle or deal with any such Goods, without prior notice to Impala and/or contrary to any special terms, conditions or arrangements agreed with Impala, the Customer will be liable for all losses, damage or expenses whatsoever caused by or to or in connection with the Goods however arising and the Customer will indemnify the Indemnitees from and against all fines, penalties, claims, losses, damages, costs (including all legal costs on a full indemnity basis) and expenses whatsoever arising in connection therewith. Such Goods may be destroyed or otherwise dealt with at the Customer's sole risk and expense and at the sole and absolute discretion of Impala or any other Person in whose custody the goods may be at the relevant time in order to avoid or mitigate any actual or perceived risk to the Goods themselves, other goods, property, life or health.



- 13.6** Impala will promptly notify the Customer of the measures taken pursuant to Clause 17.3. or 17.4., but failure to notify the Customer will not give the latter any right of claim against Impala.

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## **14 PAYMENT OF CHARGES, FREIGHT, DUTIES, ETC.**

- 14.1** All Charges will be payable by the Customer immediately upon issuance by Impala of the invoice for such amounts. Notwithstanding the above, interest pursuant to Clause 14.10 below shall not accrue on the invoiced amount until fourteen (14) days after issuance of such invoice.
- 14.2** Impala will be entitled to charge the Customer a reasonable amount in addition to the agreed Charges for any operations of an unusual nature and/or which requires additional time or effort to carry out.
- 14.3** Unless otherwise stipulated in writing and agreed to by Impala, expenses incurred by Impala in or in connection with the provision of the Services will be charged to the Customer and will be payable by the Customer and are not included in the Charges. Such expenses include postage expenses, teleprinter, telegram and telephone charges, stamp fees, import duties and excise, statistical duties, consular and attestation fees, customs formalities, emergency surcharges, security surcharges, congestion surcharges, piracy risk and war risk surcharges, currency charges, increase in rates, costs of preparing shipping documents and obtaining bankers' guarantees (if any), cost of weighing, calculating VGM, measuring, tallying, taring, sampling and repairing, bundling or rebundling, packing or repacking, crantage, additional costs of handling heavy objects, all extra costs such as warehousing charges and quayside charges or wharfage charges for consignments missing a connection, demurrage for detention or delay of vessels, trucks or other transport, hire of tarpaulins, overtime pay, the cost of working outside the Working Hours, cost of providing watchmen and all other out-of-pocket expenses whatsoever. Impala will issue a separate invoice in respect of such aforesaid expenses, fees, and duties and, except as provided in Clause 14.7 below, the Customer will pay all such expenses, fees, duties whatsoever to Impala within fourteen (14) days of its receipt of an invoice from Impala.
- 14.4** Impala will be entitled to retain and be paid all brokerage fees, commissions, allowances and other remunerations, received by Impala from third parties, in connection with the Agreement and/or the Services.
- 14.5** All quotations are valid during the time of offer by Impala and are subject to withdrawals or revisions before acceptance by the Customer. Unless otherwise agreed to in writing by Impala, Impala will be at liberty to revise a quotation after its acceptance by the Customer with or without prior notice to the Customer, in the event of any changes in the currency exchange rates, rates of freight, general port charges and any other rates or charges on which the quotation to the Customer was based, regardless of the cause of such changes.
- 14.6** The Customer will be liable for any Taxes, deposits or outlay of any kind whatsoever which are levied or imposed by the authorities at any port or place in connection with the Goods and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by Impala in connection therewith (collectively, "Taxes and Other Payments").
- 14.7** Unless otherwise agreed to by Impala in writing, the Customer will pay to Impala immediately all freight, duties, and all other costs and expenses relating to the transportation of the Goods and/or customs requirements upon arrival or dispatch of the Goods which are being received or forwarded by Impala respectively. Any risk of currency exchange fluctuations will be borne by the Customer.
- 14.8** Where the Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee of the Goods or any other persons, the Customer will remain liable for the same if the same is not paid by such consignee or other Person forthwith on the due date for payment or upon demand by Impala.
- 14.9** Impala will not be obliged to furnish or to procure any third party to furnish security for the payment of any freight, duties and/or other costs and expenses relating to the Goods in the event the same is required by any other party. In the event that Impala furnishes security out of its own resources, the Customer will make payment to Impala of the amount for which security has been furnished upon demand by Impala. Any and all consequences arising from the failure to comply with a demand from any Person to furnish security will be borne by the Customer.



- 14.10** In the event that the Customer fails to pay any amounts which are due and payable hereunder or immediately upon notification thereof by Impala, (i) interest will be payable on such amounts at the rate of 3 month US Dollar SOFR rate + 5% per annum or such other rate as may be agreed between Impala and the Customer; and (ii) notwithstanding any other term of this Agreement, Impala may terminate the Agreement with immediate effect.
- 14.11** All payments by the Customer will be made in full without any deduction, set-off, withholding, counterclaim or rebate whatsoever (except as may be required by law, in which case such deduction or withholding shall not exceed the minimum amount required to be deducted or withheld under law) and will be deemed in the first place, to the extent permitted by law, to have been made on account of non-preferential debts, regardless of any instructions which may be given by the Customer to Impala at the time of payment. The Customer irrevocably waives any such right to set-off or counterclaim against, or deduct or withhold from, any monies owed by it to Impala (other than as may be required by law, in which case such deduction or withholding shall not exceed the minimum amount required to be deducted or withheld under law). If the Customer is required by law to make a deduction or withholding in respect of any sum payable under the Agreement, the Customer shall, at the same time as the sum which is the subject of the deduction or withholding is payable, make a payment to Impala of such additional amount as shall be required to ensure that the net amount received by Impala will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.
- 14.12** In the event that any Indemnitee resorts to any legal proceedings or other means for the recovery of any amounts due and payable by the Customer hereunder (the "Indebtedness"), the Customer will, in addition to the Indebtedness and interest payable under Clause 14.10, indemnify Impala (for and on behalf of itself and each Indemnitee) for a further amount which is either (a) 10% of the Indebtedness or (b) USD50,000, whichever is higher and deemed enforceable by the applicable court having jurisdiction over the legal proceedings, on account of all management time and clerical expenses which may be incurred by the Indemnitees in resorting to such proceedings or other means.

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## **15 LIEN AND RIGHT OF RETENTION OF GOODS, DOCUMENTS, ETC.**

- 15.1** All Goods received for forwarding by Impala will be held by it subject to a general lien and right of retention for money due to Impala whether in respect of the storage of such Goods or other goods or for other Charges or costs payable by the Customer and/or the owner of the Goods, whether such lien and rights are afforded by law, the Agreement or otherwise. Impala is entitled to retain the Goods, any document relating to the Goods and moneys which Impala may hold on behalf of the Customer at the Customer's sole expense and risk as security until the Charges and all other charges, costs and expenses which are due and payable to Impala has been paid to Impala or, if the Goods are to be forwarded on to other parties, to collect the sums due on the subsequent delivery.
- 15.2** All Goods, documents and/or moneys will be held by Impala subject to a general lien and right of retention whether such lien and right are afforded by law, the Forwarding Conditions or otherwise, for money due to Impala whether in respect of the Charges or for other expenses, charges or costs payable to Impala by the Customer and/or the owner of the Goods.
- 15.3** In the event that the Customer fails to make payment of the Charges or any other moneys whatsoever due to Impala within fourteen (14) days from the day when such sums become payable, Impala will be entitled to utilise any and all such moneys held by Impala and/or sell the Goods by auction or otherwise at Impala's sole and absolute discretion and at the expense of the Customer and the proceeds (after deduction of sale expenses, storage charges, etc.) may be applied by Impala in or towards satisfaction of such Indebtedness by the Customer to Impala. In the case of perishable goods, Impala need not await the expiry of the aforesaid fourteen (14) days and may exercise such rights of sale earlier at Impala's sole and absolute discretion. Any balance of the proceeds from the sale of the Goods and/or any balance of the moneys held by Impala after the proceeds of sale and/or the moneys have been applied in or towards the satisfaction of such Indebtedness by the Customer to Impala will be paid to the Customer.
- 15.4** The Customer will upon demand by Impala furnish security for any amount which the Customer is or may be indebted to Impala.

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## 16 DECLARATION

- 16.1** Impala will be under no obligation whatsoever to make any declaration which may be required under any statute, convention or contract as with regards to the nature or value of the Goods or with regards to any special requirements relating to the delivery of the Goods unless expressly instructed by the Customer in writing and Impala agrees in writing to make such declaration or expresses such agreement by making such declaration.
- 16.2** Where Impala agrees to or is required by local regulations to give a VGM declaration in relation to containerised Goods, Impala will do so at the sole risk and expense of the Customer, and the Customer will fully indemnify the Indemnitees against any and all consequences of such a declaration in accordance with Clause 21 below.

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## 17 FORCE MAJEURE

- 17.1** Impala shall not be liable for any loss of, damage to or destruction of the Goods, or for any delay in the performance or non-performance of any of the terms of the Agreement that arise in whole or in part due to any cause not within the control of Impala, whether or not existing at the date of conclusion of the Agreement (a "force majeure event"), including the following:
- 17.1.1 war (declared or undeclared), terrorism, armed hostilities, threat of war, official action or governmental measures, quarantine, plagues, epidemics, pandemics, civil disturbance, sabotage, strike, riots, lock-out, seizures, theft, interference with communications, lack of transport, labour and/or storage accommodation, inability to obtain equipment due to blockade, embargo or sanctions, shipping disruptions or obstructions or analogous civil disturbances;
- 17.1.2 storm, fog, lightning, fire, flood, high and low tide or water level, frost, freezing, ice, heat, acts of god or analogous geological events;
- 17.1.3 subsidence and/or collapse of the ground and/or any storage facility, water leakage or seepage, dampness, odour, stench, worms and rodents, damage through rats, mice, insects or other creatures;
- 17.1.4 the natural properties of the Goods, inherent changes in quality or character, spontaneous deterioration, heat, combustion, explosion, drying, mould, yeasts, leaks, rot and mildew, rust and sweating, inherent vice, decay, drying out, powdering, heating, melting, staining, sweating, fermenting, freezing, rusting, dampness, dust, oil, discolouration, evaporation, smells or stains from, or resulting from, contact with other goods or fuel, putrefaction, water of any kind, rain or spray, effects of climate, drainage, leakage, wastage, loss of weight, breakage, splitting, bending, chaffing, shrinkage, hook holes, rats, mice, insects and other vermin, explosion of any of the goods whether received with or without disclosure of its nature, insufficiency, soiling, injury to, distortion, pressing or bursting of packages, adherence or coverings, failure to protect the goods or inaccuracy, obliteration or errors in or insufficiency or absence of marks, numbers, address or description of the goods;
- 17.1.5 breakage of glass, wickered bottles and flasks, cast-iron and other brittle articles, inadequate packing; and
- 17.1.6 all other causes which are beyond the control of Impala.
- 17.2** If a force majeure event occurs which prevents, delays or hinders performance of Services by Impala, Impala shall give notice of such force majeure event to the Customer. In the event of a force majeure event occurring, the Agreement will remain in force but Impala's obligations will be suspended for so long as the force majeure event subsists. In case the force majeure event lasts for more than three (3) months, Impala shall have the option to terminate the Agreement with no liability . All additional costs which may be incurred as a result of a force majeure event, including but not limited to transportation and storage charges, warehouse or yard rental, demurrage for vessels or trucks, charges in respect of redelivery from warehouses, bonded or otherwise, will be borne by the Customer and will form part of the debt due and owing to Impala by the Customer mentioned in Clause 14 hereof on which interest will be chargeable.

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## 18 INSURANCES

Impala shall not be responsible for and shall not bear the cost of arranging any insurance for loss of, or damage to the Goods. The Customer shall obtain and maintain for the duration of this Agreement a policy of insurance for the value of the Goods covering any loss or damage or diminution in value, including but not limited to any other charges related to the loss of the goods. The Customer is obliged to take out and maintain adequate insurance satisfactory to Impala naming Impala as a loss payee covering any and all that can be caused by the Goods, or theft thereof. Upon request, the Customer shall make the insurance policy(ies) available to Impala for inspection and provide copies.

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## 19 LIABILITY OF THE PARTIES

- 19.1** All operations and activities relating to the Goods carried out by Impala in the provision of the Services will be at the Customer's sole expense and risk.
- 19.2** In addition to Clause 20 below, the Customer will be liable for and will indemnify the Indemnitees in respect of any and all fines, penalties, expenses, losses or damage, suffered or incurred by Impala or charged on the Goods as a result of:
- 19.2.1 any action, inaction or error on the part of the Customer, its employees, agents and/or contractors or which may in any way be caused by the nature, properties or defects in the Goods entrusted by the Customer to Impala;
- 19.2.2 non-compliance with the terms of the Agreement (including the provision of incorrect, inaccurate or incomplete information, particulars or documentation).
- 19.3** In addition to Clause 20 below, Impala will not in any circumstances whatsoever, including negligence, be liable to the Customer in respect of:
- 19.3.1 any damage and/or deterioration to the Goods unless such damage and/or deterioration is proven finally in a court of law having jurisdiction to have been caused intentionally by the deliberate act of any employee of Impala;
- 19.3.2 any theft, burglary or misappropriation of the Goods, whether in Impala's custody or control or not.
- 19.4** In addition to Clause 20 below, Impala will not be liable for any loss of the Goods or any part thereof, for any non-delivery or misdelivery of the Goods or any part thereof unless such loss, non-delivery or misdelivery:
- 19.4.1 is proven finally in a court of law having jurisdiction to have occurred whilst such Goods or part thereof were in the actual custody of Impala and under its actual control; and
- 19.4.2 was due to the gross negligence or wilful misconduct of Impala.
- 19.5** In addition to Clause 20 below, Impala will not be liable for non-compliance with any instructions given to it unless it is proven finally in a court of law having jurisdiction that the same was due to the gross negligence or wilful misconduct of Impala.
- 19.6** Without prejudice to the generality of the other provisions in the Agreement, and in addition to Clause 20 below, Impala will not be liable for:
- 19.6.1 any errors in the particulars relating to the freight, duties and any other costs and expenses relating to the Goods which are stated to be payable and which are notified to Impala by third parties;
- 19.6.2 any errors in the amount of freight, duties and any other costs and expenses which are charged to the Customer. In this regard, any demand for payment of the shortfall of any such freight, duties and any other costs and expenses will be charged to and be payable by the Customer;
- 19.6.3 any consequences arising from the refusal by any carrier to sign for the number of pieces or items, weight, or any other particulars relating to the Goods;
- 19.6.4 any error in the particulars of the Goods as stated in any warrants, receipts, delivery orders, confirmations, release instructions or any other similar documents whether or not such error is due to the want of due care or negligence on the part of the Customer's employees;

- 19.6.5 any loss, damage or expense whatsoever suffered or incurred by the Customer as a result of or in any way due to any difference between the time in Geneva or other applicable domicile and in any other parts of the world where the Customer is located. Impala will not be obliged to provide or perform any Services outside the Working Hours.
- 19.7 Where Impala carries out the transportation of the Goods, its obligations and liabilities will be governed by the Agreement and not by any other agreements, enactments, legislations, rules or regulations whatsoever as may be applicable to a carrier.

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## 20 LIMITATION OF LIABILITY AND TIME BAR

- 20.1** IMPALA MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE GOODS OR SERVICES. ALL OPERATIONS AND ACTIVITIES RELATING TO THE PROVISION OF THE SERVICES IN ACCORDANCE WITH THIS AGREEMENT WILL BE DONE AT THE SOLE RISK AND EXPENSE OF THE CUSTOMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IMPALA WILL NOT BE LIABLE FOR ANY CLAIMS WHATSOEVER AND HOWEVER ARISING, WHETHER IN RESPECT OF OR IN CONNECTION WITH THE GOODS, SERVICES, ANY INSTRUCTIONS, BUSINESS, ADVICE, INFORMATION OR OTHERWISE. ADVICE AND INFORMATION, IN WHATEVER FORM IT MAY BE GIVEN, ARE PROVIDED BY IMPALA FOR THE CUSTOMER ONLY. THE CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS IMPALA FOR ALL LIABILITY, LOSS, DAMAGE, COSTS (INCLUDING ALL LEGAL COSTS ON A FULL INDEMNITY BASIS) AND EXPENSES ARISING OUT OF ANY OTHER PERSON RELYING ON SUCH ADVICE OR INFORMATION.
- 20.2** NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER DOCUMENT TO THE CONTRARY, TO THE FULLEST EXTENT PERMITTED BY LAW:
- 20.2.1 IMPALA SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGE, ANY MARKET DAMAGES OR LOST PROFITS, OR DIMINUTION IN VALUE, RELATING TO OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY RESULTED FROM ANY GENERAL OR PARTICULAR REQUIREMENT OR NEED OF WHICH IMPALA KNEW OR SHOULD HAVE KNOWN AND REGARDLESS OF WHETHER THE CLAIM IN QUESTION IS BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE. IN THE EVENT THAT ANY TERM OF THE AGREEMENT IS FOUND UNENFORCEABLE FOR ANY REASON, OR ANY EXCLUSIVE REMEDY FAILS ITS ESSENTIAL PURPOSE, THIS PROVISION OF THIS WAIVER SHALL NEVERTHELESS CONTINUE IN FULL FORCE AND EFFECT.
- 20.2.2 WITHOUT PREJUDICE TO THE REST OF THIS CLAUSE 20, IN THE EVENT IMPALA IS FINALLY ADJUDGED IN A COURT OF LAW HAVING JURISDICTION TO BE LIABLE TO THE CUSTOMER FOR ANY AMOUNTS, IN EACH CASE, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH AMOUNT(S) IS BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT THE MAXIMUM AGGREGATE LIABILITY OF IMPALA ARISING OUT OF OR RELATING TO THE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT EXCEED THE LESSER OF (a) THE ACTUAL VALUE OF THE DAMAGED OR LOST GOODS (AS EVIDENCED BY THE RELEVANT INVOICE(S) RELATING TO THE GOODS), AND (b) THE AGGREGATE CHARGES PAID UNDER THE AGREEMENT, (c) ANY LIMIT IMPOSED BY CONVENTION (WHERE APPLICABLE) OR (d) USD 25,000.
- 20.3** Notwithstanding anything set forth herein to the contrary, in no event will Impala be liable to the Customer or to any other Persons with respect to any Services provided or not provided to the Customer whatsoever, any damage or deterioration or non-delivery (in part or whole) or decrease in quantity of the Goods or in general, on account of failure by Impala to comply with any of its obligations whatsoever or howsoever arising, unless:
- 20.3.1 in respect of any damage or deterioration to all or part of the Goods or any part thereof, a notice in writing by the Customer is received by Impala within seven (7) days after the Customer takes delivery of the Goods, setting out full particulars and supporting documentation relating to such damage or deterioration;
- 20.3.2 in respect of any loss or non-delivery of all or part of the Goods or any part thereof, a notice in writing by the Customer is received within fourteen (14) days of the date when the Goods or such part thereof should have been delivered setting out full particulars and supporting documentation relating to such loss or non-delivery; and

- 20.3.3 suit is brought against Impala within twelve (12) months from the date of the event or occurrence or omission alleged to give rise to a cause of action against Impala. In each case, the period of twelve (12) months will commence on the earlier of (i) the day after which Impala notifies the customer of, or (ii) the customer becoming aware of, such event of loss.
- 20.4 The defences and limits for liability set forth in the Agreement will apply in any action against Impala whether such action is based on warranty, contract, negligence, strict liability, tort or otherwise.
- 20.5 In the event that any term of the agreement is found unenforceable for any reason, or any exclusive remedy fails its essential purpose, the provision of limitation set out in clause 20 shall nevertheless continue in full force and effect and survive any expiration, termination or cancellation of the Agreement.

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## 21 INDEMNITY

- 21.1 THE CUSTOMER COVENANTS AND AGREES TO INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE TO IMPALA), SAVE AND HOLD HARMLESS IMPALA, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL LOSSES (AS HEREINAFTER DEFINED) OF WHATSOEVER KIND AND NATURE, WHETHER INCURRED BY IMPALA OR ALLEGED BY OTHERS, IN WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, ARISING IN WHOLE OR IN PART AS A RESULT OF, OR IN CONNECTION WITH, ANY OF THE FOLLOWING: (i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY SET FORTH IN THE AGREEMENT OR THE FORWARDING CONDITIONS BY THE CUSTOMER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR PARTIES ON WHOSE BEHALF THE CUSTOMER IS ACTING AND ENTERING INTO THE AGREEMENT (COLLECTIVELY, THE "CUSTOMER PARTIES"), (ii) NEGLIGENCE BY ANY CUSTOMER PARTY, (iii) ANY DEFECT OF ANY KIND IN THE GOODS OR THEIR PACKAGING, (iv) ANY ACT OR OMISSION OF ANY CUSTOMER PARTY, (v) VIOLATION OF ANY LAW BY ANY CUSTOMER PARTY, (vi) AN INDEMNITEE FOLLOWING THE INSTRUCTIONS OF ANY CUSTOMER PARTY OR IMPLEMENTING SUCH INSTRUCTIONS, (vii) ANY SERVANT, AGENT OR SUBCONTRACTOR OR ANY HAULER, CARRIER, WAREHOUSEMEN, OR OTHER PERSON OR PARTY WHOMSOEVER WHO MAY AT ANY TIME BE INVOLVED WITH THE GOODS, (viii) ANY INSUFFICIENCY OF THE PACKING OF THE GOODS, (ix) ANY ONE OR MORE OF THE MATTERS PROVIDED FOR IN CLAUSE 7.3 ABOVE, (x) IMPALA'S FURNISHING OF A CONFIRMATION FOR THE RECEIPT OF GOODS PURSUANT TO CLAUSE 8, (xi) INACCURACY OF ANY DESCRIPTIONS, PARTICULARS AND/OR INFORMATION CONCERNING THE GOODS THAT IS FURNISHED BY A CUSTOMER PARTY OR ON ITS BEHALF, EVEN IF SUCH INACCURACY IS NOT DUE (WHETHER IN WHOLE OR IN PART) TO ANY NEGLIGENCE OR FAULT ON THE PART OF A CUSTOMER, (xii) ANY AND ALL TAXES AND OTHER PAYMENTS, (xiii) FAILURE BY ANY CUSTOMER PARTY TO PAY ANY INDEBTEDNESS, OR (xiv) ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY CAUSED BY OR RESULTING FROM THE GOODS AND/OR THE ACTION OR INACTION ON THE PART OF ANY CUSTOMER PARTY, (xv) IN CONNECTION WITH CLAUSE 13, AND (xvi) ANY GENERAL AVERAGE (VOLUNTARY SACRIFICE) OR ANY CLAIMS OF GENERAL AVERAGE (CLAIMS FOR EXTRAORDINARY EXPENDITURE INCURRED). AS USED HEREIN "LOSSES" MEANS ANY AND ALL LIABILITIES, OBLIGATIONS, SUITS, CLAIMS, LOSSES, DAMAGES, JUDGMENTS, AWARDS, PENALTIES, INJURIES, ACTIONS, COSTS, FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND DISBURSEMENTS AND COSTS OF INVESTIGATION, LITIGATION, ALTERNATIVE DISPUTE RESOLUTION, SETTLEMENT, JUDGMENT, INTEREST AND PENALTIES).
- 21.2 THE INDEMNIFICATION PROVIDED FOR HEREIN IS WITHOUT PREJUDICE TO ANY OTHER RIGHTS OR REMEDIES ANY INDEMNITEE MAY HAVE UNDER ANY LAW OR UNDER THE AGREEMENT. WITHOUT LIMITATION, MATTERS COVERED BY THE FOREGOING INDEMNITY INCLUDE:
- 21.2.1 DAMAGES FOR PERSONAL INJURY, DISEASE OR DEATH;
- 21.2.2 DAMAGES FOR INJURY TO PERSONAL OR REAL PROPERTY;
- 21.2.3 ENVIRONMENTAL DAMAGES;

- 21.2.4 ANY AND ALL COSTS OR RECALLS OF SUCH GOODS OR PRODUCTS, INCLUDING BY WAY OF EXAMPLE, BUT NOT OF LIMITATION, COSTS INCURRED IN TRANSPORTATION, LABOR, REMOVAL, INSTALLATION, FINES, PENALTIES AND ATTORNEYS' FEES;
- 21.2.5 ALL COSTS, CONSEQUENCES, DAMAGES AND FINES RESULTING FROM AN INCORRECT VGM DECLARATION EVEN IF CAUSED BY THE NEGLIGENCE OF IMPALA; AND
- 21.2.6 ALL EXPENSES, COSTS AND FEES INCURRED BY ANY INDEMNITEE AS A RESULT OF ANY CLAIM FOR INDEMNIFICATION HEREUNDER.
- 21.3 TO THE EXTENT PERMITTED BY LAW, IF ANY CUSTOMER PARTY ENTERS ANY PREMISES OWNED, LEASED OR CONTROLLED BY ANY INDEMNITEE, SUCH CUSTOMER PARTY HEREBY WAIVES AND AGREES TO INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM, ANY AND ALL LOSSES THAT ANY SUCH CUSTOMER PARTY MAY HAVE OR INCUR AS A RESULT OF THEIR PRESENCE ON SUCH PREMISES, WHETHER OR NOT ARISING OUT OF ANY ACT OR OMISSION (WHETHER NEGLIGENT OR NOT) OF ANY INDEMNITEE.
- 21.4 THE INDEMNITIES GIVEN IN THESE FORWARDING CONDITIONS SHALL SURVIVE THE EXPIRATION, TERMINATION, OR CANCELLATION OF THE AGREEMENT.

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## 22 MISCELLANEOUS

- 22.1 The Customer represents and warrants (which representation shall be deemed to be repeated on each day for the duration of the Agreement) that it is duly authorized to enter into the Agreement and to agree to these Forwarding Conditions and to perform its obligations under the Agreement and possesses all licenses, permits, consents and approvals required by law to conduct all business which it conducts with respect to the Goods.
- 22.2 No course of prior dealings and no usage of trade will be relevant to supplement, explain or construe any terms used in the Agreement, including these Forwarding Conditions. The Agreement, including these Forwarding Conditions will be binding upon Customer and its successors and permitted assigns.
- 22.3 If any provision of the Agreement, including these Forwarding Conditions, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remainder of the Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of these Forwarding Conditions.
- 22.4 The Customer shall comply with all laws pertaining to the Goods.
- 22.5 The failure by Impala to insist, in any one or more instances, upon the performance of any of the terms or conditions of the Agreement or these Forwarding Conditions, or to exercise any right or remedy hereunder, shall not be construed as a waiver of the future performance of any such terms or conditions or the future exercise of such right or remedy.
- 22.6 Sovereign immunity: To the extent that any one or more of the parties may in any jurisdiction whatsoever claim or permit to be claimed for itself or any of its agencies, instrumentalities, properties or assets, immunity (whether characterised as sovereign or otherwise, or as arising from an act of State or sovereignty) from suit, set-off, interim relief, injunction, enforcement action, execution of any judgment or arbitration award, attachment (whether in aid of execution, before judgment or otherwise) or from other legal process including, without limitation, immunity from service of process and immunity from the jurisdiction of an arbitral tribunal, each such party or parties hereby expressly and irrevocably waives and abandons absolutely to the fullest extent permitted by law any such claim to immunity which it may have now or may subsequently acquire on its behalf or on behalf of its agencies, instrumentalities, properties or assets, including but not limited to its bank accounts (present or subsequently acquired and wherever located).
- 22.7 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of Impala which is not set out in this Agreement and agrees that it shall have no claim in respect of the same.



- 22.8** Save as expressly set out in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 22.9** By requesting that Impala perform the Services and/or by executing the booking confirmation and/or other documentation to which these Forwarding Conditions are attached, the Customer covenants and agrees to be bound by the terms hereof and represents and warrants the truth and accuracy of the matters set forth herein to be represented and/or warranted by the Customer.
- 22.10** Any notice to be given by Impala under the Forwarding Conditions shall be deemed delivered if addressed to the Customer at the last known contact details (address or email) of the Customer as set out in the Commercial Agreement whether or not the Customer acknowledges receipt. Evidence of being sent shall be deemed evidence of receipt immediately where sent by email or within forty-eight (48) hours if sent by post or courier. Each Party shall at all times have in place at least one representative who has full authority to act on its behalf for all purposes of the Agreement and shall keep the other party informed at all times of the name and contact details of its representative.

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## **23 TERMINATION**

- 23.1** Notwithstanding anything in the Agreement to the contrary, Impala may at any time terminate the Agreement by written notice to the Customer, effective immediately if:
- 23.1.1 the Customer commits a material breach of any of the terms of the Agreement, including these Forwarding Conditions (or a document issued pursuant thereto or hereto) and such breach if capable of cure is not cured within fifteen (15) days after the Customer being notified by Impala; or
- 23.1.2 notwithstanding any period for payment under the Agreement, the Customer is dissolved, becomes insolvent, is unable (or admits it is unable) to pay its debts as they fall due, enters into an arrangement with or for the benefit of its creditors, goes into liquidation or commits an act of bankruptcy under the laws of its relevant jurisdiction of incorporation, or if a receiver is appointed over any of its assets, or if legal proceedings are commenced by any third party in respect of the insolvency or winding up of the Customer, or if the Customer ceases to carry on the business in which it was engaged at the commencement of the Agreement, or anything occurs with analogous effect to any of the above.
- 23.2** In the event that the Customer purports to terminate the Agreement unilaterally in accordance with the terms of the Agreement, Impala will be entitled to a compensation for all loss it suffers (including but not limited to any loss of profit) as a result of the purported termination of the Agreement.
- 23.3** Upon the occurrence of a termination of the Agreement, any Charges or expenses (whether present or future, contingent or otherwise) shall become immediately due and owing by the Customer to Impala.
- 23.4** The expiry or termination of this Agreement for any reason shall not affect any of the accrued rights of Impala nor shall it affect the continuance in force of any provision thereof which is expressly or by implication intended to continue after such termination. In particular, but without limitation, the terms of this Agreement shall continue to apply to (i) any instructions received by Impala (and Services pursuant to those instructions) prior to termination or expiry and (ii) any Goods that are in the course of being forwarded pursuant to this Agreement.

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## **24 DATA PROTECTION AND CUSTOMER DATA**

- 24.1** Each Party confirms and undertakes that it does and will comply with its obligations under Data Protection Laws.
- 24.2** Each Party shall act as an individual data controller in respect of any personal data processed under or pursuant to the Agreement. Impala refers the Customer to its privacy policy to be found at <https://www.impalaterminals.com/privacy-policy/>, and the Customer undertakes to inform each individual for whom it processes Customer Personnel Data of Impala's privacy policy.



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## 25 CONFIDENTIALITY

- 25.1** Duty to preserve confidentiality: Each Party shall keep confidential all Confidential Information of the other Party which comes into its possession or control or is learned and, except as permitted by this Clause 25, shall not copy or disclose the Confidential Information (in whole or in part) to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
- 25.2** Rights of disclosure:
- 25.2.1 Each Party shall be permitted to divulge the Confidential Information of the other Party to personnel, agents, contractors and representatives who need to know it for the purpose of providing or receiving the Services or otherwise performing the recipient Party's obligations or enforcing the recipient Party's rights under this Agreement, provided that the recipient Party:
- (a) informs the individual or entity of the confidential nature of the Confidential Information; and
  - (b) ensures that the individual or entity (i) agrees to act in compliance with the confidentiality requirements of this Agreement; and (ii) is obliged to keep the Confidential Information confidential on terms no less onerous than those set out in this Clause 25.
- 25.2.2 Each Party shall be entitled (without the prior written consent of the other Party but always subject to the provision in Clause 25.2.1 to disclose the terms of the Agreement to an Auditor, its legal or other professional advisers including insurance brokers and financial advisers, to the extent that the Customer (acting reasonably) considers that they each need to know it in relation to this Agreement;
- 25.2.3 Neither Party shall be in breach of this Clause 25 by reason only of disclosing Confidential Information which the Party is required to disclose by applicable law or judicial process or by a stock exchange or by any Regulatory Authority. A Party that is required to disclose Confidential Information in these circumstances shall give the other Party reasonable written notice of the disclosure (provided that it is not legally prohibited from doing so) to allow the other Party an opportunity to take such steps as are available to it to control or prevent the disclosure.

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## 26 ANTI-BRIBERY AND CORRUPTION

- 26.1** Each Party respectively warrants and undertakes to the other Party that in connection with the Agreement:
- 26.1.1 it has implemented adequate internal procedures designed to ensure it shall not authorise the giving or offering of any financial or other advantage with the intention of inducing or rewarding an individual or entity to improperly perform an activity undertaken in the course of an individual's employment or connected to an entity's business activities (the "Anti-Corruption Controls"); and
- 26.1.2 it has not authorised and it will not authorise, in connection with the performance of the Agreement, any financial or other advantage to or for the benefit of any public official, civil servant, political party, political party official, candidate for office, or any other public or private individual or entity where such authorisation would violate the Anti-Corruption Controls.
- 26.2** In the event of any breach of the warranties and undertakings in Clauses 26.1.1 and 26.1.2, the non-breaching party may terminate the Agreement with immediate effect upon written notice to the other Party. This shall be the sole remedy available for a claim by the Customer in relation to a breach of the warranties and undertakings in Clauses 26.1.1 and 26.1.2.

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## 27 SANCTIONS

- 27.1** Each Party respectively warrants and covenants that:
- (a) to the best of its knowledge (having made due enquiries), on the date of this Agreement and throughout the duration of this Agreement, it is not a Sanctioned Entity or an Affiliate of a Sanctioned Entity; and
  - (b) for the duration of this Agreement, it will comply with all Sanctions applicable to it.
- 27.2** Impala shall have no obligation to seek government approvals and/or authorisations under any Sanctions whether on behalf of the Customer or for its own account. Should Impala nonetheless agree to seek such approvals and/or authorisations in order to continue the performance of this Agreement, the Customer shall bear all costs, fees and charges, including attorneys' fees therefor and the risk of delays and/or failure to obtain any such approval and/or authorisation.
- 27.3** The Customer represents and warrants that, from the date of this Agreement, it shall not deliver Goods into storage or request any of the Services which would reasonably be expected to result in Impala or any of its shareholders or any member of such shareholder's group being in breach of any Sanctions applicable to it. If requested, the Customer shall provide Impala with satisfactory evidence of the supplier, purchaser, ownership, origin and destination of the Goods.
- 27.4** If at any time during the performance of this Agreement:
- (a) one party ("Party A") becomes aware that the other party ("Party B") is in breach of the above warranties or covenants in this Clause (whether as a result of any action and/or omission); or
  - (b) new Sanctions are imposed; or
  - (c) there are changes to existing Sanctions or their interpretation which materially affects Party A's performance of its obligations hereunder,
- Party A shall advise Party B in writing of the breach(es) and, notwithstanding any clause or provision to the contrary in this Agreement and without prejudice to Party A's other rights:
- (d) Party A may immediately suspend performance of its obligations under this Agreement;
  - (e) provided such circumstances are continuing to affect materially Party A's performance for more than 7 calendar days from the date of Party A's notice, Party A shall be entitled to terminate this Agreement with immediate effect on written notice to Party B, unless Goods are already in the Warehouse, where redelivery of the Goods to the Customer shall be made in accordance with the Customer's instructions and at the Customer's expense with termination effective on completion of redelivery. Upon termination there shall be no further liability on either party save for any accrued rights or remedies including under this clause; and
  - (f) if Party A is Impala, the Customer shall make arrangements to take redelivery of the Goods promptly upon receipt of any redelivery request by the Warehouse. For the avoidance of doubt, the Customer shall remain liable for storage fees for all time pending redelivery of the Goods.
- 27.5** The Customer agrees to indemnify and hold harmless Impala from and against any and all losses of whatsoever kind and nature, including but not limited to any fines and penalties, whether incurred by Impala or alleged by others arising in whole or in part as a result of or in connection with termination of this Agreement pursuant to this clause and/or a failure to comply with this clause.
- 27.6** To the extent any payment under this Agreement would be in violation of or otherwise prohibited by Sanctions applicable to a Party, any payment obligations arising prior to termination of this Agreement which have been incurred but not yet paid) shall be suspended until such time as payment is no longer prohibited by Sanctions whereupon such payment shall be made notwithstanding the termination.
- 27.7** In the event that a payment arising pursuant to this Agreement cannot be made in United States Dollars due to Sanctions or applicable laws, Impala may require that the Customer makes payment in an alternative applicable payment currency, in which case Impala shall reasonably determine the relative rate of exchange using an internationally recognized and tradable daily fixation.

- 27.8** Notwithstanding anything in this Clause to the contrary, neither Impala nor the Customer shall be required to do anything which constitutes a violation of, or would be in contravention of, any Sanction applicable to it, or would expose the Customer to being designated by a Sanctions Authority.
- 27.9** “Sanctions” means any sanction, regulation, statute, official embargo measures or any “specially designated nationals” or “blocked persons” lists, or any equivalent lists maintained and imposed by any Sanctions Authority.
- 27.10** “Sanctioned Entity” means any entity, being an individual, corporation, company, association or government, who or which is the subject of Sanctions.
- 27.11** “Sanctions Authority” means:
- (a) the United Nations
  - (b) the United States of America;
  - (c) the European Union;
  - (d) the United Kingdom;
  - (e) any other jurisdiction applicable to a Party; and
  - (f) the governments and official institutions, bodies or agencies of any of paragraphs (a) to (e) above, including but not limited to the United Nations Security Council, the Office of Foreign Assets Control of the United States Department of the Treasury, the Council of the European Union, H.M. Treasury and the Export Control Organisation of the United Kingdom’s Department for Business, Innovation and Skills.

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## **28 GOVERNING LAW AND JURISDICTION**

- 28.1** The Agreement will be governed by and will be construed in accordance with English law, unless otherwise provided in the Commercial Agreement or required compulsorily in applicable national law
- 28.2** Any contractual or non-contractual claim, dispute or matter arising under or in connection with the Agreement (including any dispute as to its existence, termination or enforceability) (a “Dispute”) shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA) (the “Rules”) in force at the date on which arbitration is commenced.
- 28.3** The seat of the arbitration shall be London, England and the language of the arbitration shall be English.
- 28.4** The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as Presiding arbitrator) shall be nominated by the arbitrators nominated by the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 30 days of the nomination of the second arbitrator, by the LCIA Court (as defined in the Rules).
- 28.5** For the purposes of arbitration pursuant to this Clause 28, the Customer waives any right of application to determine a preliminary point of law or appeal on a point of law under Section 45 of the Arbitration Act 1996. Notwithstanding the Rules, Impala retains its right of application to determine a preliminary point of law or appeal on a point of law under Section 45 of the Arbitration Act 1996.
- 28.6** Notwithstanding the other provisions of this Clause 28, Impala shall not be prevented from taking proceedings relating to a Dispute in any courts with jurisdiction over the Customer, its assets or its operations. To the extent allowed by law, Impala may take concurrent proceedings in any number of jurisdictions. The Customer irrevocably waives any objection on the grounds of venue or forum non conveniens, lis alibi pendens or other similar grounds