

Compiled by: Despina Nicolau		Issue Rev: 2017
Revised By: Darshani Parsuramen		Original Issue date: 1 July 2017
Approved By: Aleksandrs Kucerovs	<b>STANDARD TERMS AND CONDITIONS</b>	

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## 1. INTERPRETATION

In these Conditions:

- 1.1 The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 Unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely:

**'IBLTS'** Independent Beira Logistics Terminals & Services, Limitada including its employees, agents, contractors and sub- contractors acting within the course and scope of their employment by IBLTS;

**'Carrier'** Any carrier of Goods whether by rail, road, sea or air;

**'Conditions'** These general trading conditions as amended or supplemented from time to time;

**'Container'** Any container, transportable tank, bolster or flat rack, used to transport goods and constructed to ISO standards or recommendations or those of a similar recognized classification society;

**'Container Operator'** A Container Operator or any person who carries on the business of transporting containerized goods, or any Ship Owner, Charterer, Ship Operator, Carrier, Ship's Agent, Shipbroker, Freight Forwarder, non-Vessel Owning Common Carrier, Clearing and Forwarding Agent, International Transport Operator and Combined Transport Operator, from, on whose behalf, or at whose request or instruction IBLTS receives and containerizes export goods and delivers such containerized goods or from whom or at whose instance or instruction IBLTS receives containerized import goods. Whenever there is a reference in these Conditions to a Container Operator or to the obligation of a Container Operator, such reference shall be deemed to be a reference to the Container Operator from or on whose behalf IBLTS receives any Goods or for, or on whose behalf, it performs any service;

**'Container Trailer'** A trailer constructed for the purpose of carrying containers;

**'Customer'** Means any person at whose request or on whose behalf IBLTS undertakes any business or provides any advice, information or service and shall be deemed to include the owner, consignee or consignor of the goods as hereinafter defined, any agent acting for such owner, consignee or consignor of the goods and any other person claiming any right to or in respect of any such goods;

**'Day'** The 24-hour period from midnight to midnight;

**'Dangerous Goods'** Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in IBLTS's sole opinion to endanger the lives or the health of persons or any property including but not restricted to containers, ships, rolling stock, vehicles, buildings and lifting equipment, as well as all goods defined as dangerous in the IMCO regulations or any statute,

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statutory instrument or order, any regulations made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of goods;

**'DRO'** A Delivery Release Order (DRO) being a document issued by or on behalf of a container operator in respect of LCL or FCL goods, or in respect of a FCL container, authorizing in each case the release of import goods (or the container as the case may be) identified thereon and bearing the name and purporting to be signed by or bearing the stamp of the container operator, or, as the case may be, the consignee;

**'Depot'** A container depot operated by IBLTS as a depot operator;

**'Export Goods'** Goods delivered to IBLTS for containerization;

**'FCL'** Full Container Load, that is a Container containing Import or Export Goods for one consignee or which is shipped under one ocean bill of lading;

**'FCL Goods'** Goods contained in an FCL container

**'Goods'** means any cargo handled, transported or dealt with by or on behalf of or at the instance of IBLTS or under the control of IBLTS or its agents, employees, contractors, or subcontractors on the instructions of the Customer and includes any package or any other form of covering, packaging used in connection with or in relation to such goods, and shall also include Containers;

**'IMCO'** Intergovernmental Maritime Consultative Organisation;

**'ISO'** International Organisation for Standards, Geneva, Switzerland;

**'Loss'** Means physical loss, whether actual or constructive and includes loss arising out of damage, theft or any other cause whatsoever;

**'LCL Container'** Any Container other than an FCL container, excluding empty and cabotage containers;

**'LCL Goods'** Goods contained in an LCL container;

**'Market Value'** The market value at the date of the loss of or damage to any items as determined in the case of an item other than Goods, at the place where such loss or damage occurred, or in the case of Goods at the place where IBLTS handled or packed the Goods in question;

**'Obnoxious Goods'** Any of the following kinds of Goods which are not included in the definition of Dangerous Goods, namely, goods defined as obnoxious in the Intergovernmental Maritime Consultative Organisation ('IMCO') Regulations or any statute, statutory instrument or order, regulation made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods, and including any other Goods which in the sole opinion of IBLTS are possessed of inherent vice, likely to affect other Goods adversely or to cause physical discomfort or injury to personnel handling them or to present any other special difficulties in handling or transport;

**'Out of Gauge'** Goods, which extend beyond the confines of a Container;

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**'Owner'** The legal owner of the Goods;

**'Person'** Natural person, statutory body, company incorporated in terms of the law in force at the place at which the company is incorporated, a firm, partnership, close corporation, trust or association;

**'Services'** means those services specified in paragraph 3.1;

**'The Group'** Means IBLTS and any company which is a holding company or subsidiary of IBLTS or a subsidiary of the J&J Group, including any company in which any such company has a shareholding of more than 20% of the issued shares, which may render services to the Customer;

**'The Service Charge Schedule'** The Service Charge Schedule published by IBLTS as amended and in force from time to time, or any alternative Service Charge Schedule published by IBLTS in writing. Copies of the Service Charge Schedule are available from IBLTS upon request;

**'Valuable Goods'** Goods of high value or requiring special care including, without limiting the generality of the above, bullion, coins, money, precious metals and stones, electronic equipment, jewellery, antiques, pictures, paintings, works of art, and similar Goods or merchandise

**'Warehousing Services'** Those services performed by IBLTS as described in clause 3 of the Conditions.

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## 2 THE APPLICABILITY OF THESE CONDITIONS AND THE SERVICE CHARGE SCHEDULE

- 2.1** These Conditions and the Service Charge Schedule apply to any and all business undertaken by IBLTS, and advice, services and information provided by IBLTS, whether gratuitous or not, and to every Customer for or on whose behalf IBLTS procures and/or renders any services in respect of Goods. In the event that the Customer is not the Owner of the Goods, the Customer:
- 2.1.1** Warrants that he is authorized to bind the Owner to the Conditions;
- 2.1.2** shall in any event provide the Owner with a full copy of the Conditions and bring the contents of the Conditions to the attention of the Owner;
- 2.1.3** Accepts that, to the extent that the Owner may attempt to deny that he is bound by the Conditions, shall remain liable to IBLTS for all purposes relating to any agreement between IBLTS and the Customer.
- 2.2** The Service Charge Schedule is subject to and is to be construed and applied in accordance with the provisions of these Conditions. These Conditions shall prevail in the event of any conflict between them and the Service Charge Schedule, and furthermore, IBLTS shall not be bound by any term or condition contained in the Service Charge Schedule that would in any way increase or have the effect of increasing IBLTS's liability or obligations beyond its liability or obligations as set out in these Conditions.
- 2.3** These Conditions are those referred to in all IBLTS notices, correspondence, receipts, e-mails or other electronic communications and other documents.
- 2.4** IBLTS may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information or services as principal upon and subject to the terms and conditions contained herein which shall apply mutatis mutandis to the Customer and any such member of the Group.
- 2.5** Each member of the Group shall be deemed to have appointed IBLTS as its agent for procuring on behalf of any such member of the Group, the benefit of these Conditions and IBLTS shall further be deemed to accept such benefits at the time of accepting any instruction to perform any function in rendering any services to the Customer.

## 3 SERVICES RENDERED BY IBLTS

- 3.1** Subject to these Conditions, IBLTS provides, inter alia, the following Warehousing and related Services:
- 3.1.1** In respect of Import Goods:
- 3.1.1.1** Receipt of Goods from Cornelder, CCFB, CFM, or any other person.
- 3.1.1.2** Container inspection, checking and recording of seals.

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- 3.1.1.3** Container Storage.
- 3.1.1.4** Opening of Containers for inspection by the South African Revenue Services/Department of Health Customs (Alfandegas de Mocambique) and/or any other Government Authority.
- 3.1.1.5** Packing and unpacking, loading and handling of Goods and Containers.
- 3.1.1.6** Delivery of Goods at the Depot to the person in physical possession of the original DRO.
- 3.1.1.7** Goods in storage, either directly to the Customer, or, where the Customer has placed goods in storage with IBLTS, when such Goods continue to be stored on behalf of the State warehouse or as required by any legislation or court order.
- 3.1.1.8** Removal of Goods to State Warehouse.
- 3.1.1.9** Receiving, handling and checking of documents.
- 3.1.1.10** Completion of discrepancy and damage reports.
- 3.1.1.11** Provision of facilities for inspection of Goods.
- 3.1.2** In respect of Export Goods:
- 3.1.2.1** Receipt of shipping instructions.
- 3.1.2.2** Receipt, handling and checking of documents.
- 3.1.2.3** Receipt of Goods in compliance with Export Goods delivery instructions.
- 3.1.2.4** Outward examination and reporting of the condition of Goods
- 3.1.2.5** Packing, handling and loading of Goods and Containers.
- 3.1.2.6** Closing and sealing of Containers.
- 3.1.2.7** Obtaining receipts from Cornelder or other agents of the Container Operator.
- 3.1.2.8** Storage of Containers for export staging.
- 3.1.3** In respect of Containers:
- 3.1.3.1** The handling, storing, and inspection of Containers.
- 3.1.3.2** Compliance with such provisions and obligations as are imposed on a depot operator in terms of the applicable legislation.
- 3.1.3.3** Tracking and stock monitoring.

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**3.1.4** Generally: Any other services which by reason of their nature are Warehousing Services.

**3.1.5** In terms of any legislation or court order:

**3.1.5.1** The receipt of FCL Containers.

**3.1.5.2** Receipt of Containers in bond.

**3.1.5.3** Provision at each Depot of accommodation for officials of such governmental authorities as may reasonably require it and facilities for such officials to enable them to carry out their duties in terms of the applicable legislation.

**3.1.5.4** Storage of Goods in terms of any provision of legislation or any court order.

**3.2** Subject to these Conditions, any reference in these Conditions to Cargo Logistics Services shall be deemed a reference to any one or more of the services performed by IBLTS as a Cargo Logistics Operator, which shall include any form of carriage and/or transportation undertaken and/or procured by IBLTS.

#### **4 CONDITIONS SPECIFICALLY APPLICABLE TO WAREHOUSING SERVICES**

##### **4.1 PERIOD OF IBLTS's LIABILITY**

**4.1.1** The Goods in respect of which IBLTS provides any Warehousing Services shall only be regarded as being in the actual custody of IBLTS and under its actual control from the time the Goods are received by IBLTS at a Depot to the time that they are delivered.

**4.1.2** IBLTS bears the risk in and to the Goods subject to the terms of these Conditions and only whilst the Goods are in IBLTS's actual custody at a Depot.

**4.1.3** Goods shall be deemed to have been received by IBLTS at the later of the time when:

**4.1.3.1** the Goods enter through the Depot gate; or

**4.1.3.2** the Goods have been off-loaded from the delivery vehicle at the Depot.

**4.1.4** An acknowledgement of receipt of any Goods by IBLTS shall not constitute an acknowledgement or admission in regard to the state or condition or quantity of such Goods, nor as to the correctness of any statement on the relevant Container Terminal Order form or other transport document.

**4.1.5** Goods shall be deemed to have been delivered by IBLTS at the earlier of the time when:

**4.1.5.1** they are placed at the disposal of the person in possession of a DRO or any other document which in IBLTS's sole opinion entitles that person to possession of the Goods, at a IBLTS depot; or

**4.1.5.2** the Goods exit through the Depot gate.

**4.1.6** The Customer shall be entitled to appoint a surveyor to monitor the loading and offloading of Goods at IBLTS.

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**4.1.7** IBLTS shall in no circumstances be responsible and accepts no liability for the loading, unloading, securing and/or lashing of Goods on Container Trailers and/or any other vehicles.

**4.1.8** The Customer hereby waives any and all claims which it may have for any damages and or losses incurred in connection with or as a result of actions beyond IBLTS's responsibility, in the terms established in the previous paragraphs of this clause and all other clauses of this contract, wherever applicable, and indemnifies IBLTS against any claims which may arise against IBLTS arising out of or in connection with the loading, unloading, securing and/or lashing of Goods, whether or not such claim arose as a result of breach of contract, and/or negligence in whatever degree on the part of IBLTS.

## **4.2 ACCEPTANCE OF BENEFITS AND RATIFICATION**

**4.2.1** Notwithstanding anything to the contrary contained in these Conditions, IBLTS shall be entitled to all the benefits, rights, immunities and limitations contained in bills of lading, combined transport documents or other documents and any statement in such documents to the effect that the benefits, rights, limitations and immunities in such documents and of the contracts of carriage pursuant to which such documents were issued, shall apply to any employee, agent, contractor or sub-contractor of the person issuing such documents, shall be deemed to include IBLTS

**4.2.2** IBLTS authorizes every Customer, which issues a bill of lading, combined transport document and/or any other document evidencing a contract of carriage, for or on whose behalf it deals with Goods in any manner:

**4.2.2.1** to act as IBLTS's Agent to contract on its behalf with all persons to whom bills of Lading, combined transport documents or any other documents evidencing contracts of carriage are issued, in order to obtain for IBLTS the same benefits as those which accrue to carriers in terms of agreements evidenced by such documents, alternatively and/or in addition;

**4.2.2.2** to act as IBLTS's agent to accept on its behalf the benefit of all provisions stipulated for the benefit of any employee, agent, contractor and/or sub-contractor in terms of bills of lading, combined transport documents or any other documents evidencing contracts of carriage.

**4.2.3** Every Customer issuing a bill of lading, combined transport document and/or any other document evidencing a contract of carriage of Goods undertakes to contract on IBLTS's behalf with Persons to whom bills of lading, combined transport documents or any other documents evidencing contracts of carriage are issued in one or both of the manners detailed in 4.2.1 and 4.2.2 to procure for IBLTS the same benefits as accrue to the Carrier in terms of such documents. Every bill of lading, combined transport document or other document evidencing or purporting to evidence such contract of carriage shall contain the paragraph below or a paragraph having the same effect. Every Customer from or on whose behalf IBLTS receives Goods, undertakes to IBLTS that all such Goods shall be subject to a contract of carriage which shall include a provision reading (or having the same meaning) as follows:



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**4.2.4** *“The shipper, holder, consignee or any Person entitled to possession of the Goods or of this bill of lading undertakes that no claim or allegation shall be made against any Person or body whomsoever by whom the Carriage or any part of the Carriage is performed or undertaken (other than the Carrier) which imposes or attempts to impose upon any such Person or any vessel owned by any such Person any liability whatsoever in connection with the goods whether on or arising out of negligence on the part of such Person, and if any such claim or allegation should nevertheless be made to indemnify that Person against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of all provisions herein benefiting the carrier as if such provision were expressly for his benefit; and in entering into this Contract, the Carrier, to the extent of these provisions, does so not only on his own behalf, but also as agent and trustee for such Persons.”*

**4.2.4.1** The Customer shall procure that every receipt, DRO, delivery note or any similar document issued by or on behalf of a Carrier shall contain a statement to the effect that IBLTS renders services in respect of such Goods as are referred to in such document as the agent and/or sub-contractor of the Carrier and that the liability of IBLTS is limited in terms of these Conditions.

#### CONDITIONS SPECIFICALLY APPLICABLE TO CARGO LOGISTICS SERVICES

### 5 IBLTS ACTING AS PRINCIPAL OR AGENT

**5.1.1** All carriage and/or transport whatsoever and at any point in the movement of Goods is procured and/or arranged by IBLTS as agent only for and on behalf of the Customer,

**5.1.2** IBLTS shall only act as principal in the following circumstances:

**5.1.2.1** where IBLTS issues a bill of lading (whether or not negotiable) or waybill binding itself as Carrier in respect of any consignment, in which event the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions;

**5.1.2.2** where the handling or storage of any Goods is actually performed by IBLTS and such Goods are in the actual physical custody and control of IBLTS;

**5.1.2.3** where the transport of any Goods is actually performed by IBLTS in vehicles owned or operated directly by IBLTS and such Goods are in the actual physical custody and control of IBLTS

**5.1.2.4** IBLTS expressly agrees in writing to act as a principal;

**5.1.2.5** to the extent that IBLTS is held by a court of law to have acted as principal.

**5.1.3** Without prejudice to the generality of clauses 5.1 and 5.2:

**5.1.3.1** the charging of IBLTS of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that IBLTS is acting as an agent or a principal in respect of such service or services;

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- 5.1.3.2** the supplying by IBLTS of its own or leased equipment shall not in itself determine or be evidence that IBLTS is acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
- 5.1.3.3** IBLTS acts as an agent where IBLTS procures a bill of lading or other document evidencing a contract of carriage between a person, other than IBLTS, and the Customer;
- 5.1.3.4** IBLTS always acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and other similar services.

## **6 CARGO LOGISTICS SERVICES: IBLTS CONTRACTING AS AGENT**

- 6.1 Special Liability and Indemnity Conditions:** To the extent that IBLTS acts as an agent, IBLTS does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- 6.2** IBLTS shall not be liable for the acts and omissions of such third parties referred to in sub- clause 6.1 above.
- 6.3** IBLTS when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- 6.4** Except to the extent caused by IBLTS's negligence, the Customer shall defend, indemnify and hold harmless IBLTS in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clauses 6.1 and 6.2.

## **7 CARGO LOGISTICS SERVICES: IBLTS CONTRACTING AS PRINCIPAL**

### **7.1 Special Liability Conditions**

To the extent that IBLTS contracts as principal for the performance of the Customer's instructions, IBLTS undertakes to perform or in its own name to procure the performance of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

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- 7.2** Where IBLTS contracts as a Principal and sub-contracts the performance of services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor, IBLTS shall in addition to its rights in terms of these Conditions, have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between IBLTS and the sub-contractor and in any law, statute or regulation and the liability of IBLTS shall not exceed the amount recovered, if any, by IBLTS from such sub-contractor.
- 7.3** Where any international law or convention regulates any loss or damage to any Goods and the provisions of such law or convention precludes parties from contracting out of the provisions thereof then the liability of IBLTS to its Customer for any such loss or damage shall, notwithstanding anything to the contrary herein contained, be determined in accordance with the provisions of such law or convention.
- 7.4** Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 8.3 do not apply, IBLTS's liability shall be determined in accordance with the provisions of The Hague-Visby Rules.
- 7.5** Notwithstanding the provisions of clause 8.3 if the loss of or damage to the Goods and/or Containers occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of IBLTS shall be limited to the proportion of the said limitation fund allocated to the Goods.
- 7.6** The limitation of IBLTS's responsibility in terms of paragraphs 8.3 and 8.5 does not signify an exemption of the responsibility relating to the standard of quality agreed for the contracted services, IBLTS commits itself to ensure full compliance of the same.
- 8** **BOTH TO BLAME COLLISION:** The current Both-to-Blame Collision Clause adopted by The Baltic International Maritime Council ('BIMCO') is incorporated in these conditions.
- 9** **EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER:** IBLTS deals with Goods only on the basis that it is neither a common nor a public Carrier.
- 10** **OBLIGATIONS OF CUSTOMER**
- 10.1** The Customer warrants that it is either the Owner of the Goods or the authorized agent, contractor and/or sub-contractor of the Owner of the Goods and that it is authorized to accept and is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner of the Goods.
- 10.2** The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including but not limited to the provisions of all laws applicable to and the terms of sale and purchase of the Goods and all other matters relating thereto.
- 10.3** The Customer shall give what in IBLTS's sole discretion constitutes sufficient and executable instructions.

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- 10.4** IBLTS shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 10.5** The Customer warrants that the description and particulars, including the weight of the Goods, are complete and correct.
- 10.6** The Customer warrants that the Goods are properly packed, packaged and labeled, except where IBLTS has accepted instructions to pack, package and label the Goods itself.

#### **11 SPECIAL INSTRUCTIONS, GOODS AND SERVICES**

- 11.1** Unless otherwise previously agreed in writing by IBLTS, the Customer shall not deliver to IBLTS or cause IBLTS to deal in any way with or handle Dangerous and/or Obnoxious Goods, and IBLTS shall be entitled to refuse to deal with any such Goods, which may be refused entry to and/or removed from IBLTS's Depot at the Customer's sole risk and expense.
- 11.2** The Customer shall ensure that any Dangerous and/or Obnoxious Goods which IBLTS agrees to handle in terms of clause 11.1 comply in every respect with any and all applicable legislation and/or international conventions, including any regulations and/or rules promulgated and/or applicable pursuant thereto.
- 11.3** If the Customer is in breach of clause 11.1 and/or 11.2 above, it shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods, howsoever arising, whether or not caused by the negligence or otherwise of IBLTS or its employees, agents, contractors and/or sub-contractors, and shall defend, indemnify and hold IBLTS harmless against all penalties, claims, loss, damages, costs (including but not limited to legal costs on the attorney and own client scale) and expenses whatsoever arising in connection therewith and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of IBLTS or any other Person in whose custody they may be at the relevant time.
- 11.4** If, at any time after IBLTS agrees to accept Dangerous and/or Obnoxious Goods, and in the sole opinion of IBLTS they constitute a risk to other Goods, property, life or health they may without notice to the Customer, be destroyed or otherwise dealt with so as to remove such risk, at the sole risk and expense of the Customer.
- 11.5** The Customer undertakes not to tender for transportation of any Goods which require temperature control without previously giving at least 2 days written notice to IBLTS of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with IBLTS shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

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- 11.6** IBLTS will not effect any insurance except upon express instructions given in writing by the Customer and all insurances effected by IBLTS are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, IBLTS shall not be under any obligation to effect separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the Customer shall have recourse against the insurers only and IBLTS shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by IBLTS or paid to IBLTS by the Customer. Insofar as IBLTS agrees to arrange insurance IBLTS acts solely as agent for and on behalf of the Customer.
- 11.7** The Customer hereby waives any claim it may have against IBLTS arising out of or in connection with the effecting by it of insurance in terms of clause 11.6, whether or not caused by or in any way attributable to IBLTS's negligence in any degree, and indemnifies IBLTS in respect of any claims made against it in this regard.
- 11.8** Notwithstanding anything to the contrary herein contained the liability of IBLTS in respect of any claim brought against IBLTS arising out of or connected with the provisions of clause 11.6 shall be regulated and determined in accordance with the provisions of clauses 16 and 17 of these Conditions.
- 11.9** Except in accordance with the Customer's express instructions previously received in writing and accepted in writing by IBLTS, IBLTS shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature of value of any Goods or as to any special interest in delivery.
- 11.10** Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and IBLTS's liability shall not exceed that provided for in these Conditions in respect of mis-delivery of Goods.
- 11.11** IBLTS accepts no responsibility and/or liability whatsoever for the late departure or arrival of Goods.

## **12 GENERAL INDEMNITIES**

- 12.1** The Customer shall defend, indemnify and hold harmless IBLTS against all liability, loss, damage, claims, penalties, costs or expenses arising from:
- 12.1.1** the nature of the Goods, except and only to the extent that such liability, loss, damage, claims, penalties, cost or expense is caused by IBLTS's gross negligence;
- 12.1.2** IBLTS acting in accordance with the Customer's or Owner's instructions;
- 12.1.3** any breach of warranty or obligation by the Customer or Owner;
- 12.1.4** the negligence, in any degree, of the Customer or Owner;

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- 12.1.5** any contractual or other penalties for which the Customer may be liable including, but not limited to, demurrage, detention, dead freight, early arrival and storage in the port due to any particular shipment missing vessel stacks and / or being short-shipped due to the fault of Cornelder, CCFB, CFM and/or any other party whatsoever.
- 12.2** Except as otherwise provided in these Conditions, and except to the extent caused by IBLTS's sole negligence, the Customer shall be liable for and shall defend, indemnify and hold harmless IBLTS in respect of all duties, fines, penalties, taxes, imposts, detention charges, levies, deposits and outlays of whatsoever nature levied by or paid to any authority whatsoever, including but not necessarily limited to Cornelder, CCFB, CFM and Customs of Mozambique (Alfândega de Moçambique), and for all claims, costs, expenses, loss and damage whatsoever incurred or sustained by IBLTS in connection therewith.
- 12.3** Advice and information, in whatever form it may be given, is provided by IBLTS for the Customer only and the Customer shall defend, indemnify and hold harmless IBLTS for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- 12.4** The Customer undertakes that no claim be made against any employee, contractor, sub-contractor or agent of IBLTS which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or any services provided, including advice given, if any such claim should nevertheless be made, to indemnify IBLTS against all consequences thereof.
- 12.5** Without prejudice to the foregoing, every such employee, contractor, subcontractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract IBLTS, to the extent of those provisions, does so not only on its behalf, but as agent for such employees, sub-contractors and agents.
- 12.6** The Customer hereby waives any claims it may have and shall defend, indemnify and hold harmless IBLTS from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of IBLTS under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of IBLTS, in whatever degree, its employees, contractors, subcontractors and agents.
- 12.7** In clauses 12.4 to 12.6, "sub-contractors" includes direct and indirect sub-contractors and their respective employees and agents.
- 12.8** The Customer shall be liable for any loss, damage, contamination, soiling, detention or demurrage suffered or incurred before, during and after the carriage of Goods by IBLTS or any Person or vessel referred to in clauses 12.4 to 12.7 above, caused by the Customer or Owner or any Person acting on behalf of either of them or for which the Customer is otherwise responsible.

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- 12.9** Save where caused by the fault of IBLTS, the Customer shall indemnify and hold IBLTS harmless against any loss, damages, claim, cost (including but not limited to legal costs on the attorney and own client scale) and/or other liability (including but not limited to fines and other penalties) which IBLTS may incur or suffer in terms of the Road Traffic Code, approved by Decree-Law no. 1/2011 of 23 March, and any regulations promulgated pursuant thereto, as may be in force from time to time.
- 12.10** In no circumstances shall IBLTS be liable to any Customer for any penalty which a Customer attempts to impose against or on IBLTS for any reason whatsoever which is alleged by the Customer to be in consequence of negligence or wrongdoing by IBLTS.

### 13 CHARGES

- 13.1** The Customer on whose behalf IBLTS performs Warehousing and/or Cargo Logistics Services shall be liable to IBLTS for the payment of all amounts due to IBLTS for Services rendered in respect thereof, and such payment shall, where applicable, be made in accordance with the charges set out in the then applicable Service Charge Schedule and/or as set out in IBLTS's credit application form and/or as agreed to at the time by the parties. IBLTS shall nevertheless be entitled to a reasonable remuneration at the comparable market rate where a service is provided which does not appear in the Service Charge Schedule and/or a rate has not been agreed to by the parties.
- 13.2** For the avoidance of doubt, the Customer shall remain liable to pay storage costs in respect of Services rendered pursuant to paragraph 3.1.1.7 of these Conditions.
- 13.3** The Customer shall pay to IBLTS all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- 13.4** IBLTS may appropriate any payment made by the Customer to any outstanding undisputed indebtedness by the Customer to IBLTS, in its sole discretion and even if the Customer, when making payment, seeks to appropriate such payment to any particular debt or part of a debt.
- 13.5** When IBLTS is instructed to collect freight, duties, charges or other expenses from any Person other than the Customer, the Customer shall be responsible for the same immediately on receipt of evidence of demand and non-payment by such other Person when due.
- 13.6** On all amounts overdue to IBLTS, IBLTS shall be entitled to charge interest, calculated at 4 per cent above base rate of the prime overdraft lending rate of Central Bank of Mozambique from the date on which payment was due and payable until the full amount outstanding is paid.



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**13.7** The Customer shall be obliged to pay all and any costs incurred by IBLTS in complying with all and any statutory requirements and regulations, notices, requirements of a competent authority or order of court, including storage, movement, permanent removal or destruction of infested or contaminated Containers or Goods or the treatment of IBLTS's employees, agents, contractors or sub-contractors or premises or any other persons or premises as a result of any infestation or contamination arising from such Containers or Goods, and the Customer waives any claims it may have against IBLTS for loss of or damage to property or injury to persons, arising directly or indirectly from such infestation or contamination and indemnifies IBLTS against any claims in this regard made by any other Person, except where and only to the extent attributable to the negligence of IBLTS or its employees.

**13.8** IBLTS shall be entitled to recover any amounts due to it or other members of the Group by the Customer in respect of instructions relating to or in terms of any contract between the Customer and IBLTS or the Customer and other members of the Group, or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as IBLTS in its absolute discretion deems fit.

**13.9** The Customer agrees that in the event of IBLTS or any member of the Group instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these trading terms and conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to IBLTS or any member of the Group in terms of such agreement, Customer shall be liable for all legal costs incurred by IBLTS or member of the Group, as the case may be, on the scale as between attorney and own client, as well as collection commission and tracing agents' fees.

**13.10** All and any monies received by IBLTS in excess of what is due owing and payable by the Customer may be held by IBLTS and transferred to any other member of the Group where such member of the Group has outstanding invoices due owing and payable by the Customer. The relevant member of the Group will then allocate the funds accordingly and account to the Customer in relation to receipt of same.

**13.11** To the extent that IBLTS hereby creates a contract for the benefit of any member of the Group, the latter shall be deemed to have accepted the benefits conferred on it by such contract and may at any time hereafter ratify and accept such benefits to the same that its acceptance.

#### **14 LIBERTIES AND RIGHTS OF IBLTS**

**14.1** IBLTS shall be entitled, without notice to the Customer, and except insofar as has been otherwise agreed in writing, to enter into any contracts on behalf of itself or the Customer for the purpose of performing the services, which shall include but not be limited to contracts:

**14.1.1** for the carriage of Goods by any route, means or Person;

**14.1.2** for the carriage of Goods of any description on or under the deck of any vessel;

**14.1.3** for the storage, packing, transshipment, loading, unloading or handling of Goods by any Person at any place whether on shore or afloat and for any length of time;



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- 14.1.4** for the carriage or storage of Goods in Containers or with other Goods of whatever nature;
- 14.1.5** for the performance of its own obligations; and to do such acts as in the opinion of IBLTS may be necessary or incidental to the performance of IBLTS's obligations.
- 14.2** IBLTS shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of IBLTS there is good reason to do so in the Customer's interest and it shall not incur any additional liability thereby.
- 14.3** IBLTS may at any time comply with the orders or recommendations given by any authority. The responsibility of IBLTS in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 14.4** If at any time the performance of IBLTS's obligations, in the opinion of IBLTS or any person whose services IBLTS makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by IBLTS or such other Person, IBLTS may, on giving notice in writing to the Customer or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part thereof at the disposal of the Customer at any place which IBLTS may deem safe and convenient, whereupon the responsibility of IBLTS in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by IBLTS.
- 14.5** If delivery of the Goods or any part thereof is not taken by the Customer at the time and place when and where IBLTS, or any Person whose services IBLTS makes use of, is entitled to call upon the Customer to take delivery thereof, IBLTS or such other Person shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- 14.6** Notwithstanding clauses 14.4 and 14.5, IBLTS shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer, to sell or dispose of:
- 14.6.1** on giving 21 days' notice in writing to the Customer all Goods which in the opinion of IBLTS cannot be delivered as instructed; and
- 14.6.2** without notice Goods, which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner, which has caused or may be reasonably expected to cause loss or damage to any Person or property or to contravene applicable law and/or regulations.
- 14.7** All Goods as well as documents relating to Goods, including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien or pledge and may be held by IBLTS in any place by IBLTS or any other authorized agent of IBLTS as security either for monies due in respect of such Goods or for other monies due to IBLTS or any other companies within the Group by the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any.

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- 14.8** In delivering the Goods into the custody of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to IBLTS or any other companies within the Group at that time or which become payable in the future. In the event of IBLTS utilizing the services or premises of any third party for any purposes including the transportation or storage of any Goods, such third party shall be the agent of IBLTS for purposes of exercising IBLTS's right to retention under lien and/or pledge.
- 14.9** If any monies due to IBLTS or any other companies within the Group are not paid within 28 days after notice has been given to the person from whom the monies are due that such Goods or documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of IBLTS and at the expense of such person, and the net proceeds (if any) applied in or towards satisfaction of such indebtedness.
- 14.10** The Customer shall not be entitled to effect or allow to be effected any security in respect of the Goods or the documents relating to the Goods, including without limitation, any general or special notarial bond, hypothec, right of retention, or lien and pledge, without the prior written consent of IBLTS. The lien and pledge and right of retention in favor of IBLTS referred to above in 14.7 and 14.8, shall operate as a first and prior charge against the Goods and the documents relating to the Goods and no other security shall rank prior to IBLTS's lien, pledge or right of retention.
- 14.11** IBLTS shall be entitled to retain and receive all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 14.12** IBLTS shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.
- 14.13** In order to guarantee the fulfillment of the provision in this clause, whenever applicable, the customer will sign a Pledge Agreement with IBLTS relating to the commodities, which are the object of the contracted services, according to the attached draft/document.

## **15 THE MANNER, IN WHICH THE CONTAINER HAS BEEN PACKED**

### **15.1 CONTAINERS**

- 15.1.1** If a Container has not been packed or stuffed by IBLTS, IBLTS shall not be liable for loss of or damage to the contents if caused by:
- 15.1.1.1** the unsuitability of the Goods for carriage in containers, unless IBLTS has approved the suitability in writing;
- 15.1.1.2** the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of IBLTS this paragraph shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of IBLTS or (b) would have been apparent upon reasonable inspection by the Customer or Person acting on behalf of either of them;

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**15.1.1.3** the fact that the Container has not been properly sealed at the commencement of the Carriage except where IBLTS has agreed to seal the Container.

**15.2** The Customer shall defend, indemnify and hold harmless IBLTS against all liability, loss, damage, costs, claims and expenses arising from one or more of the matters covered by 15.1.1 above.

**15.3** Where IBLTS is instructed to provide a Container, in the absence of a written request to the contrary, IBLTS is not under an obligation to provide a Container of any particular type or quality.

## **16 GENERAL LIABILITY**

**16.1** Except insofar as otherwise provided by these Conditions, IBLTS shall not be liable for any claims, whether arising in contract or delict, which are in any way related or attributable to:

**16.1.1** any act or omission of the Customer or any Person acting on its behalf;

**16.1.2** compliance with the instructions given to IBLTS by the Customer or any other Person entitled to give them;

**16.1.3** insufficiency of the packing or labeling of the Goods except where such service has been provided by IBLTS;

**16.1.4** the weight, measurements, contents, quality, defect or description of any Goods;

**16.1.5** handling, loading, stowage or unloading of the Goods by the Customer or any person acting on its behalf;

**16.1.6** inherent vice of the Goods;

**16.1.7** riots, civil commotions, strikes, lockouts, stoppage or restraint of labor from whatsoever cause;

**16.1.8** fire, flood or storm;

**16.1.9** damages, costs, claims, penalties and/or charges of whatever nature arising from loss of market or attributable in any way to delay in forwarding or in transit or failure to carry out any instructions given to IBLTS, including any indirect and/or consequential loss;

**16.1.10** loss or non-delivery of any separate package forming part of a consignment or for loss for a package or an unpacked consignment or for damage or mis-delivery;

**16.1.11** injury or death suffered by the Customer or any Person arising from any cause, including but not limited to IBLTS's negligence, in whatever degree, as a result of IBLTS's performance or attempted performance of its obligations to the Customer and/or the Customer's requirements or mandate;

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**16.1.12** the failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part IBLTS and/or breach by it of these Conditions, of IBLTS's computer systems and/or software programs, provided and/or operated by IBLTS and/or by any person with whom IBLTS conducts business, and/or any third party, and which systems shall include IBLTS's electronic automated information service provided to its Customers;

**16.1.13** the provision by IBLTS to the Customer in whatever manner and/or form, of incorrect information where such incorrect information has been generated by and provided to IBLTS by any Person with whom IBLTS conducts business, and/or any other third party.

**16.1.14** any cause which IBLTS could not have prevented by the exercise of reasonable diligence.

**16.2** Notwithstanding anything to the contrary contained in these conditions, IBLTS shall not be liable for: Any loss or damage to property other than the Goods themselves; any indirect or consequential loss or damage; loss of profit; delay or deviation arising from any cause, including but not limited to IBLTS's negligence, in any degree, or breach by it of any of these Conditions.

## **17 AMOUNT OF COMPENSATION**

**17.1** Except insofar as otherwise provided by these Conditions, the liability of IBLTS, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:

**17.1.1** in respect of all claims, of whatsoever nature, relating to the Goods (excluding Containers), whichever is the least of the value of the goods, or their market price;

**17.1.2** In respect of claims arising out of loss of or damage to Containers, which for whatever reason are not excluded by the provisions of these conditions:

**17.1.2.1** the reasonable cost of repair thereof; or

**17.1.2.2** the lesser of the market or depreciated value thereof at the date of such loss or damage in the event of total loss and/or damage being beyond economical repair.

**17.1.3** In respect of any and all other claims, whether related to the Goods or other property and/or equipment, including claims arising out of or in any way attributable to delay, which for whatever reason are not excluded by the provisions of these Conditions, the amount of IBLTS's charges in respect of the Goods.

**17.2** The value of Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.

**17.3** If there be no invoice value for the Goods, the value shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

**17.4** By special agreement in writing and on payment of additional charges, higher compensation may be claimed from IBLTS not exceeding the value of the Goods or the agreed value, whichever is the lesser.

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## 18 NOTICE OF LOSS, TIME BAR

**18.1** IBLTS shall be discharged of all liability unless:

**18.1.1** notice of any claim is received in writing by IBLTS or its agent within 14 (fourteen) days after the date specified in 18.2 below, or within a reasonable time after such date, but in any event not exceeding 60 (sixty) days, if the Customer proves that it was impossible to so notify, and

**18.1.2** suit is brought in the proper forum and written notice thereof received by IBLTS within 9 (nine) months after the date specified in 18.2 below.

**18.2** The time limits referred to in clause 18.1 shall commence on:

**18.2.1** in the case of loss or damage to Goods, the date of delivery of the Goods;

**18.2.2** in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;

**18.2.3** in any other case, the event giving rise to the claim

## 19 BREACH

If IBLTS breaches any of these Conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by IBLTS of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions and any agreement between the Customer and IBLTS.

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- 20 GENERAL AVERAGE:** The Customer shall defend, indemnify and hold harmless IBLTS in respect of any claims of a General Average nature which may be made on IBLTS and the Customer shall, upon demand by IBLTS, provide such security as may be required by IBLTS in this connection.
- 21 MISCELLANEOUS:** Notices sent in terms of these Conditions may be sent by post, telefax and/or e-mail, provided that any postal notice sent in terms of these Conditions shall be deemed to have to be given on the 10th day following the day on which it was posted to the address of the recipient of such notice last known to IBLTS, and IBLTS shall only be deemed to have received electronic notices when such electronic notices have been retrieved, processed and read by the addressee.
- 21.1** The defenses and limits of liability provided for by these Conditions shall apply in any action against IBLTS whether such action is founded in contract or delict.
- 21.2** If any legislation is compulsorily applicable to any business undertaken by IBLTS, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by IBLTS of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.
- 21.3** These Conditions and any claim or dispute arising out of or in connection with the services of IBLTS shall be subject to Mozambican law for the determination of any claim arising out of the contract with IBLTS. Any dispute arising from or related to these Conditions or to the services of IBLTS or to the interpretation thereof shall be addressed in the first instance by good faith negotiations between the parties. In the event that the parties cannot reach a negotiated agreement with respect to any such dispute within thirty (30) days of notice thereof by one of the parties to the other, such dispute shall be referred to arbitration under the terms of Law no. 11/99, of 8 July (the "Arbitration, Conciliation and Mediation Law"), by a single arbitrator. If the parties cannot agree on the identity of the arbitrator, the appointing authority shall be the Director General of the Centre for Arbitration, Conciliation and Mediation (CACM) in Maputo or, if the parties so agree, each party shall indicate an arbitrator, and the third, who shall be the chairman of the arbitral tribunal, shall be appointed by the Director General of the CACM in Maputo. The arbitration shall be administered by the CACM. The arbitration shall take place in Beira. The language of the arbitration shall be English. The decision of the arbitrator or of the arbitral tribunal regarding the disagreement or dispute shall be rendered within 30 days of the first hearing and shall be final and binding on both of the parties. This clause is for the benefit of the parties, thus can be changed at any time by mutual agreement. This clause shall not limit the right of IBLTS to bring proceedings against the Customer in any other court of competent jurisdiction or concurrently in more than one jurisdiction.
- 21.4** No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any party in respect of its rights under these Conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Conditions.

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**21.5** No variation of these Conditions shall be binding on IBLTS unless embodied in a written document signed by a director of IBLTS, duly authorized by a IBLTS Board Resolution. Any purported variation or alteration of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Conditions by the Customer.

**21.6** If any provision of these Conditions is unenforceable, then IBLTS shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these Conditions, which shall not be affected and shall remain of full force and effect.

## **22 CHOICE OF RATES**

**22.1** Where there is a choice of rates according to the extent or degree of liability assumed by Persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.