



Heysham Port Limited
Maritime Centre, Port of Liverpool L21 1LA

HEYSHAM PORT LIMITED

TERMS AND CONDITIONS

FOR HANDLING GENERAL CARGO

May 2018

Heysham

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1. Interpretation

In these conditions:

- 1.1 “the Berth” means any berth operated by the Company in the Port and shall include any quay, transit shed or other area situate thereat, save as provided in Clause 4.

“cargo handling services” means any operation or service specified in Schedule “A” hereto performed or provided by the Company in connection with the receiving or delivering of goods or the loading or discharging of goods into or from a Shipowner’s vessel or the temporary storage of such goods.

“the Cargo Owner” means the owner of any goods and any bailor bailee consignor shipper consignee or other respective agents in relation thereto (but shall not include the Company).

“charges” includes charges of every description for the time being payable to the Company in respect of cargo handling services.

“the Company” means Heysham Port Limited whose registered office is situate at Maritime Centre, Port of Liverpool L21 1LA, England.

“Data Protection Legislation” means all applicable data protection and privacy legislation, regulations and guidance including, without limitation the Data Protection Act 1998, 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 Dock Estate” means the docks quays berths stages jetties bridges and all works lands and property of every description whatsoever and the buildings structures and erections thereon for the time being vested in or occupied by the Company.

“goods” means any cargo, merchandise articles and things of any description (including any packages or containers within or by which the said cargo merchandise articles and things may be contained or carried) including, but without prejudice to the generality of the foregoing, fish, livestock and animals of all descriptions and also liquids and gases but excluding stores and bunkers.

“the Harbour Master” means the Marine Operations Manager or other Officer appointed by the Company to act as Harbour Master as defined by The Heysham Harbour Byelaws 1979 or any modification or re-enactment thereof.

“the Owner” means the Shipowner and/or Cargo Owner, as appropriate.

“the Port” means the Heysham Harbour as defined in the Sealink (Transfer of Heysham Harbour) Harbour Revision Order 1991 or any statutory modification or re-enactment thereof.

“the Shipowner” means the owner of any vessel to which these Terms and Conditions relate and any part owner charterer master or other person in charge of the vessel disponent owner consignee or mortgagee in possession.

“Timber Cargo” means packaged timber, logs, forest products, kiln dried timber and panel products, (including all by-products thereof) together with any packages or containers within or by which the said Timber Cargo may be contained or carried.

- 1.2 Words importing the singular shall include the plural and vice versa unless the context otherwise requires.
- 1.3 The headings for clauses are for ease of reference only and shall not affect the construction hereof.
- 1.4 Reference herein to any statutory provision includes reference to any consolidation, re-enactment or modification thereof.
- 1.5 Reference to clauses or schedules are references to the clauses and schedules of these Terms and Conditions unless otherwise stated.

2. Berths and Services

The Company shall provide the use in common with vessels in other ownerships of a Berth and shall provide or perform cargo handling services thereat upon the terms and conditions mentioned below.

3. Notice and Warranty of Authority

- 3.1 Use of a Berth and or cargo handling services by the Shipowner or Cargo Owner shall be deemed to constitute notice of and agreement to these Terms and Conditions provided that prior to the use of the said Berth or services the Company shall take all reasonable steps to ensure that the Shipowner or Cargo Owner is aware of these Terms and Conditions and that copies are available on request.
- 3.2 The Shipowner further warrants that in accepting the services subject to these Terms and Conditions that it does so for itself and with full authority on behalf of the Cargo Owner and agrees to fully indemnify the Company in respect of all liability, costs, expenses, damages and losses and other consequences whatsoever arising in the event that the Cargo Owner has not given such authority or lacks authority in any respect.

4. Extent

These Terms and Conditions shall be applicable during such time as a Berth is being used by a vessel for the used by a vessel for the loading or discharging of ship's stores or bunkers and at any time a berth quay used by a vessel for the loading or discharging of goods by the Company or the transit shed or other area at the Port is being used for

the receiving or delivering, loading or discharging, or temporary storage of goods by the Company.

5. Manning and Performance of Cargo Handling Services

- 5.1 Subject to these Terms and Conditions, the Company shall provide supervision, labour, plant and equipment as available for the discharging, loading, receiving and delivery of goods.
- 5.2 The Company may in its absolute discretion elect to commence shipworking in respect of any vessel at any time and on any day, and, provided that the Company has given due notice thereof to the Shipowner or Cargo Owner as appropriate, the said Shipowner or Cargo Owner shall take such steps as shall be prudent and necessary to facilitate the commencement of such shipworking at the time and date specified in such notice given by the Company.
- 5.3 The Company shall be entitled not to commence cargo handling operations until a suitable berth, quay and, if required, transit shed and suitable plant and equipment are available and sufficient port operations workers and other employees are available to perform cargo handling services on the vessel, the quay or in the transit shed. After the commencement of cargo handling services on a vessel or quay, they will be continued as and to the extent that plant and port operations workers and other employees are reasonably available in all the circumstances from time to time bearing in mind the need to meet the requirements of other users of the Port. No liability shall attach to the Company in consequence of its not commencing or continuing cargo handling services for the reasons specified in this Clause.
- 5.4 The Company shall perform or provide such of the cargo handling services as the Company in its reasonable discretion considers appropriate and expedient for each vessel and its cargo or for particular goods unless instructed to the contrary in writing by the Shipowner or the Cargo Owner.
- 5.5 The Company may use such plant and equipment on cargo handling services as it considers suitable for the type of cargo being handled.
- 5.6 All stevedoring or other operations to be performed by the Company shall be performed in accordance with the normal working practices of the Company. The Company reserves the right to alter such working practices at any time and without prior notice to the Owner or his haulier.
- 5.7 Without prejudice to the generality of the foregoing when a cargo is exceptionally difficult to work due to unsoundness of the cargo, bad or collapsed stowage, damage to the cargo or the vessel or other matter creating exceptionally difficult working conditions then the Company may in its absolute discretion elect whether to perform or provide or continue to perform or provide cargo handling services and if it should so elect and inform the Shipowner for that vessel thereof then the Company shall not be liable for any loss or damage whatsoever howsoever caused (including where caused by the negligence of the Company its servants agents or independent contractors) to the cargo or the vessel including any claim for loss of use or loss of a particular market and the said Shipowner shall indemnify the Company against all proceedings claims and expenses arising out of or consequent on any such election by the Company including all proceedings claims and expenses relating to the handling of cargo on the quay or in a shed. The Company by reason of its specialised knowledge shall be the sole arbiter

as to whether a cargo is exceptionally difficult to work or not.

The Company shall have the right, having made an election, to subsequently reverse that election in the light of circumstances then prevailing and no liability shall attach to it thereby.

All extra costs charges and expenses incurred by the Company hereby shall be repaid by the Shipowner of the vessel on which the cargo was or was to be consigned.

6. Force Majeure

The Company shall not be liable for any failure to perform or provide any of these Terms and Conditions or for any loss and or damage arising or resulting from Act of God; Casualty (including fire or explosion) unless caused by the negligence of the Company, its servants or agents; damage; breakdown; any consequence of war or hostilities (whether war be declared or not); riots, civil commotions or invasions; industrial disputes or actions of any nature; storm, flood, earthquake, subsidence, epidemic or other natural physical disaster; act of any Government or any other cause or event which could not be avoided and the consequence whereof could not be prevented by the exercise of reasonable care by the Company.

7. Vessel on Berth

7.1 The Company shall permit a vessel once on a Berth to remain at the Berth until the completion of cargo handling services in relation to that vessel (provided that the master shall ensure that the vessel shall at all times remain always safely afloat), but subject to the discretion of the Company in regard to its operational requirements for the Berth and to the statutory powers of the Harbour Master of ordering the movement of vessels within the Port.

7.2 A Shipowner may with the prior approval of the Company and at agreed times load/discharge stores and bunkers whilst a vessel is on a Berth, subject to such terms and conditions as the Company may from time to time specify and provided also that such loading or discharging does not interfere with the operational activities of the Company.

8. Arrival of Vessel

The expected date of arrival of each vessel and notification of each vessel's expected time of arrival at the Berth ("E.T.A.") shall be given in writing by the Shipowner to the Harbour Master and to the Company's authorised cargo handling representative not later than seven days prior to the said date of arrival or such lesser period as may be agreed to by the Company and all changes to that date shall be promptly notified by the Shipowner to the Harbour Master and the said authorised representative. Notice of the vessel's final E.T.A. at the Berth shall be given in writing to the Harbour Master and the said authorised representative between the hours 0800 to 1600 Monday - Thursday inclusive, 0800 to 1200 Friday and not later than 24 hours (excluding Bank or other National Holidays) prior to the said time of arrival.

9. Working Periods

9.1 Cargo handling services may be performed or provided during the following working periods (except on Christmas Day, Boxing Day and New Year's Day) unless otherwise notified in writing by the Company:-

(a) Shipwork (loading/discharging cargo)

0700 - 1900 hours Monday to Friday inclusive (Midweek Periods)

0700 hours Saturday to 0700 hours Monday (Weekend Periods)

(b) Other cargo handling services (including receiving/delivering cargo)

0800 - 1700 hours Monday to Friday inclusive (Midweek Periods)

In the context of this Clause 9, Bank and other National Holidays shall be deemed to commence at 0700 hours on the relevant Holiday and be of 24 hours duration.

9.2 Shipwork performed at the request of a Shipowner or Cargo Owner for more than 8 consecutive hours between 0700 hours Monday and 0700 hours Saturday (except on Bank and other National Holidays), will be subject to additional charges as specified by the Company from time to time - subject to a minimum charge of 4 hours per gang.

9.3 Work performed at the request of a Shipowner or Cargo Owner outside the Midweek Periods specified in Clause 9.1 (except on Bank and other National Holidays), will be subject to additional charges as specified by the Company from time to time - subject to a minimum charge of 4 hours per gang.

9.4 Work performed at the request of a Shipowner or Cargo Owner on Bank and other National Holidays (i.e. between 0700 hours on a Bank or other National Holiday and 0700 hours the following day), will be subject to additional charges as specified by the Company from time to time - subject to a minimum charge of 8 hours per gang.

9.5 The Company reserves the right to elect to commence shipworking on the vessel at any time on any day and to work for 12 consecutive hours thereafter ("the First Working Period") at no additional cost to the Shipowner or Cargo Owner, but in such event the provisions of Clause 9.7 shall apply.

9.6 The Shipowner or Cargo Owner may request that arrangements be made for 24-hours-a-day shipworking on the vessel. In such event, and subject to the agreement of the Company, the Company shall provide shipworking on that vessel for the first 12 consecutive hours ("the First Working Period") in each 24-hour period at no additional cost to the party requesting such working arrangement, but in such event the provisions of Clause 9.7 shall apply.

9.7 In consideration of each occasion that the Company provides shipworking gangs to work a vessel during the First Working Period at no additional cost to the Shipowner or Cargo Owner pursuant to Clauses 9.5 or 9.6, the Shipowner or Cargo Owner shall employ the Company to work the vessel during the next following 12 consecutive hours ("the Second Working Period") and to provide such number of shipworking gangs therefor as is considered reasonable by the Company. In such event, shipwork performed or provided in the Second Working Period will be subject to additional charges as specified by the Company from time to time.

10. Time Lost

- 10.1 Where labour has been arranged by the Company in reliance on the vessel's final E.T.A. given to the Company pursuant to Clause 8 or in compliance with the Shipowner's request that work should commence at or finish before a particular time, and time is lost consequent on a vessel's late arrival or non arrival at the Berth or due to material delays attributable to the Shipowner or to adverse weather, then the period of working time with labour standing by will be charged for as specified in Clauses 10.2 and 10.3.
- 10.2 Time lost shall be deemed to commence at the time for which labour has been arranged and to cease when a vessel is safely secured at its intended berth and ready to work, or, if later, on the termination of the period for which labour has been arranged; and the time lost calculated thereby shall be charged to the Shipowner at the rates specified by the Company from time to time.
- 10.3 Time lost or work delayed due to adverse weather, or to material delays attributable to the Shipowner its servants agents or independent contractors (other than the Company), shall also be charged to the Shipowner, at the rates specified by the Company from time to time; Provided always that the Shipowner shall not, in any event, be liable to pay the time lost or work delayed charge if such time lost or work delayed occurs or is solely as a result of breakdown of the Company's plant or equipment, or labour disputes between the Company and its employees at the Berth, unless occasioned by or resulting from the act or default of the Shipowner, or its servants, agents, independent contractors or sub-contractors or any other circumstances not being the act or default of the Company. Any additional charge payable pursuant to Clause 9 ("Overtime Charge") shall nonetheless remain payable notwithstanding the above proviso.
- 10.4 Notice of cancellation of shipwork labour previously arranged by the Company in reliance on the vessel's final E.T.A. given to the Company pursuant to Clause 9, or in compliance with the Shipowner's request that work should commence at or finish before a particular time:
- (a) for any working period for which an Overtime Charge is payable - must be received by the Company not later than 1200 hours on the normal working day, Monday to Friday inclusive (Bank/National Holidays excepted), next preceding the day for which such labour has been arranged.
 - (b) for any other working period - must be received by the Company not later than 24 hours before the start of the working period for which labour has been arranged.
- If such notice is not duly received, then the relevant Overtime Charge and/or, at the Company's discretion, charge for lost time will remain payable in full by the Shipowner.

11. Provision and Use of Gear, etc.

- 11.1 The Shipowner shall permit the Company the full use of all lighting, cranes, gantries, winches, derricks, runners and tackle on the vessel and shall supply full power therefor and for lighting at all times without charge. The Shipowner shall provide all necessary standing and running gear, hatch and winch tents, gear and dunnage.
- 11.2 All the equipment and gear referred to in Clause 11.1 shall be maintained in good working order by the Shipowner and before work commences the Shipowner shall produce to the Company a current certificate of test for such equipment and gear showing the same meets the requirements of any statute, order or regulation then in force within the United Kingdom.

- 11.3 To the extent that the equipment and gear referred to in Clause 11.1 is not available to the Company or is not maintained or certified in the manner specified in Clause 11.2, the Company shall be at liberty at its discretion and subject to availability to supply the same at the expense of the Shipowner in accordance with the Company's standard rates current from time to time.
- 11.4 The Shipowner shall indemnify the Company against any claim in relation to any accident howsoever arising out of or caused or contributed to by any defect in the equipment or gear referred to in Clause 11.1.

12. Documentation

- 12.1 All manifests shipping notes/advices, consignment notes, packing lists, documents of title and instructions and orders concerning cargo handling services must be lodged in writing with the Company between the hours 0800 to 1600 Monday - Friday inclusive and not less than 72 hours (excluding Bank or other National holidays) before the relevant service is required to be or is to be performed or provided.
- 12.2 Any tally of goods prepared by the Company in connection with the loading or discharging of any vessel or vehicle or railway wagon shall be the property of the Company which shall not be under any obligation to disclose such document to any other party as the standard of accuracy required for the Company's purposes is such that they record only approximate quantities and do not need to record marks. Thus the accuracy of any document based whether wholly or partially upon such tallies shall not be presumed by any other party unless and until such accuracy is confirmed by the Company in respect of the document in question.
- 12.3 The Company's outturn reports showing the quantity of goods delivered and damage thereto shall be deemed to be the quantity and condition of the cargo landed. Such reports shall, if required, be prepared on final delivery count from the quay, rendered within 21 days of delivery of the goods from the Berth or, if final delivery from the quay has not taken place within 6 months of the vessel from which such cargo was landed completing discharge in the Port ("the Discharge Date"), within 6 months of the Discharge Date. The Cargo Owner may request the Company in writing to provide an indication of outturn for a vessel within 10 working days of such vessel completing discharge in the Port.
- 12.4 Where goods received from a vessel by a Cargo Owner are damaged or are less than the quantity stated on the relevant bill of lading (or similar document evidencing receipt, including waybill), the Cargo Owner may request the Company in writing to provide within a reasonable period of time an Outturn for the goods described on the bill of lading applicable thereto for the purposes of assisting him in making a claim in respect of the alleged damage or shortfall.

13. Accuracy of Particulars of Cargo

The Shipowner shall be deemed to warrant the accuracy of all descriptions, values, weights and other particulars of any goods supplied to the Company for any purpose whatsoever or marked thereon in relation to cargo handling services and shall indemnify the Company against all proceeding claims expenses and pecuniary penalties that the Company may suffer or incur as a result of any inaccuracy or omission therein.

14. Unsound Cargo

Where cargo is not sound cargo able to be worked under normal conditions on a normal vessel or, at the discretion of the Company, for any other reason such that a reasonable rate of receiving loading or discharging delivering is not achievable, and in such regard the Company by reason of its specialised knowledge shall be the sole arbiter, then the rates per tonne specified from time to time by the Company shall not be applicable but shall be substituted by the Company's standard charges for labour plant gear and equipment and, in addition, all extra costs charges and expenses incurred by the Company hereby shall be repaid by the Shipowner of the vessel on which the cargo was or was to be consigned.

15. Hazardous Cargoes

No goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature including but without prejudice to the generality of the foregoing those enumerated in the International Maritime Dangerous Goods Code as applicable from time to time will be handled by the Company except with the consent of the Company and then only in accordance with any conditions prescribed by the Company and in accordance with statutory and the Company's directions regulations and byelaws governing the handling of such goods.

All extra costs charges and expenses incurred by the Company in handling goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature shall be repaid by the Shipowner of the vessel on which they were or were to be consigned.

16. Delivery of Goods

- 16.1 No goods shall be available for delivery by the Company until such time as H.M. Revenue & Customs clearance has been obtained in respect thereof. Responsibility for the clearance of goods with H.M. Revenue & Customs rests with the owner of the goods.
- 16.2 Delivery orders in respect of goods to be delivered by the Company shall be lodged with the Company by, or on behalf of, the owner of the goods.
- 16.3 On no account will goods be delivered by the Company without production of a delivery order issued by, or on behalf of, the Shipowner in his usual form authorising such delivery and in the case of sub-orders issued by or on behalf of the owner of the goods named in the original delivery order and being in a form satisfactory to the Company and authorising such delivery.
- 16.4 The Company's normal practice is to deliver goods according to the principal or leading mark specified in the bill of lading.
- 16.5 In respect of any working period (as specified in Clause 9.1) for which the Company's employees are engaged for the purpose of delivering goods, the Company shall be at liberty to charge the Cargo Owner (in addition to the normal delivery charges in respect thereof) an additional sum in respect of any part of that working period when the Company's said employees are not employed for the said purpose or for the purpose of undertaking any other cargo handling services as defined herein. Such sum shall only

be chargeable with effect from the end of the fifth working day after the day when the discharge of the vessel from which the goods were landed is completed, and shall be limited to the amount of the whole of the payments made to the Company's said employees in respect of that part of the working period when they are not so employed, together with a sum equal to the reasonable expense of such employment and of the mechanical appliances used or to be used (or in the case of mechanical appliances on hire, if it be greater, the actual cost of hiring such mechanical appliances) including reasonable administrative expenses and overheads.

17. H.M. Revenue & Customs Examination

No extra charges will be raised for routine Customs examination of goods carried out in situ at the Berth at which the goods are discharge/received. However, additional charges will be made if the goods are stored in ISO containers or moved to another location, or if H.M. Revenue & Customs order a more extensive or thorough examination for any reason, including use of a scanning machine.

18. Check Weighing

The Company reserves the right to check the weight of any goods at the expense of the Shipowner of the vessel on which the same were or are to be shipped.

19. Non-Shipment of Goods

19.1 The receiving by the Company for and on behalf of the Shipowner of goods for shipment does not imply that such goods will be shipped. The acceptance or refusal of goods for shipment is the responsibility of the Shipowner concerned, for whom the Company accepts as agent.

19.2 Where goods are not shipped, the Shipowner shall pay to the Company such reasonable sum as the Company shall determine in relation to the work performed by the Company or in connection with the redelivery of such goods to the Cargo Owner who shall take delivery of the goods at the part of the Dock Estate at which they are lying but the Company shall be at liberty nevertheless to transfer such goods at the expense of the Shipowner to another location if in the opinion of the Company such goods could otherwise cause congestion at their existing location and to delay or decline to perform the work of redelivery until the reasonable sum aforesaid shall have been paid to them.

20. Covered Accommodation and Sheeting

20.1 If the Shipowner or the Cargo Owner requests the Company to provide sheeting or covered accommodation for weather sensitive commodities (all together referred to herein as "Dry Cargo") then the Company shall provide subject to availability such sheeting or covered accommodation provided that the Shipowner or the Cargo Owner has notified the Company in writing between 0800/1600 hours Monday to Friday inclusive (excluding Bank and other National holidays) and at least 72 hours (excluding weekends) before cargo handling services commence in respect of the vessel on which the Dry Cargo is carried. Where covered accommodation for Dry Cargo is requested but is not available at the Berth at which such cargo was discharged from a Vessel, the Company may at its discretion:

- (i) transfer such cargo to covered accommodation at another Berth - in which event the costs associated with such transfer shall be charged to the Shipowner or Cargo Owner, as appropriate, or
 - (ii) sheet such cargo,
- but in the case of panel products, tin plate and cold-rolled steel it will be the normal practice to provide undercover storage accommodation whether or not such accommodation is requested by the Shipowner.

- 20.2 Without prejudice to the generality of Clause 20.1 hereof, no responsibility shall attach to the Company as a result of its performing or not performing the services of sheeting or providing covered accommodation for Dry Cargo other than panel products, tin plate and cold-rolled steel, unless any loss or damage resulting therefrom is caused solely by the negligence of the Company, its servants, agents or independent contractors.
- 20.3 Any extra charge specified by the Company in respect of the provision of sheeting or covered accommodation for Dry Cargo other than panel products, tin plate and cold-rolled steel, shall be paid by the Shipowner or the Cargo Owner requesting such sheeting or covered accommodation.
- 20.4 Subject to Clause 20.1, the Cargo Owner warrants that the goods require for their safekeeping no special protection arising from vulnerability to heat, cold, salt, moisture, pilferage or proximity to other goods or from inflammability, but will remain safe if left standing in the open on the Dock Estate.

21. Charges

- 21.1 The charges for cargo handling services are those specified from time to time by the Company and are (subject as provided below) payable by the Shipowner or, in respect of the delivery of goods, the Cargo Owner on demand unless otherwise agreed by the Company without reduction or deferment on account of any claim counterclaim or set off.
- 21.2 If the Owner fails to make any payment due to the Company when due, then the Company may charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Notwithstanding the foregoing the Company reserves the right to require a deposit of 80% of the estimated total charges for the cargo handling services to be performed or provided, plus the full amount of any other charges as are payable to the Company in respect of such Vessel, before the commencement of such services and which deposit shall be payable on demand and failing receipt of which such services will not be commenced.
- 21.3 The above charges are in addition to conservancy, ships and goods dues as defined by the Harbours Act 1964, pilotage charges, boatmen charges and any other levies or charges (including but not limited to environmental levies) charged by the Company from time to time, together with charges for ancillary services.
- 21.4 The charges for cargo handling services specified by the Company from time to time cover the provision of such of the services as are specified by the Company in relation thereto (other than the provision of plant, gear and equipment except as expressly stated) where the cargo is sound general cargo under normal conditions on a normal vessel such that a reasonable rate of receiving loading discharging or delivering in relation to that particular vessel or cargo is achievable PROVIDED that (i) where time is lost for any reason referred to in Clause 10 such time shall in addition be charged in

accordance with the rates specified by the Company from time to time and (ii) where the charges calculated in accordance with the said rates specified by the Company for cargo handling services are less than the charges calculated in accordance with the rates specified by the Company for lost time as referred to in Clause 10 (i.e. as if the time in question had been lost) plus the cost of all plant gear and equipment supplied by the Company, then the charges to be paid by the Shipowner to the Company shall be calculated on a Labour Basis plus the cost of plant gear and equipment supplied

- 21.5 Any cargo handling services (including, but without prejudice to the generality of the foregoing, the provision of all plant gear and equipment) not specified in Schedule "A" hereto shall be a Special Service, the provision of which shall be at the discretion of the Company. Special Services, and any cargo handling services for which the rate is specified as "Labour Basis", shall be charged for in accordance with the rates of pay of the Company's employees engaged thereon (including percentage uplift for reasonable overheads) plus the Company's standard charges for plant gear and equipment or the charges of any hirer of plant or sub-contractor. All such charges shall, except in respect of any cargo handling services for which the rate is specified as "Labour Basis", be in addition to the rates per tonne specified by the Company from time to time.
- 21.6 Notwithstanding the provisions above, if any Statute or Statutory Instrument shall become compulsorily applicable to the cargo handling services performed hereunder, the Shipowner will reimburse the Company any extra cost occasioned thereby for the duration that such Statute or Statutory Instrument shall apply or until such time as the said extra costs shall be incorporated in the Company's charges for such cargo handling services.

22. Rent Charges

- 22.1 Rent charges in respect of goods situate at the Berth shall be paid to the Company as and when incurred, in accordance with the Company's general tariffs from time to time such as relate to quay rent and special rent in relation to goods .
- 22.2 Without prejudice to its statutory rights, including its rights under Torts (Interference with Goods Act) 1977, the Company reserves the right on giving 7 days prior notice to the Cargo Owner to remove goods that are on the quay or in the transit sheds at the Berth to a longer term storage area within the Dock Estate and any costs incurred by the Company in relation to or arising out of such removal and storage shall be paid by the Cargo Owner, in addition to the charges relating to such longer term storage in accordance with the Company's applicable tariffs.

23. Lien on Goods and Vessels

- 23.1 The Company shall be entitled to refuse to allow cargo discharged from a vessel, to leave the Dock Estate until (i) all charges claimed by the Company for cargo handling services whether in relation to that cargo (whenever performed) or to other cargo of the Cargo Owner have been paid or secured to the satisfaction of the Company, and (ii) security to the satisfaction of the Company has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Cargo Owner of that cargo (whether or not such claims arise in relation to that cargo or any other cargo of the Cargo Owner).
- 23.2 The Company shall be entitled to refuse to allow a vessel to leave its Dock Estate until:

23.2.1 all charges claimed by the Company for cargo handling services whether in relation to that vessel (whenever performed) or to other vessels of the Shipowner have been paid or secured to the satisfaction of the Company, and

23.2.2 security to the satisfaction of the Company has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Shipowner (whether or not such claims arise in relation to that or another vessel).

24. Bill of Lading

24.1 The Shipowner for a vessel which it is intended to sail to or from a Berth shall be the agent of the Company for the purposes of agreeing with the Cargo Owners in his usual contract of carriage to exempt or limit the liability inter alia of the Company whether as agent sub-bailee stevedore or independent contractor or otherwise howsoever.

24.2 The Shipowner shall, in its bills of lading, shipping notes and notices to shippers or similar documentation regarding conditions for carriage for receiving/delivering goods ("Carriage Documentation"), use its best endeavours to provide that whether or not the Company is acting solely for the Shipowner;

- (a) the Company shall have the benefit of all provisions therein exempting or limiting the liability of the Shipowner,
- (b) the law governing such provisions so far as relating to the Company shall be English Law determined by English Courts, and
- (c) such provisions so far as relating to the Company shall be applicable to the period that goods are at or on the Dock Estate or a vessel thereat,

The Company hereby accepts the benefit of such provisions and appoints the Shipowner as the Company's agent for the purpose of entering into the contracts of carriage evidenced by the Carriage Documentation.

If such Carriage Documentation do not so provide then the Shipowner shall, without prejudice to any other rights of the Company herein, indemnify the Company against all proceedings claims and expenses (including legal costs on a full indemnity basis) arising out of the failure to so provide.

25. Limitation of Liability

25.1 The Company shall only be liable under these Terms and Conditions for physical loss of or damage to any vessel or other property of the Shipowner or to any goods or other property of the Cargo Owner and such liability will only apply to physical loss or damage to the extent that such loss or damage exceeds £150 per occurrence or incident and is limited to occurrences proved to be caused solely by the negligence of the Company or its employees acting in the course of their employment during the performance or provision of cargo handling services hereunder provided that:

25.1.1 The Company's liability in respect of physical loss or damage to any vessel of the Shipowner shall not exceed £1 million per occurrence.

25.1.2 The Company's liability in respect of physical loss or damage to goods shall not exceed a maximum amount of £1.20 per kilo of gross weight of the goods lost or damaged but shall not in any event exceed an aggregate amount of £150,000

per occurrence or incident.

- 25.1.3 In relation to goods received for delivery or otherwise handled by the Company, the Company shall not be liable to the Cargo Owner nor to the Shipowner as bailee of the goods for (i) any misdelivery due to misleading or faint markings or absence of markings or (ii) any loss or damage arising from defects in the goods or the packaging thereof.
- 25.1.4 The Company shall be freed and discharged from all liability in respect of any physical loss or damage to any vessel or goods or equipment or any other matter or thing unless notification of a claim in respect of such loss or damage be made in writing to the Company within 30 days of the occurrence causing such loss or damage or from which such loss or damage arose (so as to enable the Company to forthwith commence investigations into the alleged loss or damage) and the claim presented including the amount of the said loss or damage be submitted in writing to the Company within six months after the said occurrence.
- 25.1.5 In the case of latent physical loss or damage to goods the Company shall be discharged from all liability unless notice of such loss or damage and the particular nature thereof has been given to the Company immediately after the Cargo Owner has been notified of or become aware of or should reasonably have become aware of such loss or damage but in any event not later than 40 days after the loading or discharging of the goods by the Company or 14 days after delivery of the goods to final consignee whichever shall be the earlier.
- 25.1.6 The Company shall in any event be freed and discharged from all liability for any loss or damage to any vessel, goods or equipment or any other matter or thing unless suit is brought (i.e. proceedings issued in a court or before a tribunal of competent jurisdiction, and served on the Company) within twelve months of the said occurrence. In the case of loss of or damage to any vessel or any other property of the Shipowner, the Shipowner shall grant full and reasonable facilities to the Company to survey all such loss or damage.
- 25.1.7 Notwithstanding the above, the Company shall have the right in any circumstances to elect or to rely on (in the alternative) any relevant statutory provisions providing for limitation or exclusion of liability.
- 25.2 Notwithstanding the foregoing provisions, in the event that the Master or Cargo Owner, or their respective representative, agent or surveyor is of the opinion that the Company has caused damage in respect of any steel goods (such as but not limited to hot/cold rolled coil, upright coil, plates, sheets, pipes/tubes, D-Bar, scaffolding, rebar, billets, beams, hollow sections, wire rod and wire rod in coil), during the discharge or other cargo handling operations of such goods, such Master or Cargo Agent, or their respective representative, agent or surveyor must notify the Company in writing at the latest at the end of each working day, giving full particulars of the alleged damage and the Company must be given the opportunity for its representative and/or appointed surveyor to inspect such damage prior to delivery taking place.

The Company accepts no liability for any claim made against them for damage to steel goods which has not been notified to the Company in the manner set out above. The Company will not consider any claim for damage to steel goods which has not been notified and recorded upon the Company's delivery receipt prior to such goods leaving the Company's care, custody and control.

25.3 Whilst the Company will use its best endeavours to collect and bind at the Berth any loose pieces of Timber Cargo, and other goods as appropriate, according to mark and will deliver the same to consignee, the Company shall not be liable for any loss or damage whatsoever arising out of or consequent on such collection and binding.

The Company shall be under no obligation to rebind such loose goods to a greater standard than is deemed by the Company to be reasonable for the safe onward transportation of such goods and in particular the Company shall not be required to rebind to the same standard as the goods were in when originally bound.

25.4 For the avoidance of doubt it is hereby declared that the Company's liability in respect of any physical loss or damage whether in contract or in tort shall not extend outside the minimum and maximum limits specified in clause 25.1 and that the Shipowner and or the Cargo Owner whichever to be at the discretion of the Company will indemnify the Company against all proceedings and claims howsoever arising and by whomsoever brought in respect of the liabilities as mentioned under this Clause so far as the amounts so claimed are outside the exclusions or limits prescribed in Clause 25.1.

25.5 The Company shall not be under any liability whatsoever for any personal injury or fatality, except where the Company is proven negligent, nor for loss damage or delay caused to vessels or goods arising as a result of the characteristics or design of the vessels or goods for mechanical handling operations including but not limited to, in the case of vessels, non compliance with class regulations, having inadequately protected tanks, there being obstructions and impediments on decks and hatches, including overhanging hatch covers, structures or fittings projecting into the stowage space and/or other parts of the vessel or its equipment which are vulnerable to damage by grabs and machines, and in the case of goods where all reasonable steps have not been taken to protect the same from damage as may otherwise occur as a result of mechanical bulk handling operations.

25.6 Save as expressly provided by Clauses 25.1 and 25.2, the Company shall not be responsible for any loss or damage whatsoever of or to any vessel or any other property of a Shipowner or of or to goods or any other property of a Cargo Owner howsoever caused or arising, and in particular the Company shall not be liable for indirect or consequential damage including any claims for loss of use or profits or the loss of a particular market.

26. Indemnity

26.1 The Shipowner or Cargo Owner as the case may be shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever arising from the use of or the presence of his vessel or goods in the Port including the Dock Estate and its facilities 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 presence or of any act neglect or default of the master of the vessel or the Shipowner or Cargo Owner their respective contractors agents or servants (other than the Company, its servants and agents) or of any inherent quality or defect of any goods on the Dock Estate or on the vessel.

26.2 The Shipowner or the Cargo Owner shall pay to the Company full compensation for all

damage done to or suffered by the Dock Estate and other property of the Company and arising as aforesaid.

27. Security

- 27.1 The provision of any security services or anti-terrorist measures in respect of a Vessel shall be the responsibility of the Shipowner.
- 27.2 The Owner shall comply in every respect with the International Ships and Ports Facility Security Code ("the ISPS Code") together with all relevant UK and EU Regulations including in particular Regulation 11 of the Ship & Port Facility (Security) Regulations 2004 (SI 2004/1495) and any instructions or directions issued by the UK Department for Transport ("DfT") relating to any of the said Regulations, and in particular the Owner shall at all times comply fully with the instructions of the Port Facility Security Officer(s) in accordance with the Heysham Harbour Port Facility Security Plan and any other such Plan approved from time to time by DfT relating to the Port and/or any other property of the Company adjacent thereto.
- 27.3 In the event that ISPS conditions, and/or the level of security threat, in the Port increases at any time, the Company reserves the right to then charge the Owner an additional charge proportional to the increase in port security costs thereby incurred by the Company in relation to the performance of the cargo handling services.

28. Protection of Company's Employees and Agents

The employees, independent contractors and agents of the Company shall be entitled to the benefit of all provisions herein which exclude or restrict liability of any kind. The Company in undertaking cargo handling services does so on its own behalf and as agent for all its employees, independent contractors and agents.

29. Data Protection

- 29.1 The Company may collect and process information relating to the Owner 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.

30. Byelaws and Regulations

Use of berths in the Port and or services described herein shall be subject to such statutes byelaws regulations and directions of the Company as may be in force from time to time.

31. Relationship to Special Agreements

These Terms and Conditions are supplemental to any special agreement made between the Company and any other party relating to cargo handling services except insofar as is expressly excluded thereby or inconsistent therewith.

32. Jurisdiction

- 32.1 All claims under these Terms and Conditions shall be determined according to the Laws of England by the English Courts to the exclusion of the jurisdiction of the courts of any other country.
- 32.2 Where these Terms and Conditions are silent on the rights and liabilities of the Company and or Shipowner or Cargo Owner, these shall be determined according to the Laws of England as aforesaid.

33. Alterations and Variations

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

LIST OF SCHEDULES

Schedule “A”: Cargo Handling Services - Normal Services

- Part I The service of Loading
- Part II The service of Discharging
- Part III The service of Receiving
- Part IV The service of Delivery

Schedule “B”: Cargo Handling Services - Special Services

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SCHEDULE "A"

CARGO HANDLING SERVICES

PART I (LOADING)

The service of LOADING will normally consist of:-

- (a) The slinging of cargo and taking from quay, shed, road vehicle, rail (where facilities allow) or craft to ship's side, loading and stowing in vessel's cargo space or deck.
- (b) The provision of all necessary and appropriate non-specialist gear and equipment not otherwise prescribed in Clause 11 hereof, excluding protective overalls and equipment for special cargoes.
- (c) The provision of fork lift trucks (up to seven tonnes S.W.L. capacity) on the quay for the taking of cargo to ship's side for loading.
- (d) Laying of dunnage, as necessary, excluding the laying of floors/beds.
- (e) The provision of managerial, supervisory and administrative staff.

PART II (DISCHARGING)

The service of DISCHARGING will normally consist of:-

- (a) Unstowing in vessel's cargo space or deck, slinging and discharging of cargo to ship's rail.
- (b) The provision of all necessary and appropriate non-specialised gear and equipment not otherwise prescribed in Clause 11 hereof, excluding protective overalls and equipment for special cargoes.
- (c) The provision of the customary out-turn reports after delivery of all the vessel's cargo from the quay (if required).
- (d) The provision of managerial, supervisory and administrative staff.

SCHEDULE "A"

CARGO HANDLING SERVICES

PART III (RECEIVING)

The service of RECEIVING may vary in accordance with the Shipowners or Cargo Owners requirements but will normally include the following:

- (a) The provision of the following documentation:
 - (i) Daily Tonnage Returns
 - (ii) Final Tonnage Details
 - (iii) Special Cargo Lists
 - (iv) Stowage Plans
- (b) The processing of the following documentation:
 - (i) National Standard Shipping Notes
 - (ii) Wharfinger's Receipts
- (c) The receiving of cargo from road vehicle or rail wagon (where facilities allow) and taking to quay or shed.
- (d) The provision of fork lift trucks (up to seven tonnes S.W.L. capacity) for the receiving of cargo to quay or shed.

Note:

- (i) The Service will be in respect of a fixed receiving period for outward cargo to be agreed between the Shipowner and the Company.
- (ii) Shut-out cargo which is subsequently redelivered shall be subject to additional charges, as provided under Clause 19.2 hereof.

PART IV (DELIVERY)

The service of DELIVERY/MASTER PORTERAGE will normally consist of:

- (a) The receiving of cargo from the discharge tackle to the quay or transit shed.
- (b) The delivery of cargo from the discharge tackle direct to waiting road vehicle, rail wagon (where facilities allow) or overside to craft.
- (c) The stowing of cargo on the quay (unless otherwise specified).
- (d) The delivery of cargo from the quay or transit shed to road vehicle, rail (where facilities allow) or craft.
- (e) The provision of fork lift trucks (up to seven tonnes S.W.L. capacity) on the quay for the cargo handling services specified above.

SCHEDULE "B"

CARGO HANDLING SERVICES

SPECIAL SERVICES

Where Special Services as referred to in Clause 21.5 are provided or performed by the Company in connection with the handling of goods, an additional charge will be payable as specified by the Company from time to time. Such Special Services shall include, inter alia:

- (a) Use of forklift trucks in excess of 7 tonnes S.W.L. capacity, whether on the vessel or on the quay.
- (b) Use of mobile cranes whether on the vessel or on the quay.
- (c) Use of specialist gear and equipment (including clothing).
- (d) Provision of documentation not otherwise specified in Schedule "A".
- (e) Receiving outward cargo before the start of the allowed receiving period.
- (f) Laying of floors and beds.
- (g) Handling unsound cargo.
- (h) Coopering (collecting and binding) goods for onward transportation purposes, to the extent that the quantity of such coopering is in excess of the limited amount which the Company deems may reasonably be required whilst handling such cargo under normal conditions.
- (i) Transferring cargo from one Berth or location to another Berth or location.
- (j) Provision of any other operations or services not listed in Schedule "A", which are requested by the Shipowner or Cargo Owner and which the Company is able and willing to provide.
- (k) Redelivering goods to coaster, for transshipment.
- (l) Receiving goods from road vehicle to quay for subsequent re-delivery to road, rail (where facilities allow) or container.