



The Mersey Docks and Harbour Company Limited  
Maritime Centre, Port of Liverpool, L21 1LA

**THE MERSEY DOCKS AND HARBOUR COMPANY LIMITED**

**TERMS AND CONDITIONS**

**RELATING TO**

**APPROPRIATED BERTHS IN THE PORT OF LIVERPOOL**

**AUGUST 2018**

**LIVERPOOL**

## **1. Definitions and Interpretation**

1.1 In these Terms and Conditions the following terms shall (except where the context otherwise requires or there is express provision to the contrary) have the following meanings:-

"Appropriated Berth" means the premises and water space as shown edged red and coloured blue respectively on the plan annexed hereto together with the buildings fixtures erections and other works erected or placed thereat except those that are occupied or used exclusively by the Berthholders

"the Berthholders" means any company person or firm having the preferential use of the Appropriated Berth.

"Cargo" means any cargo goods or commodities which are permitted hereunder by the Company to be loaded onto or unloaded from a Vessel at the Appropriated Berth.

"the Company" means The Mersey Docks and Harbour Company Limited of Maritime Centre, Port of Liverpool L21 1LA.

"Data Protection Legislation" means all applicable data protection and privacy legislation, regulations and guidance including, without limitation the Data Protection Act 2018, the GDPR (Regulation (EU) 2016/679) (as amended or re-enacted from time to time and including any replacement or subordinate legislation). Terms in this agreement shall, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.

"the Charge" means the sum payable to the Company by the Berthholders in respect of their use of the Appropriated Berth.

"Harbour Master" means the Marine Operations Manager or other officer appointed by the Company to act as Harbour Master for the Port of Liverpool.

"Vessel" means any vessel which is permitted hereunder by the Company to be loaded or unloaded at the Appropriated Berth.

1.2 The headings to clauses are for ease of reference only and shall not affect the construction hereof.

1.3 Unless the context otherwise requires the singular shall include the plural and vice versa and words imparting gender shall include any other gender.

## **2. Extent**

2.1 The Berthholders shall have the preferential but not the exclusive use of the Appropriated Berth.

2.2 The Company reserves to itself the right to use or to grant to other persons the use of the whole or any part of the Appropriated Berth during such time as it is not required by the Berthholders for the unloading, loading, delivery and receipt of Cargo.

2.3 The Company reserves to itself the right at any time or times which it shall in its absolute discretion think proper to run dry any dock or part thereof for the purposes of repairing or cleansing the same or for any purpose whatsoever and the Berthholders shall have no claim whatsoever against the Company for loss damage or expense arising therefrom or in any way connected therewith.

2.3.1 So far as circumstances permit, the Company shall give the Berthholders reasonable notice of its intention to run a dock dry and shall allow the Berthholders to have accommodation as near to the Appropriated Berth as the Company may deem

practicable for the loading and unloading of Vessels and for the receiving, delivery and handling of Cargo having regard always to the reasonable requirements of and the obligations of the Company to other users of the Port of Liverpool.

2.3.2 If the Appropriated Berth or any part thereof shall be rendered incapable of use for the loading and unloading of Vessels thereat in consequence of the exercise by the Company of its rights of running dry a dock and no reasonable alternative accommodation is provided by the Company for the Berthholders' vessels then in such events the Charge or a fair proportion thereof according to the extent of the incapacity sustained to the Appropriated Berth as aforesaid shall be suspended until such time as the Appropriated Berth or a part thereof shall again be rendered fit for the purpose aforesaid PROVIDED ALWAYS that if the exercise of the said rights of the Company is caused by or arises from any act neglect or default of the Berthholders their agents servants independent contractors or any other person whomsoever in or on the Appropriated Berth or on any vessel with the Berthholders' permission express or implied or the condition of any goods or cargo in or on the Appropriated Berth or on any vessel then in such event the Charge shall continue to be payable in full without any suspension or abatement thereof.

2.4 The Company its servants agents and other persons authorised by it shall have the right at any time or times:-

2.4.1 to pass and repass over and along the Appropriated Berth or any part thereof for all purposes in connection with its rights and duties as the Harbour Authority for the Port of Liverpool;

2.4.2 to enter the Appropriated Berth and the transit shed (if any) situate thereat to view the cargo passing through and the condition of the Appropriated Berth;

2.4.3 to inspect and maintain the Appropriated Berth and the fire fighting and life saving equipment thereat;

2.4.4 to enter for any other purpose;

and the Berthholders shall afford all reasonable facilities to give effect to the said rights.

### **3. Quay Rent**

3.1 Goods deposited on the Appropriated Berth may remain thereon without payment of any quay rent until 17.00 hours on the third working day next after the day on which the goods were deposited, but the Company shall be entitled to levy a quay rent at the rate prescribed in the Company's general rules and regulations in that regard for every day then next ensuing that such goods may remain on the Appropriated Berth but without prejudice to the Company's statutory powers of removing any goods on the Appropriated Berth.

3.2 The Berthholders shall when requested by the Company furnish to them a written list of all goods landed or deposited at or removed from the Appropriated Berth showing the day on which the respective goods included in such list were landed deposited or removed.

### **4. Use of Appropriated Berth**

4.1 The Appropriated Berth shall be used only for the purpose of:

4.1.1 loading and unloading Cargo into and from Vessels,

4.1.2 moving/handling and subsequent delivery of inward Cargo landed from Vessels berthed at the Appropriated Berth, and

4.1.3 moving/handling outward Cargo received at the Appropriated Berth for loading into Vessels berthed thereat.

4.2 The Appropriated Berth shall not be used for the lying up or repair of any vessel or any purpose other than as aforesaid without the consent of the Company which consent may be withheld at its absolute discretion or granted upon such terms and conditions as the Company might see fit.

4.3 Not more than 3% of the floor area of any transit shed at the Appropriated Berth may be used for the erection of offices or other purposes of the Berthholders.

4.4 No works or alterations at the Appropriated Berth shall be carried out by or on behalf of the Berthholders without the express permission of the Company and then only in strict accordance with plans and specifications first submitted to and approved by the Company which approval may be given subject to conditions.

4.5 Any buildings or other structural works or alterations erected or carried out at the Appropriated Berth which are for the exclusive occupation of or use by the Berthholders shall be subject to a lease or tenancy agreement between the Berthholders and the Company upon such terms and conditions as the Company may determine.

## **5. HM Revenue and Customs**

5.1 Any accommodation which may be required by HM Revenue and Customs in connection with the Berthholders use of the Appropriated Berth shall be provided by the Berthholders at their own expense.

5.2 The Berthholders shall comply with all the requirements and conditions of HM Revenue and Customs applicable from time to time.

## **6. Indemnity for Customs Duties and other taxes**

The Berthholders shall indemnify the Company against any claims for HM Revenue and Customs Duties or other taxes on goods landed or deposited at the Appropriated Berth in connection with the Berthholders' use of the Appropriated Berth.

## **7. Maintenance and Repair**

7.1 The Berthholders shall reimburse to the Company a proportion according to user of all expenses (including overhead charges of the Company) incurred by the Company in maintaining the Appropriated Berth in good repair and condition.

7.2 The Berthholders shall reimburse to the Company all expenses (including overhead charges of the Company) incurred by the Company in repairing any damage to the Appropriated Berth whatsoever howsoever arising (other than by storm or tempest, fire, lightning or explosion or occasioned by the Company or other users authorised pursuant to Clause 2.2) out of or in consequence of the use or occupation of the Appropriated Berth by the Berthholders, their servants agents or independent contractors.

## **8. Cleaning**

8.1 During such time as the Appropriated Berth is being used by the Berthholders, the Berthholders shall:

8.1.1 keep all floors and surfaces and any stairways of the Appropriated Berth and such portions of any quay as are for the time being used by them, their servants,

independent contractors or agents for the purpose of their operations clean and free at all times from obstruction or substances likely to cause injury or damage to persons or property.

8.1.2 keep clean all other parts of the interior of the Appropriated Berth and its fittings and the interior and exterior of the doors at reasonable intervals.

8.1.3 keep all door guide and slide rails, door wheels and any roller shutter doors so cleaned, maintained and lubricated as to permit the doors to be freely opened and closed at all times.

8.2 If in the opinion of the Company the Berthholders fail to carry out any of the requirements of this Clause 8 the Company shall be at liberty to do the work by its own workmen or by contractors and the Berthholders shall reimburse the Company the expense incurred by them in so doing.

## **9. Health and Safety Requirements**

The Berthholders shall be responsible for compliance with and will indemnify the Company against any claims (including all costs in connection therewith) for damage for breach of the Health and Safety at Work etc. Act 1974 (or any modification or re-enactment thereof), the Management of Health and Safety at Work Regulations 1999 and all regulations and codes of practice pursuant or ancillary thereto as though they were the occupiers of the Appropriated Berth and/or employers of personnel engaged in working there, and the provisions of Safety in Docks: Approved Code of Practice ("ACOP L148") (or any modification or replacement of those provisions) insofar as concerns work safety and emergency procedures as though they were the persons having the general management and control thereof, PROVIDED that nothing in this Clause shall extend (i) to any breach of the 1974 Act, The 1999 Regulations, or ACOP L148 occurring only whilst the Appropriated Berth is not being used by the Berthholders their servants agents or independent contractors or (ii) to a defect in the structural condition of the realty comprised in the Appropriated Berth which existed at the date of the appropriation or of which the Berthholders have given the Company notice reasonably sufficient to enable them to take steps to remedy the breach.

## **10. Other Statutory Requirements**

The Berthholders shall reimburse to the Company any expense incurred by it in complying with any duty placed upon it (whether as owner of the Appropriated Berth or otherwise) by or under any statute or regulation for the time being in force (including but not limited to those referred to in clause 9 above)) for the benefit welfare health or safety of persons employed thereat or members of the public as a consequence of the Berthholders' use of the Appropriated Berth or the operations performed thereat in connection with the Berthholders' use of the Appropriated Berth.

## **11. Cranes and other Lifting Machinery**

11.1 The Berthholders shall have the right to the preferential but not exclusive use of the Company's quay cranes (if any) and other lifting machinery at the Appropriated Berth for the handling of Cargo in transit through the Company's docks subject to the Berthholders paying for all electricity used thereby and providing whilst so used all necessary drivers and other personnel therefor at their own expense. When not required by the Berthholders for the purpose aforesaid, such cranes and other lifting machinery may be allotted by the Company for use by other persons.

- 11.2 The Berthholders shall keep the said cranes, and other lifting machinery (including wires, ropes, chains, pipes and other gear pertaining thereto or used therewith) in good repair and condition to the satisfaction of the Company, damage by fire lightning or explosion and by other users authorised by the Company pursuant to Clause 2.2 excepted, and except as aforesaid to ensure that they are in such repair and condition on the termination of their appropriation.
- 11.3 The Berthholders shall be responsible for the carrying out of all such works and other treatment of the said cranes and other lifting machinery (including as aforesaid) as may be requisite to ensure compliance with the provisions of the Health and Safety at Work etc. Act 1974 (or any modification or re-enactment thereof) and any Regulations thereunder, including but not limited to the Lifting Operations and Lifting Equipment Regulations 1998, the Work at Height Regulations 2005, and all codes of practice pursuant or ancillary thereto, and including ACOP L148 (or any modification or replacement thereof).

**12. Fire Prevention Apparatus**

- 12.1 The Berthholders shall repay to the Company a proportion according to the Berthholders' use of the Appropriated Berth of any costs incurred by it in maintaining the fire fighting equipment (including all portable equipment and hose reels but excluding any mains water pipes) provided by the Company at the Appropriated Berth and shall repay any costs incurred by the Company in replacing any such equipment as may be lost or destroyed (except so far as such loss or destruction may be proved by the Berthholders to be caused by the Company or other users authorised pursuant to Clause 2.2 or be proved to have occurred during such time as the Company or other users authorised as aforesaid have the use of the Appropriated Berth).
- 12.2 The Berthholders shall ensure that the relevant provisions of the Regulatory Reform (Fire Safety) Order 2005 are strictly adhered to in respect of all circumstances appertaining to their use of the Appropriated Berth, and shall adopt every precaution that may be necessary or expedient to prevent damage by fire (including the maintenance of ready access to fire fighting appliances) or by any other cause.

**13. Surface Loadings**

The Berthholders shall not place on the Appropriated Berth or on any part or floor thereof weights in excess of those which may from time to time be fixed in writing by the Company and shall apply to the Company to have such weights fixed.

**14. Installations and Services**

- 14.1 The Berthholders shall be allowed at their own expense to connect and keep connected during the continuance of the appropriation the installations and facilities if any in or on the Appropriated Berth with the main services of drainage water gas and electricity such connections to be made in such positions as shall be approved by the Company's representative and at all times maintained by the Berthholders to the reasonable satisfaction of the said representative of the Company.
- 14.2 The Berthholders shall have the use of such services mentioned above as are provided at the Appropriated Berth and shall be responsible for the payment of all charges in respect of electricity gas and water consumed thereat and for the rent of meters and the maintenance of and repair of all damage sustained by the meters and all pipes and equipment on the user's side thereof such charges being at the rates charged from

time to time by the appropriate authorities.

**15. Insurance**

15.1 The Company shall insure the Appropriated Berth excluding the Berthholders' machinery plant and fittings thereat against loss or damage by fire lightning or explosion as described in the Company's policies of insurance.

15.2 The Berthholders shall be responsible for insuring the Appropriated Berth against loss or damage by impact or collision arising out of or as a consequence of their use of the Appropriated Berth and the Company's cranes and other lifting machinery thereat against damage by break-down, damage by extraneous cause (other than fire lightning or explosion) arising as aforesaid and liability to third parties in the joint names of the Berthholders and the Company with an insurance company or companies approved in writing by the Company in an amount which from time to time will in the opinion of the Company afford adequate cover against the risks of loss or damage as aforesaid and will produce to the Company whenever required the policy or policies of insurance and the receipts for premiums thereon and in default thereof the Company may insure and keep insured the Appropriated Berth and the Company's cranes and other lifting machinery thereat and pay the premiums payable in respect thereof and the premiums so paid and all incidental expenses shall be repaid by the Berthholders to the Company on demand. No requirements by the Company as to the amount of the insurance to be provided by the Berthholders shall be regarded as a warranty as to the sufficiency thereof for the purpose of rebuilding reparation or reinstatement of the Appropriated Berth or the Company's cranes and other lifting machinery and if from any cause whatsoever the money received in respect of such insurance shall be insufficient for that purpose the Berthholders shall make good the deficiency AND the Berthholders shall in the event of the Appropriated Berth or the Company's cranes or other lifting machinery being damaged or destroyed and the insurance money under any policy of insurance effected thereon being partly or wholly irrecoverable by reason of any act or default of the Berthholders forthwith rebuild and reinstate at their own expense the Appropriated Berth or the Company's cranes or other lifting machinery to the reasonable satisfaction of and under the supervision of the Company's representative, the Berthholders being allowed towards the expenses of so doing the amount (if any) actually received in respect of each damage or destruction under any such insurance.

**16. Indemnity**

16.1 The Berthholders shall (subject to Clause 7) be responsible for and provide against all the risks and contingencies of their use of the Appropriated Berth and will indemnify the Company against all proceedings and claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or (except so far as may be caused by other users authorised by the Company pursuant to Clause 2.2) out of the condition of the Appropriated Berth or the machinery plant or fittings thereat or therein or works ancillary thereto or of any act neglect or default of the Berthholders their contractors or agents or their respective servants.

16.2 The Berthholders will also pay to the Company full compensation for all damage done to or suffered by the estate property or works of the Company and arising as aforesaid.

**17. Bye-Laws and Directions**

The Berthholders shall obey all the Bye-Laws and regulations of the Company from

time to time and all lawful Directions of the Company's Harbour Master or other authorised officers.

**18. Nuisance**

The Berthholders shall not deposit or do nor permit or suffer to be deposited or done at the Appropriated Berth anything which the Company the Port Health Authority or any other Civil Authorities may consider dangerous or a nuisance.

**19. Advertisements**

The Berthholders shall not erect or put up any sign or advertisement at the Appropriated Berth without first obtaining the consent in writing of the Company which consent shall not be unreasonably withheld but may be subject to such terms and conditions as the Company may consider necessary.

**20. Local Rates**

In the event of the Appropriated Berth or any part thereof being entered in the Valuation List as a separately rateable hereditament the Berthholders, so far as they are the rateable occupiers, shall pay or bear the amount of the rates payable thereon.

**21. Protection of Goods**

All goods on or within the Appropriated Berth (except goods which are being loaded, discharged, received or handled by the Company or by another person authorised to use the Appropriated Berth pursuant to Clause 2.2) are the sole responsibility of the Berthholders in every respect. The Company have no custody of such goods and will not be responsible for loss or damage caused by fire theft weather or otherwise howsoever and the Berthholders will indemnify the Company against all proceedings claims and expenses (including legal costs on a full indemnity basis) whatsoever arising out of or in consequence of such loss or damage as aforesaid.

**22. Removal of Portable Buildings**

The Berthholders may at any time prior to the termination of the appropriation with the prior consent of the Company and shall if not later than one month prior to the termination of the appropriation they are requested to do so by the Company at their own cost remove any portable buildings or other works machinery plant fixtures or fittings which may have been erected or placed by or on behalf of the Berthholders at the Appropriated Berth and, in the event of any alteration to the Appropriated Berth being carried out pursuant to the provisions of Clause 4.4, to reinstate the Appropriated Berth to the state it was in prior to any such alteration being carried out, such removal or reinstatement to be completed prior to the termination. The Berthholders shall also at their own cost if so required by the Company after such removal or taking away leave the Appropriated Berth in good and substantial repair and condition and to the satisfaction of Company's representative.

**23. Materials falling into the Dock**

The Berthholders shall take all reasonable precautions to prevent materials substances articles or other deposits from falling into or entering the Company's dock system and in any such event the Berthholders shall be responsible for removing the same from the said dock system or otherwise making good the damage at the Berthholders



expense.

**24. Stevedoring**

- 24.1 All operations carried out by the Berthholders and their employees, agents and independent contractors on MDHC's Dock Estate shall be performed strictly in accordance with all relevant statutory requirements governing health and safety.
- 24.2 All workers engaged by the Berthholders on stevedoring or other operations at the Appropriated Berth shall be properly trained for the work on which they are engaged.
- 24.3 The Berthholders shall comply fully with MDHC's "Code of Safe Practice for tenants licensees and others having control of cargo operations within the Port of Liverpool" from time to time in force, a current copy of which is attached hereto as Appendix (i).

**25. Variation**

The foregoing conditions may be amended or varied at any time in such respects and in such manner as the Company may consider desirable.

**26. Data Protection**

- 26.1 The Company may collect and process information relating to the Berthholders in accordance with the privacy notice which is available on the Peel Ports Group website. Each Party agrees to comply with their respective obligations under the Data Protection Legislation.

Appendix (i)

**THE MERSEY DOCKS AND HARBOUR COMPANY LIMITED ("MDHC")**

**CODE OF SAFE PRACTICE FOR TENANTS,  
LICENSEES AND OTHERS HAVING CONTROL OF  
CARGO OPERATIONS WITHIN THE PORT OF LIVERPOOL**

It is the responsibility of the tenant/licensee or other operator under Sections 2, 3, and 4(3) of the Health and Safety At Work Act 1974, as the person in overall control of operations, to ensure the safety of his employees, his contractors and others who might be affected by his undertakings. In so doing, such tenants, licensees and other operators must ensure, inter alia, that:-

1. their employees, and any contract labour they employ, have attended a safety induction course approved by MDHC;
2. persons attending an approved safety induction course shall sign a registration document as proof of their attendance and carry a passport badge at all times;
3. their employees, and any contract labour they employ, who act as plant drivers are in possession of a current and valid driving licence relating to the plant they drive;
4. they conduct, and produce on demand to any responsible official of MDHC, written risk assessments of their operations which may cause harm to any employee, visitor or passer by;
5. their employees, and any contract labour they employ, are supplied with and wear protective clothing. Such clothing shall be supplied by their respective employer;
6. all operations which they, their employees, agents or independent contractors carry out on the Dock Estate shall be performed strictly in accordance with all relevant statutory requirements governing health and safety, including inter alia the Management of Health and Safety At Work Regulations 1999;
7. they comply with all relevant provisions relating to dock operations, warehousing, transport and meat/fresh produce preparation/packing operations;

in so far as such matters relate to their cargo handling operations within the Port of Liverpool.

**DECLARATION ON BEHALF OF THE TENANT/LICENSEE/OPERATOR**

I have read this Code of Safe Practice and agree to comply fully with its contents.

Signed:  
Position:

Name (block capitals):  
Company:

Date:

May 2018