

# **TANKSPAN GENERAL TRADING TERMS**

*Please Note, Paragraph 4(f) is only applicable when you have DPP Insurance.*

## **1. LEASING**

In addition to the Containers, as described in Paragraph A of the Lease, this Lease Agreement shall cover similar Containers as may be substituted or added from time to time by the Lessor.

## **2. RENT**

The rent described in Paragraph C of the Lease shall be due for each Container from and including the day of delivery to the Lessee up to and including the day the Container is returned to Lessor pursuant to the terms of the Lease and in accordance with Paragraph 4 below.

## **3. DELIVERY**

Upon delivery of each Container to Lessee, the Lessee (or Lessee's agent) shall sign and return the Lessors Equipment Interchange Receipt ("EIR") to the Lessor or the Lessors representative. In addition, the Lessor shall arrange for a surveyor to inspect all such Containers, a copy of which will go to the Lessee. The costs for such inspection are detailed in sub Paragraph E2 hereof. This shall constitute conclusive evidence that the Lessee has received the Container and found it to be complete, in good working order and condition. The failure of the Lessee to note in the EIR damage, defect or deterioration to the Container shall not relieve the Lessee of any obligation or liability under the Lease. Notwithstanding the above, should Lessee fail to execute the EIR, acceptance of a Container by the Lessee shall constitute conclusive evidence that the Container at the time of the delivery was complete and in good working order and condition.

In the event that Containers are required for the use of the carriage of foodstuffs, the Lessee is responsible for any tests required to guarantee the sterility of the Container and its fittings. Any Containers leased for the carriage of foodstuffs shall only be used for such carriage unless otherwise verified in writing by the Lessor.

## **4. RETURN**

The Lessee may return the Containers pursuant to the provisions of the Lease. The Lessee shall be responsible for all shipping and transportation to nominated Lessor depot. Such costs shall be borne by the Lessee.

**(a)** The Containers and/or each of them shall be deemed to be returned:

- (i)** In the case of Containers which are in good condition and repair, on the actual date of return to an approved depot designated by Lessor and
- (ii)** In the case of Containers which are not returned in good condition and repair, on the date when all Lessee damage has been approved by the Lessee.

All per diem charges due hereunder shall continue to accrue and be payable upon each Container until Lessor is satisfied that Lessee's allocation of damages are approved in full.

**(b)** In the event that Lessor terminates this lease pursuant to Paragraph 6 below, Lessor shall in its sole discretion specify the designated depots into which the Containers are to be redelivered.

**(c)** On the date of return of each Container, the Lessee shall ensure that each Container is accompanied by a written cleaning certificate issued by a recognised independent surveyor, guaranteeing that the Container and its fittings shall be gas free, clean from any oil, rust, dirt, moisture and particles (residue) of any previous cargo, and in the case of Containers dedicated to the carriage of food grade products, shall be fit for the carriage of cargoes intended for human consumption. For the avoidance of doubt, any corrosion, pitting, scratching, staining, etching or any other damage, in the sole opinion of the Lessor (backed by an independent source where required) of unreasonable nature on and/or in the barrel of the Container, its fitting and accessories and/or to its insulation cladding and/or damage to the framework of the Containers, shall not be deemed normal wear and tear. All Containers will be repaired in accordance with the then current repair standard criteria as set forth by the International Tank Container Organisation (ITCO). In the event Lessee returns any Container without said cleaning certificate, Lessor will obtain an estimate of the costs involved in obtaining appropriate certification. This may involve transportation costs, to and from the cleaning station, plus the costs of the cleaning, and the certification by an independent surveyor. Authorisation to conduct these additional costs, as set forth in the estimate shall be given by Lessee or its local agent within five (5) days of receipt of the estimate. If Lessee or its agent fails

to respond within seven (7) days, from the date the estimate was sent, Lessor has the right to proceed and bill Lessee with such costs as per the estimate.

**(d)** In case any Container is returned damaged, an estimate of the amount and cost of the repairs necessary to repair the damage will be given to Lessee by Lessor or Lessors agent. Authorisation to conduct the repairs as set forth in the estimate shall be given by Lessee or its local agent within five (5) days of receipt of the estimate. If, requested within this period, by the Lessee or its local agent or nominated inspector, a further five (5) working days shall be allowed for any further inspection of the Container. If Lessee or its agent fails to adhere to any of the deadlines set forth herein, Lessor has the right to proceed and repair the Container and bill Lessee with repair costs as per the original estimate.

**(e)** All repair invoices shall be sent to Lessee or Lessee's local agent and shall be paid by Lessee within thirty (30) days of receipt.

**(f) Notwithstanding anything to the contrary elsewhere in the Lease, in respect of Container or Containers for which the Lessor has agreed to provide Damage Protection Plan ('DPP Containers') to the Lessee, such Container or Containers will be off-hired on date of return to depot, except in the following cases:-**

**(i) where the nature of the damage to such DPP Containers is not covered by the Lessor's Damage Protection Plan.**

**(ii) where damages to the DPP Containers is attributable to a product inappropriate for such DPP Containers.**

**(iii) negligence on behalf of the Lessee.**

**In such cases the off-hire procedure shall be as provided in sub Paragraph (a) (ii) above.**

## **5. PAYMENT**

**(a)** Payments for rent and all other charges due to the Lessor, under the terms of the Lease, for which no demands need be made, shall be made 30 days in arrears, by telegraphic or telex transfer, quoting the invoice number to: TANKSPAN LEASING LIMITED, care of:- National Westminster Bank plc, 43 Swan Street, West Malling, Kent, ME19 6HF. Account number 140-01-08333769, Sort Code 55-81-07. Such transfer shall state that the payment is made on the Lessee's behalf. Lessor may change these payment instructions at any time upon written notice to Lessee. All invoices must be paid in full without set-off or deduction of any kind.

**(b)** If the Lessee fails to pay any instalment of rent per diem or other charges payable hereunder by the due date, the Lessee shall on demand pay to the Lessor interest on all outstanding amounts due at the rate of 2.00% per month, such interest to run from the due date for payment until the actual date of payment.

## **6. DEFAULT**

**(a)** In the event that Lessee **(i)** fails to make any payments due hereunder to Lessor by the due date; **(ii)** fails to observe any other condition of this Lease Agreement or breaches any term of this Lease, **(iii)** discontinues business, becomes insolvent or unable to pay its debts when due, files or has filed against it any declaration or petition or proceeding for relief pursuant to any applicable bankruptcy or insolvency laws; **(iv)** there shall occur any reorganisation arrangement, assignment for the benefit of creditors, appointment of a receiver, liquidator, trustee or similar person of all or any of Lessee's assets; or **(v)** if there shall occur any sale, assignment, sub-letting or other encumbrance of any of the Containers of the Lease or Lessee's rights or interests there under in violation of the Lease and the Lessee fails to remedy the same within 15 days of such breach then Lessor shall have the right to terminate this Lease Agreement and without notice require Lessee to return the Containers in accordance with Paragraph 4 or take possession of the Containers free of any claims of Lessee. Any such action by Lessor shall not release Lessee of its obligations hereunder nor prejudice Lessors right to claim damages for breach of contract. In the event this Agreement be determined for any reason whatsoever other than on the expiration of the period of this Lease Agreement Lessor shall declare immediately due and payable all amounts due and owing under this Lease Agreement, including **(i)** all arrears of rent interest and other monies unpaid but payable under this Lease Agreement (and interest shall continue to become due as provided for by this Lease Agreement), **(ii)** the costs reasonably required to restore the Containers to their original condition and proper repair (excluding fair wear and tear), **(iii)** the costs of recovery and transport of the Containers to Lessors depots

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specified in the Lease Agreement, (iv) the costs of storage of the Containers between the date of determination and the date of expiration of the period of this Lease Agreement incurred whilst the Containers remain off-hire, (v) as agreed damages a sum equal to the outstanding value of the rental instalments payable under this Agreement but not yet due and (vi) legal fees incurred by the Lessor as result of the determination of this Agreement and the recovery of any Container.

(b) In the event that after the fifteen (15) days notice period has expired, the default has not been cleared, and Lessor chooses to retake possession of all or part of the Containers, Lessee authorises Lessor to take possession of any property in, or attached to such Container and, without liability for its safe-keeping, to place such property in storage at the risk and expense of Lessee.

### 7. INSPECTION AND TESTING

(a) At any reasonable time and from time to time, the Lessee shall permit the Lessor or its authorised representatives to inspect any or all of the Containers available to the Lessor at any such address as may be mutually agreed.

(b) For the purpose of periodic inspection and testing of the Containers in accordance with the requirements of governmental authorities, regulations and agreements concerning the transportation of hazardous materials, upon sixty (60) days prior written notice from Lessor, Lessee shall make any or all of the Containers available to Lessor with a certificate of cleanliness as specified in Clause 4 at a designated depot/s as may be mutually agreed. **In the event that prior written notice is not received from Lessor, it is still Lessee's responsibility, at all times, to ensure that the Containers comply with all statutory, national and international regulations.** All costs relating to the cleaning, delivery and preparation of the Containers in readiness for inspection shall be borne by the Lessee. The Lessor shall be liable for the cost of the inspection and testing itself. If at such time any Container is found to be damaged or altered or requires cleaning, the cost of repair and/or cleaning shall be for the account of the Lessee.

### 8. USE OF AND INDEMNIFICATION OF THE CONTAINERS.

(a) The Lessee will not use or permit any Container to be used for any purpose for which it is not designed or suitable and will ensure that the Containers are operated in a proper and skilful manner, specifically not to be used for the carriage of radioactive materials. The Lessee shall at its expense, comply with the International Maritime Dangerous Goods (IMDG) Code and any other relevant national, international or statutory regulations, laws, directives or conventions, including customs laws and regulations, which affect the Containers, the Lease or their possession or ownership, transportation or operation, including, but not limited to, the International Convention for Safe Containers (CSC) and the Customs Convention on Containers 1956 or 1972 as the same may be in effect from time to time.

The Lessee shall be liable for all duties, fees, charges, liens, encumbrances, fines, penalties or interest charged or incurred for failure to comply.

(b) The Lessee shall maintain the Containers free from any and all liens, encumbrances, security interest, charges (including but not limited to any tax or duty), or claims that may arise to be payable in respect of the Containers.

While any of the Containers are subject to this Lease, Lessee shall indemnify, defend and hold Lessor, its agents and associates, harmless against all loss, liability, damage, cost and expense, fines, penalties or other charges that may be incurred arising out of Lessee's failure to comply with the terms of this provision and of the Lease or imposed against Lessor arising out of or in connection with or incident to the operation, transportation, maintenance, storage, loading, use, possession or ownership of the Containers or in connection with or incident out of accidents or occurrences causing injury or illness or death of persons or loss or damage to property, due to any cause whatsoever.

(c) The Lessee shall ensure that all instructions and recommendations in relation to the operation, use and maintenance of the Containers which are contained in any manuals or other documents supplied to the Lessee by the Lessor from time to time, or other instructions and recommendations displayed upon the Container, are strictly observed.

(d) The Lessor may at any time request information from Lessee

regarding the whereabouts of any Container. Lessee shall furnish such information within five (5) working days of the date of Lessors request.

### 9. AREAS OF USE

The Lessee shall not use, or allow the use of, the Containers in hostile countries or in any area of hostilities or conflict (declared or not) or in any area specifically prohibited in writing by the Lessor to the Lessee or in any area which may lead to the invalidation of the limit of coverage and of the insurance of the Containers.

### 10. MAINTENANCE, DAMAGE, LOSS OF DESTRUCTION

(a) Except as otherwise provided in this Lease, the Lessee at its own expense shall maintain the Containers in good condition and repair and shall be liable for all damage to and loss of any Container and make all necessary replacements of components and parts during the term of the Lease using parts and workmanship equal to, or greater than, the condition that the Containers were in at the commencement of the Lease. The Lessee shall make no changes or alterations to the Containers except with the written consent of the Lessor. The colour of the Containers, identification marks, the Lessors service mark and name or any other plates, marks or seals or writing applied to the Containers must not be removed, mutilated, obliterated or supplemented in any way without the prior written approval of the Lessor and the Lessee shall take all steps to prevent any other person doing any such act or thing. The Lessee shall keep such marks and colour in good condition and repair throughout the term of the Lease.

(b) This Lease shall terminate as to any Container which is damaged beyond economic repair, lost, seized, stolen or destroyed as of the date that:

(i) Lessee notifies Lessor of and provides Lessor satisfactory evidence of, such damage, loss or destruction and (ii) pays to the Lessor the replacement value as provided in Paragraph F of the Lease for such Container. Per Diem and other rental charges due hereunder shall accrue and continue to be payable on the Container until the date that Lessor receives payment of the replacement value of the Container. Containers totally lost or destroyed shall become the property of Lessee after the replacement value is paid to Lessor and Lessee shall be responsible for any customs fees, duties or other charges associated with the disposal of such Containers. However, in the event of total damage to a Container redelivered to a Lessor depot, Lessor shall retain all salvage rights in the Container.

(c) There is to be **NO BUFFING** to any Container unless a verbal and written communication, as well as an estimate is reviewed and authorised by Lessor. Any stains or discoloration is to be removed either by using a scotchbright pad or non-aggressive solvent only.

### 11. CONVENTION FOR SAFE CONTAINERS.

Lessor shall ensure that the Containers comply with the requirements of CSC and are CSC plated accordingly when supplied to Lessee. For the duration of this Lease, Lessee shall have and exercise all responsibilities at its expense for the maintenance, examination and repair of each Container to ensure it is in compliance with the current CSC regulations. Should approval and plating of a Container come due whilst on Lease to Lessee, Lessee shall make the Container available for such approval and plating. Application for approval and supplying plates shall be Lessors responsibility but affixing the plate and having the Container examined and inspected in accordance with CSC regulations shall be the Lessee's responsibility.

### 12. INSURANCE

(a) Lessee shall insure and keep the Containers insured at its expense throughout the term of this Lease against such risks as are usually covered by insurance in the type of business and area in which Lessee is engaged and such other risks as Lessee may require including but not limited to loss, damage or liability for physical damage to the Containers, third party liability, comprehensive automobile liability, comprehensive general liability for bodily injury to or death of persons and property damage including product liability, contractual and tortious liability, cross liability and broad form property damage liability **for an amount not less than US\$10,000,000.00 per occurrence** and shall cover the Containers while on land, afloat, in transit or at any rest anywhere in the world including particular average, general average and salvage contribution insurance and against risk of loss or damage or theft as a result of wars, strikes, riots and civil disturbance. Such insurance shall be in amounts not less than the full replacement value of the Containers

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as specified in Paragraph "F" of the Lease Agreement. Such insurance shall be under a comprehensive policy of insurance free from restriction or excess on terms and conditions as agreed by the Lessor, with an insurance company of good repute approved by Lessor.

(b) Such policy may not be cancelled or materially changed without thirty (30) days prior written notice to Lessor, and shall contain endorsements that all monies payable under such policy on the Containers are to be paid to the Lessor and the Lessee hereby appoints the Lessor as agent of the Lessee for purposes of receiving monies payable under the policy. Lessor shall receive within 10 days of collection copy of insurance.

(c) At any time following the execution of this Lease Agreement, upon demand, Lessee shall provide Lessor with certificates evidencing the insurance required under the terms of this Lease Agreement. The maintenance of insurance by Lessee shall not limit or modify Lessee's obligations under this Lease Agreement. Should Lessee fail to obtain and maintain the insurance required under this Lease Agreement for whatever reason shall constitute a material breach of this Lease Agreement by Lessee entitling Lessor to terminate this Lease Agreement for default with immediate effect and to take such other action available to Lessor under the terms of this Lease Agreement. Alternatively Lessor shall obtain insurance on behalf of Lessee, such costs to be invoiced to Lessee.

(d) Lessee shall not use or allow the Containers to be used for any purpose not permitted or covered by the terms and conditions of the said insurance policies or do or allow to be done any act or thing whereby the insurance thereunder may be invalidated.

### **(e) The International Safety Management Code (ISM Code)**

With effect from 1<sup>st</sup> July 2002, all cargo vessels and offshore drilling units greater than 500 gross tonnes have to comply with the rules and regulations of the International Safety Management Code (ISM Code). If the Lessee knowingly ships the Lessor Containers on a **non** ISM certified vessel, that party is likely to be uninsured for any loss, damage or expense incurred.

## **13. TAXES**

Lessee shall pay all taxes, fees, penalties and interest and other liens, charges or encumbrances which exist or which may be imposed during the term of the lease and levied on or in connection with or arising out of the operation, transportation, maintenance, storage, loading or other use or possession or ownership of the Containers until redelivered to Lessor, including, without limitation, withholding, deduction, income (excluding any taxes levied on Lessors net income in its country of domicile), taxes, duties and charges of any type, so that if, for any reason whatsoever, the Lessee is unable to make any payment without a deduction or withholding, it will pay such additional amount so that the net amount received by Lessor will equal the full amount Lessor would have received had such deduction or withholding not been made.

## **14. FORCE MAJEURE**

The obligations of the Lessee under this Agreement are conditional and performance of any type hereunder shall not be excused for any reason including, without limitation, acts of war, civil strife, revolution, governmental action, acts of public enemies, labour conflicts or fire, accident, natural catastrophe or other acts of God.

## **15. REPRESENTATIONS AND WARRANTIES**

The Lessor makes no representations or warranties, express or implied concerning the quality or condition of the Containers or their fitness for any particular purpose or suitability for any given use or trade. The Lessee shall not rely on any representation whatsoever or howsoever made in relation thereto and no conditions or warranty has been made or given on behalf of the Lessor and all conditions and warranties and all liability for any representations or misrepresentations whatsoever on the part of the Lessor are hereby expressly excluded and extinguished.

## **16. OWNERSHIP**

As between the Lessor and the Lessee, ownership of the Containers shall at all times remain with the Lessor. The Lessee shall have quiet possession during the term of the Lease. Some of the containers on lease to the Lessee may be owned by a third party and leased by it to Lessor or managed on behalf of it by Lessor for subleasing to it's

customers, including the Lessee.

## **17. CUSTOMS AND EXCISE VAT**

The Lessee hereby confirms that the Containers leased under the terms of this Lease Agreement will be used only for the transport of freight outside the U.K., or to or from a place outside the U.K. On this understanding, rental payments are zero rated for purposes of VAT.

Where appropriate, the Lessee shall keep records to account for its use, export or other disposal to the satisfaction of the Commissioners of Customs and Excise.

## **18. MISCELLANEOUS**

(a) Lessee may not assign or transfer its rights or responsibilities under this Lease Agreement to any other party without the prior written consent of Lessor. Lessee is responsible for complying with all terms and conditions of this lease, and paying all charges due under this lease, throughout the term of the Lease, even if a Container is used by a party other than the Lessee, with or without Lessee's or Lessors consent. The Lessor may grant a security interest in and may assign any or all of it's rights, title or interest in the Containers or the Lease, including it's right to receive payment hereunder.

Lessee shall not assign, mortgage, charge, pledge or otherwise encumber the Lease or the Containers in whole or in part.

(b) Any notice served hereunder shall be sufficiently served if served personally or sent by first class mail postage prepaid, or by telex or telegram or facsimile (if receipt is electronically confirmed) to the address of the party to be served as set forth on the first page of this Agreement. Any notice sent by mail shall be deemed to be received five (5) working days after mailing, and any notices sent by telex, telegram or facsimile shall be deemed to have been received on the date of dispatch.

(c) The Lessor shall use all reasonable endeavours to assist the Lessee in obtaining such approvals as may be necessary for transportation of the Containers and shall provide to the Lessee or to the relevant approving authority as appropriate such technical information in respect of such Container as may be available to the Lessor at the time. During the term of the Lease, the Lessee shall submit to the Lessor any and all of the certificates of approval for transportation, or other evidence of approval as may be obtained by the Lessee and title to such certificates of approval shall pass to the Lessor.

(d) If any provision or term of this Lease is deemed or construed to be prohibited or unenforceable, the remaining provisions of the Lease shall remain in full force and effect.

Except as provided herein and any other rights and remedies to which the Lessor may be entitled are, to the extent permitted by law, cumulative and alternative. The use or exercise of any such remedy or right by the Lessor, including, without limitation, termination of this Lease Agreement shall not relieve the Lessee of any liability or obligation hereunder which was insured prior to the use or exercise thereof.

(e) No waiver by Lessor of any breach of any term of or any default under this Agreement by Lessee shall operate as a waiver of any other or future breach or default.

(f) Lessee agrees to supply to Lessor at the end of each financial year a complete audited year end financial statement of the Lessee.

(g) This Agreement shall be governed by and construed in accordance with the laws of England as to all matters including validity, construction and performance. This Lease Agreement (including the appendices and documents referred to herein) constitutes the entire agreement between Lessor and Lessee and may be modified or amended only by written agreement signed by both parties hereto. This Lease shall be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

## **19. JURISDICTION**

The Lease is made in Kent, England and shall be governed by the Laws of England and as to all matters including validity, construction and performance. Lessor and the Lessee hereby irrevocably submit themselves and their respective successors, sub-lessees and assigns to the non exclusive jurisdiction of the courts of England for the purpose of any action, suit or other proceeding arising out of, or relating to, the Lease or any of the Containers.