

# GENERAL TERMS AND CONDITIONS:

## ➤ WAREHOUSING CONDITIONS

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### 1 APPLICABILITY OF THE WAREHOUSING CONDITIONS

- 1.1 Unless Impala and the Customer agree otherwise expressly in writing, these Warehousing Conditions, as amended from time to time (the "Warehousing Conditions") apply to and are incorporated into all agreements for the provision of warehousing and related services by Impala and/or where a Commercial Agreement incorporates the "Warehousing Conditions" or "Impala GTCs" or "Impala General Terms".
- 1.2 The Customer shall be deemed to have notice of the Warehousing Conditions where Impala has advised the Customer in any document of a means by which the Customer may access a copy of these Warehousing 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 warehousing agent. The Customer agrees that (and acknowledges that the Customer will be bound by) additional terms and conditions may be imposed by a third-party warehouse operator covering storage of the Customer's goods.

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### 2 DEFINITIONS AND INTERPRETATION

- 2.1 In these Warehousing 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) any Warehouse Receipt, or Holding Certificate issued to that Person for Goods stored, and (iii) these Warehousing 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 (a) in the location of the Warehouse specified in a Warehouse Receipt or Holding Certificate or (b) if no such document has been issued, the location of the Warehouse in which the goods have been stored by Impala (c) or in the case of any written communication regarding these Warehousing 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 Services pursuant to an Agreement and/or for whom Impala holds Goods in custody;

“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);

“Goods” means any goods in respect of which Impala has agreed to provide (or procure the provision of) Services;

“Holding Certificate” means a non-negotiable, non-transferable certificate issued by Impala to the Customer upon or in respect of the receipt of the Goods;

“Impala” means the Impala Group entity that has concluded the Agreement, being the entity set out in the written order confirmation which accepts instructions from Impala to the Customer (or in the absence thereof, in any Warehouse Receipt or Holding Certificate);

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

“Indemnitee” has the meaning given to such term in Clause 29 of these Warehousing Conditions;

“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 receipt, storage and release 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, levies and other similar charges (and any related interest and penalties) including VAT and sales tax, in each case howsoever designated or imposed relating to the Goods or the Services;

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

“Warehouse” means any place of storage used by Impala or its sub- contractors for the storage of goods, whether a building or series of buildings, open air area or area covered in part or whole;

“Warehousing Conditions” means these general terms and conditions of Impala stipulated herein;

“Warehouse Receipt” means a non-negotiable, non-transferable warehouse receipt issued by Impala to the Customer upon or in respect of the receipt of the Goods;

“Working Hours” means 08:30 hrs to 17:30 hrs local time on a Business Day in the location of the relevant Warehouse unless Impala advises otherwise in writing.

**2.2** Unless the context otherwise requires, in these Warehousing 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 Warehousing 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,

2.2.4 headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of these Warehousing 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 Warehousing 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 Warehousing 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 such different or additional terms or conditions.

**3.3** Subject to Clause 3.1 above, in the case of any inconsistency between the provisions of the Commercial Agreement and these Warehousing Conditions, the Commercial Agreement shall prevail.

**3.4** 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:

- (a) it is and remains 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;

- (b) the Goods are not the subject of any claim, criminal or regulatory investigation or legal proceedings;
- (c) all rights of ownership and title over the Goods will be established and verified by the Customer and 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;
- (d) it is authorised to accept the terms of and conclude the Agreement not only for itself, but also as agent for and on behalf of all other Persons who are, or may thereafter become, interested in the Goods;
- (e) it is not contracting or dealing as a consumer when entering into an Agreement.

**4.2** 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 WAREHOUSE RECEIPT AND HOLDING CERTIFICATE**

**5.1** Any transfer by the Customer to a third party of title to or any interest in Goods, or any part thereof, in respect of which a Warehouse Receipt or Holding Certificate has been issued, will not be recognized or acted upon by Impala unless and until:

- (a) all moneys owing by the Customer to Impala, and all claims which Impala may have against the Customer, have been paid and/or finally settled;
- (b) Impala has acknowledged the transfer in writing to the third party to whom transfer of title or rights to possession of the Goods is being made;
- (c) a new binding Agreement has been concluded between Impala and such third party in respect of the relevant part of the Goods; and
- (d) the original Warehouse Receipt or Holding Certificate has been delivered back to Impala by the Customer with written instructions from the Customer for cancellation, at which point the Agreement with the original Customer in respect of the Goods will be deemed to be terminated in respect of the relevant part of the Goods.

**5.2** Impala shall have no liability whatsoever to the Customer or any third party as a consequence of Impala's refusal to acknowledge or act upon a transfer of the Goods before all of the conditions in Clause 5.1 above, have been satisfied to the satisfaction of Impala.

**5.3** The Customer agrees that Warehouse Receipts and Holding Certificates are not and will not be construed to be a document of title nor is a Warehouse Receipt or Holding Certificate negotiable. Subject to Clause 5.4 below, Impala will not recognize any third party as a party entitled to the Goods (or any part thereof) by reason of any transfer and/or endorsement of or on a Warehouse Receipt or Holding Certificate relating to such Goods.

**5.4** The Customer may not transfer, assign or otherwise dispose of the Warehouse Receipt or the Holding Certificate or any right or obligation in connection therewith including its rights under the Agreement without the prior written consent of Impala, and without following the steps in Clause 5.1 above.

**5.5** Impala will not proceed with any partial, full or final release of Goods under any Warehouse Receipts or Holding Certificates unless and until any original Warehouse Receipts or Holding Certificates issued in respect of such Goods are delivered to Impala at the address identified for communications in the Agreement.

**5.6** 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 INSTRUCTIONS, TENDERS, ETC.**

- 6.1** All tenders or instructions relating to the Services or the Goods must provide relevant details to enable Impala to execute them, and will be given or recorded in writing. Only Impala may plead the absence of a written confirmation if a dispute arises.
- 6.2** The Customer shall procure that all tenders of the Goods for storage by Impala, and instructions regarding storage, custody and handling of the Goods and all arrangements related thereto, are accompanied by a complete and accurate statement setting out (i) the description, content, measurement, nature, quality, properties, quantity, origin, serial numbers, marks, value, number of packages, VGM (if applicable) and gross weight 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 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.
- 6.3** 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 29 below.

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## **7 METHODS AND PROCEDURE**

- 7.1** Notwithstanding express written instructions from the Customer to the contrary, Impala will be entitled at its sole and absolute discretion to decide on the means and procedure to be followed in the handling, storing and custody of the Goods.
- 7.2** Even if initially accepted and/or acted upon by Impala, Impala will be at liberty to depart from the Customer's instructions in respect of the handling, storing and custody of the Goods 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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## **8 SUB-CONTRACTING**

- 8.1** 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.

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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.
- 9.2** 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.

- 9.3** The description, specification, particulars and/or information in respect of the Goods and/or in respect of its containers or packaging as stated on the face of any Warehouse Receipt or Holding Certificate, delivery order and/or release instructions will be treated as conclusive evidence of the description, specifications, particulars and/or information provided by the Customer to Impala. Impala does not, by the issuance of a Warehouse Receipt, Holding Certificate, delivery order, release instruction or any other document, (a) agree that such description, specification, particulars or information are, or ever have been, correct, complete or accurate, or (b) admit the existence, nature, quality, quantity, weight, good order, condition or any other characteristic of the Goods described therein, or of the contents of any package or other shipping unit. However, 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.
- 9.4** 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.

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

- 10.1** Impala will not be obliged to weigh or measure the Goods in storage if no instructions to carry out weighing or measurement of the Goods are given to, and accepted by, Impala. Notwithstanding the foregoing, Impala will be at liberty to effect weighing and/or measurement of the Goods in order to ascertain whether the weight and/or measurement of the Goods comply with the information provided (or deemed to have been provided) by the Customer. In the event that the weight and/or measurement of the Goods determined by Impala differs from the information provided by (or deemed to have been provided) by the Customer, such determination by Impala shall be conclusive in the absence of manifest error and the cost of carrying out the weighing and/or measurement of the Goods by Impala and any cost arising from the difference between the information delivered by the Customer and the determination by Impala will be borne by the Customer .
- 10.2** Subject to the provision of Clause 21, Impala will be liable to the Customer for any direct loss and/or damage to the Goods which may arise from Impala's weighing and/or measurement of the Goods where such weighing or measurements have been carried out by Impala on the Customer's instructions.
- 10.3** Packages may be opened for examination of the contents thereof at the Customer's request, but Impala will at all times be entitled, but not obliged, to do so if it suspects that the contents have been wrongly described by the Customer. Impala will be under no obligation to ensure that the Goods match the descriptions as described by the Customer or to make any declaration with respect to the nature, value or purpose of the Goods. Should the examination reveal that the contents differ in any way whatsoever from those described, the cost of the examination and any cost arising from the contents of packages being incorrectly described by the Customer will be borne by the Customer.

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## **11 DELIVERY OF THE GOODS TO IMPALA**

- 11.1** Delivery to and receipt by Impala of the Goods will be effected by the Customer handing over the Goods to Impala and Impala taking over the Goods at the agreed Warehouse. If the Customer instructs Impala to take delivery of Goods but the Goods fail to arrive at the Warehouse for any reason whatsoever, the Customer undertakes to pay Impala on an indemnity basis for all costs (including all legal costs on a full indemnity basis) and expenses incurred by Impala in taking any steps pursuant to the Customer's instructions.

- 11.2** Unless otherwise stated, the Customer warrants that the Goods will be in good condition, and if packed, be properly, sufficiently and safely packed when delivered to Impala. If the Goods appear to be in a damaged or defective condition upon delivery to Impala, Impala will be entitled but not obliged to take such steps as may be necessary to protect the Customer's interest against the carrier or any other party at the Customer's sole risk and expense. The Customer will not be entitled to question or claim damage or indemnity or other legal recourse in respect of the manner in which Impala has carried out such steps as aforesaid to protect the Customer's interest. Impala will promptly notify the Customer of any action taken, but failure to notify the Customer will not give the Customer any right of claim against Impala.

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## **12 COMMENCEMENT OF SERVICES AND SPEED OF CARRYING OUT THE SERVICES**

- 12.1** Unless otherwise agreed upon or unless prevented or hindered from doing so, Impala will commence executing accepted orders for storage or delivery of the Goods, if possible, no later than the Business Day following the Business Day on which it has accepted the order (as confirmed in writing by Impala) or on which it has received the necessary and/or contractually required documents (including but not limited to bills of lading, delivery orders and official documents) as set out in the Agreement, whichever is later. If (a) such orders are accepted, and/or (b) the necessary and/or contractually required documents are received, as applicable, after 15:00 hrs local time on a Business Day, the next Business Day will count as the day of acceptance of such orders and/or receipt of such documents.
- 12.2** Impala will determine the rate of speed at which orders for storage or delivery of Goods will be executed. Impala will note the instructions of the Customer in this respect, but will not be liable for any expenses, losses or damage incurred or suffered for and on behalf of or by the Customer should the rate of speed at which the order is executed be slower than that requested by the Customer. Time is not of the essence in performance of the Services by Impala.

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## **13 TIMES FOR DELIVERY AND COLLECTIONS OF THE GOODS**

- 13.1** Goods will be delivered to and collected from the Warehouse 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.
- 13.2** Redelivery of Goods to the Customer will be effected by Impala handing over the Goods to the Customer at the Warehouse during Working Hours. If the Customer instructs Impala to redeliver Goods at a certain time, but the Customer fails to take redelivery of such Goods at that time, the Customer undertakes to pay Impala on an indemnity basis for all costs (including all legal costs on a full indemnity basis) and expenses incurred by Impala in taking any steps pursuant to the instructions of the Customer.

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## **14 PLACE OF STORAGE OF THE GOODS**

Unless otherwise agreed upon in writing by Impala, Impala will be at liberty to decide the place at which where the Goods are stored. Impala will at any time be entitled to transfer the Goods to another Warehouse, or to move the same within the Warehouse.

The cost of any transfer and the risk of such transfer will be borne by Impala, unless the transfer has been effected by Impala in its sole and absolute discretion in the interest of protecting the Goods, or by reason of circumstances beyond Impala's control in which case such transfer will be effected at the sole and absolute discretion of Impala and at the sole risk and expense of the Customer. Impala will notify the Customer of any transfer of the Goods to any other Warehouse, but failure to give such notification will not give the latter any right of claim against Impala.



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## **15 ADMITTANCE TO PLACE OF STORAGE AND ISSUANCE OF DOCUMENTS**

- 15.1** Upon three Business Days' prior notice and subject to Clause 15.2 below, Impala will be obliged to admit the Customer and/or any Persons authorised by the Customer to the Warehouse of the Goods, subject to the compliance by the Customer or by such Person(s) authorised by the Customer with all formalities prescribed by the relevant authorities and/or applicable law.
- 15.2** The following conditions will be applicable to Persons granted admittance to the Warehouse by Impala in accordance with Clause 15.1 above:
- (a) all such Persons visiting the Warehouse, including the personnel of vessels and vehicles reporting to the Warehouse, will observe and fully comply with Impala's instructions, regulations and procedures;
  - (b) admittance of such Persons will be granted only during Working Hours and with the attendance of Impala's employees and ensuring no interruption to normal business operations at the Warehouse;
  - (c) Impala may refuse admittance of any such Person if such Person is a representative of a competitor of Impala or otherwise (in the opinion of Impala) has, or may reasonably be expected to have, an interest which conflicts with the commercial interests of Impala.
  - (d) all expenses incurred in relation to such admittance will be paid to Impala by the Customer;
  - (e) the Customer will be liable for, and will indemnify the Indemnitees in respect of, any damage caused directly or indirectly by any such Persons who are granted admittance to the Warehouse including but not limited to any damage caused to the Warehouse, the Goods and/or other goods stored at the Warehouse;
  - (f) the Customer will indemnify the Indemnitees in respect of any and all fines, penalties, expenses, losses or damages suffered or incurred by Impala by reason of any death, injury or illness of any Person as a consequence of their admittance to the Warehouse, even where caused or contributed to by Impala's negligence.
- 15.3** Upon receipt of the Goods by Impala pursuant to an Agreement, Impala shall issue a Warehouse Receipt or Holding Certificate to the Customer. Impala shall decide, in its sole and absolute discretion, which type of document to issue.

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## **16 SERVICES**

- 16.1** Subject to clause 5, Impala will carry out such Services in respect of the Goods as are requested by the Customer and accepted by Impala, as evidenced in writing or by performance, including sampling, handling, servicing, packing, re-packing, bundling, re-bundling, piling, re-piling, dispatch of cargo, in bulk, fraction or in containers (including stuffing), lotting, weighing (including for the purposes of calculating VGM), calculating VGM as well as re-delivery of the Goods at the agreed Charges. Any work which Impala does not wish to undertake may, after the prior approval of Impala, be executed by or on behalf of the Customer, subject to any conditions which may be laid down by Impala, under the supervision of Impala, and the Customer will pay any and all costs and expenses incurred by Impala in connection with such work, and indemnify the Indemnitees in respect of any and all fines, penalties, claims, losses, damages, costs (including all legal costs on a full indemnity basis), and expenses suffered or incurred by Impala in connection with such work. Impala will not be liable for any loss, damage or expenses incurred or suffered by the Customer or any third party in connection with carrying out such work.
- 16.2** Notwithstanding any other provisions of the Agreement, Impala will be entitled, without providing any reasons whatsoever, to refuse to accept any instructions which may be given by the Customer in relation to the provision of the Services. In the event of any failure by Impala to accept instructions from the Customer in writing or by performance by the date requested for such Services to occur, such instructions will be deemed to have been rejected by Impala.
- 16.3** Unless expressly agreed in writing, Impala shall not be under any obligation to guard or arrange security for the Goods at any time.



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## **17 REMOVAL OF THE GOODS BY THE CUSTOMER**

- 17.1** Impala will not proceed with any partial, full or final release of Goods under any Warehouse Receipt or Holding Certificate issued in respect of such Goods unless and until (a) payment of all sums whatsoever owing to Impala pursuant to the Agreement has been made in full and (b) the original Warehouse Receipt or Holding Certificate in respect of the Goods, as applicable, is delivered (or is reasonably believed by Impala to have been delivered) to Impala. Subject to satisfaction of these conditions, the Customer may at any time remove the Goods from the custody of Impala. In calculating the sums owing to Impala pursuant to the Agreement, Impala shall be entitled to payment of Charges (including without limitation such part of the Charges as may be based on Warehouse rent, costs and expenses) in respect of the entirety of the month in which redelivery of the Goods occurs.
- 17.2** Impala will have the right, at any time, to require the removal of the Goods from storage prior to the expiration of the agreed storage period, without having to provide the Customer any period of notice, if in the sole and absolute discretion of Impala there is, or appears to be, an urgent reason to do so. An urgent reason will, without limitation, be deemed to exist:
- (a) If the Customer fails to comply with one or more provisions of the Agreement and/or any law or regulation applicable to the Customer and/or the Goods;
  - (b) If it appears that, due to the presence of the Goods at the Warehouse, there is a risk of (i) loss and/or damage to the Goods, to other goods, to the Warehouse, or to equipment, and/or (ii) harm, injury or death of Person(s);
  - (c) if the Goods are perishable, or liable to inherent changes, which in Impala's opinion would result in a decrease in value of the Goods and the Customer has failed to provide satisfactory instructions for the prevention or mitigation of such events; and
  - (d) on the occurrence of any event described in clause 31.1(b) of these Warehousing Conditions with respect to the Customer.

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## **18 SALE OR DISPOSAL OF THE GOODS**

- 18.1** Without prejudice to Impala's other rights and remedies under the Agreement and at law, Impala will be entitled (but not obliged) to sell or dispose of the Goods subject to the notice periods set out in Clause 15.2
- (a) if the Customer fails to remove the Goods given to Impala for storage when requested by Impala to do so; and/or
  - (b) if the Customer at any time fails to pay any amount owed by it to Impala; and/or
  - (c) pursuant to Clause 17.
- 18.2** Impala will be entitled to sell or dispose of non-perishable Goods upon giving fourteen (14) days' notice in writing to the Customer. The aforesaid fourteen (14) days' notice in writing will not apply in respect of perishable Goods and Impala will be entitled to exercise such rights of sale at any time at Impala's sole and absolute discretion. The sale will be effected by auction or private contract or otherwise at the sole and absolute discretion of Impala.
- 18.3** All Charges connected with the sale and any other amounts owed by the Customer to Impala will be borne by the Customer and deductible by Impala from the proceeds of sale of the Goods. Impala will then account for any remaining balance due to the Customer and such accounting will be the deemed redelivery of the Goods to the Customer.

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## **19 DAMAGE OR DESTRUCTION OF THE GOODS DUE TO AN INSURED PERIL**

- 19.1** In the event of destruction of or damage to all or any part of the Goods whilst they are in the custody of Impala, if the assistance of Impala for assessment of the damage is desirable or necessary, such assistance may be rendered by Impala at its sole and absolute discretion. Should Impala agree to provide any such assistance, the Customer will pay Impala any and all costs and expenses incurred by Impala in the provision of such assistance, together with such remuneration as is fixed by Impala for its assistance and services. Impala may make the provision of such assistance conditional upon payment of all amounts that are due to Impala pursuant to the Agreement.
- 19.2** In the event that all or any part of the Goods are destroyed whilst in the custody of Impala, the date of destruction of the relevant part of the Goods shall for the purposes of the Agreement be deemed to be and treated as the date of redelivery to the Customer of the relevant part of the Goods, and in calculating the sums owing to Impala pursuant to the Agreement, Impala shall be entitled to payment of Charges (including without limitation such part of the Charges as may be based on Warehouse rent, costs and expenses) in respect of the entirety of the calendar month in which such redelivery is deemed to have occurred.

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## **20 HAZARDOUS AND OTHER GOODS**

- 20.1** 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 Warehouse (or any part of it) or (ii) other goods stored in the Warehouse, 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.
- 20.2** Except under special arrangements previously agreed to in writing by Impala, Impala will not accept or handle:
- (a) 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
  - (b) any precious or sensitive goods including but not limited to precious stones, jewellery, antiques, paintings, high value classic or sports cars.
- 20.3** 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.
- 20.4** If Goods which fall within Clause 20.2(a) or (b) 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.
- 20.5** Should any Customer deliver Goods which fall within Clause 20.2(a) or (b) above, to Impala or cause Impala to handle or deal with any such Goods without prior notice and/or contrary to any special terms, conditions or arrangements agreed with Impala, the Customer will be liable for all expenses, losses or damages 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, and the Goods may be destroyed or otherwise dealt with at the Customer's risk and expense at the sole and absolute discretion of Impala or any other Person in

whose custody they 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. .

- 20.6** Impala will promptly notify the Customer of the measures taken pursuant to Clause 20.4 or Clause 20.5, but failure to notify the Customer will not give the latter any right of claim or legal recourse against Impala. Without prejudice to the provisions of the preceding paragraph, the Customer will indemnify the Indemnitees from and against any claims of third parties on account of damage caused by the Customer's Goods to third parties.

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## **21 LIABILITY FOR LOSS OF OR DAMAGE TO THE GOODS**

- 21.1** IMPALA WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE AND/OR DETERIORATION OF THE GOODS EXCEPT TO THE EXTENT THAT THE GOODS WERE AT THE TIME OF SUCH LOSS, DAMAGE OR DETERIORATION IN THE EXCLUSIVE CUSTODY AND CONTROL OF IMPALA AND SUCH LOSS, DAMAGE OR DETERIORATION IS PROVEN FINALLY IN A COURT OF LAW HAVING JURISDICTION TO HAVE BEEN CAUSED BY THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF IMPALA, PROVIDED THAT IMPALA WILL NOT IN ANY CIRCUMSTANCES WHATSOEVER BE LIABLE FOR LOSS OR DAMAGE OR DETERIORATION OF THE GOODS WHERE SUCH LOSS OR DAMAGE OR DETERIORATION OCCURS IN CIRCUMSTANCES INCLUDING:
- (a) ANY DAMAGE AND/OR LOSS THROUGH THEFT, BURGLARY OR MISAPPROPRIATION;
  - (b) ANY LOSS, DAMAGE AND/OR DETERIORATION OF ANY GOODS STORED IN THE OPEN, WHICH CAN ONLY BE STORED IN THE OPEN, OR WHICH IMPALA CUSTOMARILY STORES IN THE OPEN;
  - (c) ANY LOSS, DAMAGE AND/OR DETERIORATION OCCURRING WHILE THE GOODS ARE IN THE CUSTODY OF IMPALA OR OCCURRING BEFORE RECEIPT BY IMPALA OF THE GOODS AND DUE TO A CAUSE WHICH AMOUNTS TO A FORCE MAJEURE EVENT (AS DEFINED IN THESE WAREHOUSING CONDITIONS), REGARDLESS OF THEIR ORIGIN;
  - (d) ERRORS IN ANY DELIVERY ORDERS, CONFIRMATIONS, RECEIPTS, WARRANTS, WAREHOUSE RECEIPTS, HOLDING CERTIFICATES OR ANY OTHER DOCUMENT;
  - (e) IMPROPER OR INADEQUATE PACKING OR PROTECTION OF THE GOODS;
  - (f) ANY CAUSE BEYOND THE CONTROL OF IMPALA, WHETHER OR NOT SIMILAR TO CLAUSES (a) to (e) ABOVE.

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## **22 NO WARRANTY; NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY**

- 22.1** IMPALA MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER 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.
- 22.2** IN ADDITION TO CLAUSE 19 ABOVE AND NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THE AGREEMENT, AND/OR IN ANY WAREHOUSE RECEIPT AND/OR IN ANY HOLDING CERTIFICATE AND/OR IN ANY OTHER DOCUMENT, TO THE FULLEST EXTENT PERMITTED BY LAW:
- (a) IMPALA SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGES, OR LOST

PROFITS, OR ANY DIMINUTION IN VALUE, OR MARKET BASED LOSSES 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;

- (b) WITHOUT PREJUDICE TO THE REST OF THIS CLAUSE 19, 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 OR THE GOODS 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 OR (C) USD 50,000.

**22.3** 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-REDELIVERY (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:

- (a) 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 REDELIVERY OF THE GOODS, SETTING OUT FULL PARTICULARS AND SUPPORTING DOCUMENTATION RELATING TO SUCH DAMAGE OR DETERIORATION;
- (b) IN RESPECT OF ANY LOSS OR NON-REDELIVERY 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 REDELIVERED SETTING OUT FULL PARTICULARS AND SUPPORTING DOCUMENTATION RELATING TO SUCH LOSS OR NON-REDELIVERY; AND
- (c) 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.

**22.4** 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.

**22.5** 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 21 SHALL NEVERTHELESS CONTINUE IN FULL FORCE AND EFFECT AND SURVIVE ANY EXPIRATION, TERMINATION OR CANCELLATION OF THE AGREEMENT.

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## **23 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. The Customer is obliged to take out and maintain adequate insurance

satisfactory to Impala naming Impala as a loss payee covering any and all damage 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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## **24 CHARGES, RATES AND PAYMENT TERMS**

- 24.1** The Charges including Warehouse rent plus increases therein, if any, and all other amounts due and owing to Impala by the Customer on any account whatsoever, including but not limited to rent, disbursements, remunerations for storage and delivery, outlays and charges for work done or to be done, the cost of any clearance work or similar activities during or after a fire and all extraordinary expenses, extra wages whatsoever will be payable by the Customer immediately upon issuance by Impala of the invoice for such amounts. Notwithstanding the above, interest shall not accrue on the invoiced amount until fourteen (14) days after issuance of such invoice.
- 24.2** The Charges and all other applicable costs and all verbal or written agreements between Impala and the Customer regarding rates and remunerations for work will be based on the wages paid to its staff by Impala and charges imposed by the relevant authorities (where applicable) on the Services rendered by Impala in force at the time the Agreement was concluded. In the event that there is an increase in said wages and charges imposed by such authorities or as may be adjusted by Impala (acting reasonably), the rates and remunerations which have been agreed upon will be adjusted accordingly and become effective immediately.
- 24.3** Unless otherwise expressly agreed upon, the agreed rates for storage will be based on the customary method of stacking the Goods. If at the Customer's request, or owing to the condition of the Goods, the customary method is departed from, an increase in rates will be charged in proportion to the additional floor space occupied as compared to that for the normal stacking of the Goods.
- 24.4** 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.
- 24.5** In the event that the Customer fails to pay any amounts by the due date and without prejudice to any other rights Impala may have at law or under the Agreement, (i) interest will be payable on such amounts at the rate of 3month US Dollar SOFR rate + 5% per annum or such other rate as may be agreed between Impala and the Customer; (ii) Impala may refuse or suspend performance of the Services; and (iii) notwithstanding any other term of this Agreement, Impala may terminate the Agreement with immediate effect.
- 24.6** 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 24.5 indemnify Impala (for and on behalf of itself and any Indemnitee) for a further amount which is either (a) 10% of the Indebtedness or (b) US\$100,000, 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.
- 24.7** Impala may at any time require payment of monies on account or pre-payment of its expenses or Charges and such expenses or Charges will be due and payable by the Customer forthwith. In the event that any sum is not paid when required, and without prejudice to any other rights Impala may have at law or under the Agreement, Impala may refuse or suspend performance of the Services.

- 24.8** The Customer shall bear and pay all Taxes relating to the Goods or Services. If the Customer is required by applicable law to deduct or withhold any sum as or on account of Taxes, the amount payable by the Customer shall be increased by such amount as is necessary to ensure that Impala receives a net amount equal to that which it would have received in the absence of such deduction or withholding.

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## **25 LIEN**

- 25.1** All Goods received for storage 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. If the general lien is not satisfied within fourteen (14) days from the day when the amounts in question become payable, the Goods may be sold by auction or otherwise at Impala's sole and absolute discretion and at the expense of the Customer and the proceeds of sale will be applied to the satisfaction of the lien and the overdue amounts. Any balance of the proceeds from the sale of the Goods after the proceeds have been applied in or towards the satisfaction of such lien and expenses will be paid to the Customer. Storage fees will be charged for the Goods detained under the lien.
- 25.2** The Customer agrees and acknowledges that the lien ranks in priority to any other right (security or otherwise) which it may give or have given to any other person in relation to the Goods.
- 25.3** 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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## **26 FORCE MAJEURE**

- 26.1** Impala shall not be liable 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:
- (a) war (declared or undeclared), terrorism, armed hostilities, threat of war, official action or governmental measures, quarantine, plagues, epidemics, pandemics, civil disturbance, sabotage, strike, riot, 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;
  - (b) storm, fog, lightning, fire, flood, high and low tide or water level, frost, freezing, ice, heat, acts of god or analogous geological events;
  - (c) 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;
  - (d) 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;
  - (e) breakage of glass, wickered bottles and flasks, cast-iron and other brittle articles, inadequate packing; and



(f) all other causes which are beyond the control of Impala.

**26.2** 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 24 hereof on which interest will be chargeable.

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## **27 DATA PROTECTION AND CUSTOMER DATA**

**27.1** Each Party confirms and undertakes that it does and will comply with its obligations under Data Protection Laws.

**27.2** 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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## **28 CONFIDENTIALITY**

**28.1** 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 28, 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).

**28.2** Rights of disclosure:

**28.2.1** 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 28.

**28.2.2** Each Party shall be entitled (without the prior written consent of the other Party but always subject to the proviso in Clause 28.2.1) 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;

**28.2.3** Neither Party shall be in breach of this Clause 28 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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## 29 INDEMNITY

- 29.1** 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 WAREHOUSING 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", INDIVIDUALLY A CUSTOMER PARTY), (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) CLAIMS FROM 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 AND ALL CLAIMS BY ANY PERSON THAT ITS TITLE TO THE GOODS ARE SUPERIOR TO THAT OF THE CUSTOMER PARTY, (x) ARISING UNDER OR PURSUANT TO CLAUSE 7.1 ABOVE, (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) CLAIMS OR COSTS ARISING UNDER OR PURSUANT TO CLAUSE 16.1 ABOVE, (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. 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).
- 29.2** 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:
- (a) DAMAGES FOR PERSONAL INJURY, DISEASE OR DEATH;
  - (b) DAMAGES FOR INJURY TO PERSONAL OR REAL PROPERTY;
  - (c) ENVIRONMENTAL DAMAGES;
  - (d) 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;
  - (e) ALL COSTS, CONSEQUENCES, DAMAGES AND FINES RESULTING FROM AN INCORRECT WEIGHT FOR THE PURPOSES OF VGM CALCULATION OR AN INCORRECT VGM DECLARATION EVEN IF CAUSED BY THE NEGLIGENCE OF IMPALA; AND
  - (f) ALL EXPENSES, COSTS AND FEES INCURRED BY ANY INDEMNITEE AS A RESULT OF ANY CLAIM FOR INDEMNIFICATION HEREUNDER.
- 29.3** 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.

- 29.4** THE INDEMNITIES GIVEN IN THESE WAREHOUSING CONDITIONS TO THE INDEMNITEES SHALL SURVIVE THE EXPIRATION, TERMINATION, OR CANCELLATION OF THE AGREEMENT.

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## **30 MISCELLANEOUS**

- 30.1** 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 Warehousing 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.
- 30.2** 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 Warehousing Conditions. The Agreement, including these Warehousing Conditions, will be binding upon Customer and its successors and permitted assigns.
- 30.3** If any provision of the Agreement, including these Warehousing 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.
- 30.4** The Customer shall comply with all laws pertaining to the Goods.
- 30.5** 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 to exercise any right or remedy thereunder, 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.
- 30.6** 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).
- 30.7** The 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.
- 30.8** 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.
- 30.9** Any notice to be given by Impala under the Warehousing Conditions shall be deemed delivered if addressed and dispatched to the Customer at the last known contact details (address, email, SMS or instant messaging ) 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, SMS, instant messaging 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.
- 30.10** By requesting that Impala perform the Services and/or by executing the booking confirmation and/or other documentation to which the Warehousing Conditions are attached and/or in which the Warehousing Conditions are

referred to, 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.

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## 31 TERMINATION

- 31.1** 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:
- (a) the Customer commits a material breach of any of the terms of the Agreement, including these Warehousing 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
  - (b) 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.
- 31.2** 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.
- 31.3** 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.
- 31.4** 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 subject to a Warehouse Receipt or Holding Certificate.

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## 32 ANTI-BRIBERY AND CORRUPTION

- 32.1** Each Party respectively warrants and undertakes to the other Party that in connection with the Agreement:
- (a) 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
  - (b) 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.
- 32.2** In the event of any breach of the warranties and undertakings in this Clause 32, 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 this Clause 32.

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## 33 SANCTIONS

- 33.1** 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.

**33.2** 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.

**33.3** Impala shall be entitled to refuse to perform any of the Services if there are reasonable grounds for believing that such performance would 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.

**33.4** The Customer warrants and covenants 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.

**33.5** 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.

**33.6** 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.

**33.7** 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.

**33.8** 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.

- 33.9** 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.
- 33.10** “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.
- 33.11** “Sanctioned Entity” means any entity, being an individual, corporation, company, association or government, who or which is the subject of Sanctions.
- 33.12** “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 (d) 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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## **34 DECLARATION**

- 34.1** 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.
- 34.2** 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 34.1 above.

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## **35 GOVERNING LAW AND JURISDICTION**

- 35.1** 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.
- 35.2** 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.
- 35.3** The seat of the arbitration shall be London, England and the language of the arbitration shall be English.
- 35.4** 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).

**35.5** For the purposes of arbitration pursuant to this Clause 35, 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.

**35.6** Notwithstanding the other provisions of this Clause 35, 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