



The Manchester Ship Canal Company Limited
Maritime Centre, Port of Liverpool L21 1LA

THE MANCHESTER SHIP CANAL COMPANY LIMITED

TERMS AND CONDITIONS

**APPLICABLE TO A LICENCE FOR THE USE OF BERTHS IN THE PORT OF
MANCHESTER**

MAY 2018

MSCC

1. Definitions

In these Terms and Conditions the following words shall have the meanings respectively set against them:-

“the Applicant”	the Applicant whose name and address are set out in the Application.
“the Application”	the application form signed by the Applicant to which these Terms and Conditions apply.
“the Berth”	the berth and adjoining quay as specified in the Application.
“the Booking Period”	the booking period referred to in the Application.
“the Cargo”	the cargo described in the Application to be loaded on or discharged from a vessel at the Berth.
“the Cranes”	any rail mounted quay crane owned by MSCC and used by the Applicant at the Berth pursuant to the Application.
“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.
“MSCC”	The Manchester Ship Canal Company Limited of Maritime Centre, Port of Liverpool, L21 1LA.
“the Vessel”	the vessel specified in the Application.

2. The Applicant shall have licence to use the Berth for the period of time and for the purposes specified in the Application.

3. The Applicant shall ensure that at all times these Terms and Conditions are adhered to by the Applicant, its employees, agents and independent contractors.

4. An application for the use of the Berth should be lodged with MSCC preferably 10 days before and in any event not less than 24 hours (excluding Saturday, Sundays, Bank and other National Holidays) before the Berth is required by the Applicant. MSCC does not guarantee the availability of the Berth nor the Cranes nor any equipment that may be situate thereat.

5. The berthing of Vessels alongside the Berth shall be at the sole discretion of MSCC’s Harbour Master or other authorised officer. The Berth shall not be used for the laying up or repair of any Vessel.

6. In the event that Cargo working in relation to the Vessel has not been completed prior to the expiry of the Booking Period, the Vessel shall if requested by MSCC’s Harbour Master or other authorised officer be removed from the Berth to another berth in the Port of Manchester at the cost of the Applicant, to lay-by or with the agreement of MSCC to work cargo. MSCC shall be at no expense in relation to such removal, or in relation to any delay, demurrage or other costs that might be incurred in connection with or as a result of such removal and the Applicant shall hold harmless and indemnify MSCC in respect of any claim arising out of or resulting from such removal.

7. MSCC does not provide any labour in connection with the use of the Berth or the Cranes situate at the Berth.

8. The rates for the hire of the Berth, and where such have been requested the Cranes, are payable whether the Berth or Cranes are used or not. An Applicant will not be permitted to retain the use of the Berth or the Cranes beyond the Booking Period except with the permission of MSCC which may be granted subject to conditions.
9. In respect of their hire of the Berth, the Applicant shall pay to MSCC a charge (details of which are available on request from MSCC).
10. In the event that the Applicant requests the services of the Cranes in the Application, the Applicant shall pay to MSCC charges (details of which are available on request from MSCC) in respect of the hire of each of the Cranes. The Applicant's use of such Cranes shall be in accordance with and subject to MSCC's "Terms & Conditions Relating to the Hire of a Mobile Crane", in force from time to time.
11. Charges shall be invoiced by MSCC following completion of the discharging and/or loading of the relevant Cargo from/to the Vessel and shall be payable to MSCC within 28 days of the date of MSCC's invoice.
12. All payments referred to herein are exclusive of value added tax and where such tax or any other tax substituted for it is payable the same shall be paid by the Applicant to MSCC.
13. Interest calculated on a day to day basis shall be payable on all charges payable hereunder remaining unpaid after their due date.
14. The Applicant shall be responsible for ensuring that all operations carried out by or on behalf of the Applicant in connection with its use of the Berth shall be performed strictly in accordance with all relevant statutory requirements governing health and safety and in accordance with MSCC's "Code of Safe Practice for tenants licensees and others having control of cargo operations within the Port of Manchester" as applicable from time to time.
15. All persons employed by or on behalf of the Applicant on stevedoring operations at the Berth shall be properly trained and experienced for the work on which they are engaged. The Applicant will produce to MSCC, on demand, training records and proof of experience for those persons employed on stevedoring operations at the Berth.
16. The Applicant shall, at their own expense, be responsible for undertaking such Risk Assessments as may be required from time to time, in accordance with the Management of Health and Safety at Work Regulations, by the Health and Safety Executive in respect of the operations carried out at the Berth. The Applicant will produce to MSCC, on demand, copies of such Risk Assessments.
17. The Applicant shall be responsible for taking out insurance with a reputable insurer in respect of third party and Employers Liability in relation to its use of the Berth in an amount that will afford adequate cover against the risks concerned. The Applicant will produce to MSCC, on demand, evidence of such insurance and the receipts for premiums paid thereon.
18. The Berth shall be used only for the discharging and delivering/or receiving and loading of the Cargo from and/or to the Vessel whilst berthed alongside the Berth. All cargo discharged from or to be loaded on the Vessel shall be removed from the Berth or loaded on the Vessel as appropriate prior to the end of the working day on which such Cargo was discharged or was to be loaded.
19. The Applicant shall not cause or permit the Cranes to be loaded beyond the safe working load marked thereon.
20. The Applicant shall not cause or permit the Berth or any part thereof to be loaded in excess of the following maximum Limits: Up to 3m from the quay edge = zero tonnes, between 3m and 5m from the quay edge = 3 tonnes per square metre, over 5m from the quay edge = 5 tonnes per square metre.

21. The Applicant shall have the right at all times and for the purpose of proceeding to and from the Berth in connection with their use of the Berth, with or without vehicles, to pass or repass over and along such route(s) as MSCC shall from time to time determine PROVIDED ALWAYS THAT the said route(s) shall be kept clear of obstruction at all times and the Applicant and others authorised by the Applicant shall unless necessary in connection with the use of the Berth under no circumstances and at no time place or deposit or permit to be placed or deposited on the said route(s) any vehicle item article or material.

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

23. The Applicant shall comply in all respects with all relevant standards and conditions imposed by the National Rivers Authority or any successor body thereto in respect of the operations carried out at the Berth by or on behalf of the Applicant.

24. The Applicant shall strictly observe the procedures laid down from time to time by MSCC regarding the handling of dusty cargoes in the Port of Manchester. Copies of MSCC's current "Code of Practice for the handling of dusty cargoes" are available from MSCC upon request.

25. The Applicant shall employ properly qualified and experienced staff to perform and monitor dust control and environmental protection measures undertaken by the Applicant in respect of their use of the Berth.

26. The Applicant shall keep the Berth clean and free at all times from obstructions or substances likely to cause injury or damage to persons or property. Prior to the end of the Booking Period, the Applicant shall at its own expense clean the Berth to standard that is acceptable to MSCC. If in the opinion of MSCC, the Applicant fails to carry out any of the requirements of this clause, MSCC may undertake the necessary work at the expense of the Applicant.

27. The Applicant shall take all reasonable precautions to prevent materials, substances, articles or other deposits from falling into or entering MSCC's dock system, and in any such event the Applicant shall be responsible for removing the same from the said dock system at the Applicant's expense.

28. The Applicant shall be responsible for compliance with, and will indemnify MSCC against any claims (including all costs in connection therewith) for damage for breach of the Health and Safety At Work Act 1974 (or any modification or re-enactment thereof) as though they were the occupiers of the Berth and the provisions of Regulations 6, 7 and 9 of the Dock Regulations 1988 (or any modification or re-enactment of those provisions) 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 said Act or the said Regulations occurring only whilst the Berth is not being used by the Applicant, its servants, agents or independent contractors or (ii) to a defect in the structural condition of the realty comprised in the Berth which existed at the date of the Application or of which the Applicant has given MSCC notice reasonably sufficient to enable them to take steps to remedy the breach.

29. MSCC its servants agents and other persons authorised by it shall have the right at any time or times:-

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

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

29.3. to inspect and maintain the Berth and the fire fighting and life saving equipment thereat;

29.4. to enter for any other purpose;

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

30. The Applicant shall indemnify MSCC against any claims for Customs Duties or other taxes on goods landed or deposited at the Berth in connection with the Applicant's use of the Berth.
31. All goods/cargo at the Berth are the sole responsibility of the Applicant in every respect.
32. MSCC shall not be responsible for, but shall be indemnified by the Applicant against any claim, including any costs relating thereto, arising out of the use or occupation of the Berth by the Applicant or of any act neglect or default of the Applicant, its contractors or agents or their respective servants, and against any costs and expenses (including legal costs on a full indemnity basis) incurred by MSCC in connection with any claim for loss (including consequential loss) injury (including death) or damage alleged to be attributable to the condition of the Berth and/or the Cranes or to any act, neglect or default of any employee of MSCC engaged for the time being in connection with the use of the Berth, and/or MSCC's Cranes and equipment, or to any delay arising from any failure or breakdown of the Cranes or in supplying the Berth and/or Cranes and/or MSCC Crane drivers at the time appointed. The provisions of this Clause shall not apply to any claim:-
- i) for damage done to the Cranes or other property of MSCC, attributable to the structural condition of the Berth and/or the Cranes, or to any act, neglect or default of any employees of MSCC engaged for the time being in connection therewith where such condition, act, neglect or default is the sole cause of the said damage, or
 - ii) for loss, injury (including death) or damage (except loss, injury or damage caused by delay) where the sole cause of such loss, injury or damage is a defect in or the unfitness of the Cranes themselves.
33. The use of the Berth and/or Crane by the Applicant may in an emergency or other special circumstances be terminated by MSCC and no liability whatsoever shall attach to MSCC in respect thereof.
34. The Applicant shall obey all the Bye-laws, Regulations and lawful Directions from time to time of MSCC.
35. MSCC shall not be liable for any delay loss or damage whatsoever caused directly or indirectly by:-
- i) Act of God, war, riots or adverse weather conditions;
 - ii) strikes lock outs or industrial actions or disputes whether within or outside MSCC's direct control;
 - iii) any other cause whatsoever reasonably outside MSCC's direct or indirect control preventing delaying or hindering the fulfilment of any of its obligations hereunder;
 - iv) any malfunction of or fault in the Cranes.
36. The MSCC may collect and process information relating to the Applicant 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.
37. Any dispute or difference between MSCC and the Applicant as to the interpretation of these Terms and Conditions shall be referred to a single Arbitrator if the parties can agree upon one or otherwise to be appointed on the application of either party by the President for the time being of the Law Society and in either case subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
38. This Agreement is subject to English law.

THE MANCHESTER SHIP CANAL COMPANY LIMITED ("MSCC")

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

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 MSCC;
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 MSCC, 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 Manchester.

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: _____ Name (block capitals): _____

Position: _____ Company: _____

Date: _____