

Port of Sheerness Ltd
**Terms and Conditions
of Trading**



Operative from:
March 2019

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Terms and Conditions of Trading

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TERMS AND CONDITIONS OF TRADING

Part 1 - General

1. Definitions

1.1. In these Terms and Conditions: -

“Agreement”	means any agreement or contract entered into by the Company with a Customer or Shipowner.
“Bulk Commodity”	means any homogenous liquid or solid carried in a vessel without any intermediate form of containment (such as oil, ores, or sand).
“Cargo Handling Services”	means the Services of discharging, loading, receiving and delivering of Goods performed or provided by the Company at the Docks, and operations ancillary thereto.
“Chatham Docks”	means the Docks at Chatham.
“the Company”	means The Port of Sheerness Limited whose registered company number is 02639118 and whose registered office is situated at Maritime Centre, Port of Liverpool, L21 1LA
“Containerised Cargo”	“Containerised Cargo” means any Cargo shipped in either 20’ 30’ 40’ or 45’ containers which complies with I.S.O. standards (and for the purposes of this Agreement includes empty containers handled by the Company).
“Customer”	means any person for whom Services are performed or provided by the Company, including:- A.where used in relation to any Goods; the owner, consignor, shipper, consignee, receiver or other person in charge of the Goods or other respective agents (other than the Company) in relation thereto. B.where used in relation to any road or rail vehicles; the owner, agent, operator, driver or other person in charge of the vehicle.
“Dangerous Substances”	means any substance as defined in Section 3 of the Dangerous Substances in Harbour Areas Regulations 1987.



<p>“Data Protection Legislation”</p>	<p>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.</p>
<p>“the Docks”</p>	<p>means the basins and docks (including the approaches thereto), locks, bridges, wharves, quays, berths, roads, railways and other property and works of every description and nature, and the buildings, structures and erections thereon, at the Ports of Sheerness and Chatham (respectively or collectively as the context dictates) for the time being owned, occupied or managed by the Company. Where relevant, the expression “the Docks” shall include “the Port”.</p>
<p>“Goods”</p>	<p>means any goods, cargo, commodities, livestock, articles and things of every description (including any crates or packaging within which such Goods may be contained), but excluding Containerised Cargo, stores and bunkers.</p>
<p>“Harbour Master”</p>	<p>means the harbour master appointed by the Company and includes his authorised deputies and assistants and any person authorised by the Company to act in that capacity.</p>
<p>“Length Overall” (LOA)</p>	<p>means the extreme length of the vessel as declared on the vessel’s Tonnage Certificate or in Lloyds Register of Shipping.</p>
<p>“Package”</p>	<p>means a bag, bale, bundle, carton, cage, case, cask, carboy, crate, cylinder, drum, net, tank, pallet or other receptacle. It also includes an empty package.</p>
<p>“the Pilotage Area”</p>	<p>means the area from the Medway Buoy to Rochester Bridge including the enclosed Chatham Dock and the Swale for which the Company is the Competent Harbour Authority pursuant to the Pilotage Act 1987.</p>

<p>“the Port”</p>	<p>means the area bounded to the south by Allington Lock and to the north by an imaginary line drawn from the Garrison Point Navigation Light (position 51° 26.788’N 00° 44.738’E) in a 305° (T) direction for 1890 metres as defined in the Medway Ports Re-Organisation Scheme 1968. The area also includes an area bounded by an imaginary line drawn from the Garrison Point Navigational Light in a 305° (T) direction for 143 metres, thence in a 045° (T) direction for 273 metres, thence in a 090° (T) direction for 250 metres and thence in a 180°(T) direction for 355 metres to the shore line, as defined in the Medway Ports Authority Harbour Revision Order 1989. The eastern limit of the Port is an imaginary line drawn from Shellness across The Swale on a bearing of 160° (T) to the opposite shoreline.</p>
<p>“Schedule of Published Charges”</p>	<p>means “the Port of Sheerness Port Charges’ booklet, or any booklet(s) in substitution or replacement thereof, published by the Company in relation to statutory charges (including Conservancy and Berth Charges) on vessels calling at the Port, and goods loaded, discharged and stored at the Port.</p>
<p>“Services”</p>	<p>means any service or operation of whatsoever nature performed or provided by the Company.</p>
<p>“Shipowner”</p>	<p>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 and “owner of a ship” is to be construed accordingly.</p>
<p>“vehicle”</p>	<p>means any vehicle, including any motor car, motor cycle, lorry, trailer, tractor, steam roller, excavator, agricultural machine or other machine on wheels or tracks.</p>
<p>“vessel”</p>	<p>means any vessel, including any hovercraft, hydrofoil vessel and anything constructed or used to carry persons, goods or cargo by water.</p>

- 1.2. The headings to clauses are for ease of reference only and shall not affect the construction thereof.
- 1.3. Unless the context otherwise requires, the singular shall include the plural and vice versa and words importing gender shall include any other gender.
- 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. GENERAL CONDITIONS

- 2.1. All quotations, orders and contracts of the Company are subject to the Terms and Conditions set out herein. Any variations to these Terms and Conditions are of no effect unless confirmed in writing by the Company.
- 2.2. Part 1 of these Terms and Conditions shall apply to every Agreement entered into and to the provision of all Services by the Company to a Customer or Shipowner. These Terms and Conditions shall be read in conjunction with such other Parts of these Terms and Conditions as are applicable to the particular Agreement. Where there is any conflict between Part 1 of these Terms and Conditions and any other Part of these Terms and Conditions, then the Terms and Conditions in the other Part shall take precedence over those contained in Part 1 hereof.
- 2.3. It is recorded that the Agreement shall be between the Customer and/or the Shipowner as the case may be and the Company or Companies concerned.
- 2.4. The Company may amend or vary these Terms and Conditions from time to time in such manner and in such respects as the Company may consider desirable.
- 2.5. These Terms and Conditions prevail over and apply to the exclusion of any terms and conditions proposed by the Customer (whether in writing or otherwise) and any terms implied by trade, custom or practice unless specifically agreed to in writing by the Company.
- 2.6. Special Conditions may be made by the Company from time to time relating to specific goods, vessels, services or events. Any such special Conditions are supplemental to, and apply in conjunction with, these Terms and Conditions.
- 2.7. Use of the Docks and/or Services by the Customer and/or Shipowner shall be deemed to constitute notice of and agreement to these Terms and Conditions provided that prior to such use the Company shall take all reasonable steps to ensure that the Customer and/or Shipowner, as appropriate, is aware of these Terms and Conditions and that copies of the same are available on request.
- 2.8. The Company may collect and process information relating to the Customer / Shipowner 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.

3. VESSEL APPROVAL

- 3.1. It shall be the responsibility of the master of the vessel or his authorised agent to obtain approval from the Medway VTS for the arrival, departure or movement of that vessel in the River Medway and The Swale.

4. CHARGES

- 4.1. Charges and dues for Services performed or provided by the Company shall be payable by the Customer and/or the Shipowner, as appropriate, in accordance with the Company's standard charges, as published and revised from time to time, or at such

other rates as shall be agreed from time to time between the Company and the Customer and/or Shipowner, as appropriate.

- 4.2. The Company's standard charges refer to Services performed or provided during the Company's normal working hours and in the Company's normal manner. If the Company performs or provides Services outside its normal working hours, or if by reason of an emergency or the nature and condition of any Goods, the construction, condition and readiness of any vessel or road or rail vehicle, the availability of crew, or for any other reason the Company performs or provides Services that, in its opinion, are beyond or in a different manner to those for which the standard charges and dues refer, the Customer or the Shipowner as appropriate shall pay an additional charge to cover the increased or additional costs thereby incurred by the Company.
- 4.3. The Shipowner shall pay to the Company such charges as are applicable from time to time in connection with the provision and operation of a ship's waste reception facility managed by the Company, as required pursuant to the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003.
- 4.4. Charges and dues published or otherwise quoted by the Company are exclusive of Value Added Tax. Where such tax or any other tax substituted for it is payable, the same shall be paid by the Customer or Shipowner, as appropriate, to the Company.
- 4.5. The Company's Schedule of Published Charges are subject to revision by the Company without formal notice at any time.

5. PAYMENT TERMS

- 5.1. Payment is due on the date of invoice unless credit facilities have been granted in which case payment is due as follows:-
 - 5.1.1. Cargo Handling and Dock Charges – 28 days from date of invoice.
 - 5.1.2. Marine Department and Pilotage Charges – due immediately Conservancy – within 14 days from date of invoice.
 - 5.1.3. Any other charges – 28 days from date of invoice.
- 5.2. The Company reserves the right:-
 - 5.2.1. to charge interest on overdue accounts at 4% above the then prevailing Bank of Scotland Base Rate calculated on a day to day basis;
 - 5.2.2. to recover such legal and other costs incurred in the recovery of monies outstanding to the Company;
 - 5.2.3. to suspend Services where there is a breach of credit facilities
- 5.3. All charges shall be paid in full without reduction or deferment on account of any claim, counter claim or set off.
- 5.4. The said charges shall be payable by the Customer or the Shipowner as appropriate on demand unless otherwise agreed by the Company. Interest at the rate of 4 per cent above the prevailing Bank of Scotland Base Rate is payable on charges remaining

unpaid twenty-eight days after the date of the Company's invoice.

- 5.5. Notwithstanding the aforementioned provisions of this Clause, the Company may if it thinks fit, require any Customer or Shipowner liable or likely to become liable to pay any charges or dues to provide the Company with security for any such charges or dues or the estimated amount thereof in a form satisfactory to the Company before the commencement of such Services and failing receipt of which such Services will not be commenced.

6. CANCELLATION

- 6.1. Should the Customer and/or Shipowner cancel the Agreement at any time, the Company at its sole discretion shall be entitled to invoice the Customer and/or Shipowner with the full agreed charge or any lesser amount, which charge or amount shall be due and payable on the date of invoice.

7. LIEN ON GOODS AND VESSELS

- 7.1. The Company shall be entitled to refuse to allow cargo discharged from a vessel to leave the Docks until:-
 - 7.1.1. all charges claimed by the Company for Cargo Handling Services whether in relation to that cargo (wherever performed) or to other cargo of the Customer have been paid or secured to the satisfaction of the Company, and
 - 7.1.2. security to the satisfaction of the Company has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Customer in relation to that cargo (whether or not such claims arise in relation to that cargo or any other cargo of the Customer).
- 7.2. The Company shall be entitled to refuse to allow a vessel to leave the Docks until:-
 - 7.2.1. all charges claimed by the Company for Cargo Handling services and payable by the Shipowner 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
 - 7.2.2. 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).
- 7.3. The Company shall have the absolute right to suspend the provision of any Services for the Customer or Shipowner until all amounts payable to the Company by such Customer or Shipowner, as appropriate, have been paid in full. Where such a right is exercised, charges (including interest) shall continue to accrue until payment in full is made.

8. WARRANTIES

- 8.1. The Customer / Shipowner warrants its power to enter into the Agreement and that it has obtained all necessary approvals to do so either as principal or as agent in which event the Customer / Shipowner is fully authorised to legally bind both the Customer / Shipowner and its principal and to accept these Terms and Conditions on behalf of itself and of its principal. Unless otherwise expressly agreed in writing with the Company, any Customer acting as agent for or on behalf of any other person shall accept joint and several liability with his principal for all charges dues and other sums payable to the Company.
- 8.2. The Customer shall ensure that any Agreement, contract or other arrangement made between the Customer and (i) the Shipowner, (ii) the owner or operator of any road or rail vehicle, (iii) the supplier of any transportation services, (iv) the owner of (or person or Customer in connection with which or to whom Services are performed or provided by the Company contains similar terms, conditions and limitations of liability as are expressed herein, for the benefit of the Customer both on its own behalf and as agent for the Company. Where any Customer fails to comply with this provision, the Customer shall indemnify the Company against all proceedings claims and expenses (including legal costs on a full indemnity basis) arising out of or pursuant to such failure to comply.

9. INDEMNITIES

- 9.1. The Shipowner or the Customer in respect of the Goods 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 howsoever arising from the use of or presence of his vessel or Goods at the Docks 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 the Customer as the case may be, their respective contractors agents or servants (other than the Company) or of any inherent quality or defect of any vessel, or of any Goods at the Docks or on the Vessel.
- 9.2. The Shipowner or the Customer shall pay to the Company full compensation for all damage done to or suffered by the Docks and other property of the Company and arising as afore said.

10. FORCE MAJEURE

- 10.1. The Company shall not be liable for any failure to commence or continue to perform or complete the Services nor for any delay, deficiency, loss, mis-delivery 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; strikes, lockouts, industrial disputes or actions of any nature, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster; act of any Government or other regulatory restrictions; difficulty or increased expense in obtaining workmen, equipment or transport or other circumstances affecting the supply or performance of the Services by the Company's normal methods or means; 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.

11. RESERVATION OF RIGHTS

11.1. The Company reserves the right to refuse to accept Goods for any reason and/or to provide Services subject to any agreement between the parties.

12. LEGAL

12.1. 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.

12.2. Where these Terms and Conditions are silent on the rights and liabilities of the Company and or the Shipowner or the Customer, these shall be determined according to the Laws of England as aforesaid.

12.3. Nothing in these Terms and Conditions shall affect the provisions of the Medway Ports Authority Act 1973 or any byelaws made thereunder, or any other relevant statute or statutory regulations in force from time to time.

13. RISK AND INSURANCE

13.1. All Goods at or on the Docks are the sole responsibility of the Customer in every respect and shall at all times remain at the entire risk of the Customer. The Customer is advised to make appropriate comprehensive insurance arrangements in respect thereof.

14. BYE LAWS & REGULATIONS

14.1. All Customers and/or Shipowners, as appropriate shall at all times comply with and ensure that all Goods, vessels, road and rail vehicles and persons under their control and using the Docks comply with:-

14.2. All Bye-Laws, Regulations and Directions made by the Company as are from time to time in force in respect of the Docks.

14.3. All instructions and directions given by the Company from time to time in connection with the proper, efficient and safe operation and management of the Docks.

15. BILL OF LADING

15.1. The Shipowner for a vessel which it is intended to sail to or from the Docks shall be the agent of the Company for the purposes of agreeing with the Customers 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.

15.2. The Shipowner shall, in his Bills of Lading, Shipping Notes and Notices to Shippers

regarding conditions for carriage or receiving, use his best endeavours to provide that whether or not the Company is acting solely for the Shipowner:-

- 15.2.1. the Company shall have the benefit of all provisions therein exempting or limiting the liability of the Shipowner,
 - 15.2.2. such provisions so far as relating to the Company shall be applicable to the period that Goods are at the Docks or on a vessel thereat.
- 15.3. Provided that nothing herein shall prevent the Company, at its discretion, from being the principal of the Shipowner in relation to provisions exempting or limiting liability, where the relevant law and Courts are not English Law and English Courts respectively.
- 15.4. The Company hereby accepts the benefit of such provisions and appoints the Shipowner as the Company's agent for the purpose of entering into contracts of carriage evidenced by the Bill of Lading and the Shipping Note.
- 15.5. If such Bills of Lading, Shipping Notes or Notices to Shippers 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 or in consequence of the failure of such Bills of Lading, Shipping Notes or Notices to Shippers so to provide.

16. LIMITATION OF LIABILITY

- 16.1. 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 Customer 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. Furthermore, liability 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 the Services, including any Cargo Handling Services and dock services provided that:-
- 16.1.1. The Company's liability in respect of physical loss or damage to any vessel or other property of the Shipowner shall not exceed £2,000,000 per occurrence.
 - 16.1.2. 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, subject to an aggregate amount of £500,000 per occurrence.
 - 16.1.3. In relation to Goods received for shipment by or otherwise handled by the Company, the Company shall not be liable to the Customer nor to the Shipowner as bailee of the Goods for (i) any mis-delivery 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.
 - 16.1.4. 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 (otherwise than upon any of the Company's documents) to the Company within 30 days of the date when the Customer has or ought reasonably to have learned 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 amount of the said loss or damage be submitted in writing to the Company within twelve months after the said occurrence.

- 16.1.5. 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 Customer has been notified of or becomes 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.
- 16.1.6. 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 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.
- 16.1.7. 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 tort shall not extend outside the minimum and maximum limits specified in Clause 16.1 and that the Shipowner and or the Customer 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 16.1.
- 16.1.8. Notwithstanding the above, the Company shall in addition have the right in any circumstances to rely on any relevant statutory provisions providing for limitation or exclusion of liability.
- 16.2. Save as expressly provided by Clause 16.1, 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 Customer howsoever caused or arising whether in contract, tort, (including negligence) or otherwise at law, and in particular the Company shall not be liable for (a) any claims for loss of use or profits or the loss of a particular market and whether direct or indirect and whether or not foreseeable at the date of coming into force of the Agreement; or (b) indirect or consequential loss or damage.
- 16.3. The Company's charges are determined on the basis of the limits of liability set out in these Terms and Conditions. If any customer requires a higher limit of liability, the Company will endeavour to arrange additional insurance cover, in which event the costs of such additional insurance shall be paid by the Customer.
- 16.4. The Company shall not be responsible to any user of railway wagons for any loss or damage of whatsoever nature of or to, or any demurrage charges in respect of, railway wagons and sheets ropes chains or other similar fittings therefor whatsoever howsoever caused and the Customer shall be responsible for and indemnify the Company against any such loss, damage or charges.
- 16.5. 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 the Services, does so on its own behalf and as agent for all its employees and agents.

- 16.6. Without prejudice to the generality of Clause 16.1, if, in the event of the Company being liable under this Clause for a delay in the removal of Goods from bonded premises, there occurs during the delay an increase in any Customs or other duty or tax payable in respect of those Goods, such increase shall for the purpose of these Terms and Conditions be deemed to be indirect or consequential damage.
- 16.7. For the purposes of this Clause, the value of the Goods shall be taken to be the market price of Goods of the same kind and quality immediately before the deficiency, loss, damage, mis-delivery or delay arose or took place.

17. CONFIDENTIALITY

- 17.1. Both the Company and the Customer undertakes that it shall not at any time during or after termination of the Agreement, disclose to any person the details of the Agreement or any confidential information concerning the business affairs, customers, clients or suppliers of the other party, except as provided by Clause 17.2.
- 17.2. Either the Company or the Customer may disclose the other party's confidential information:
- 17.2.1. to those of its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out that party's obligations under the Agreement. the Company and the Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses another Party's confidential information comply with this Clause 17; and
- 17.2.2. as may be required by law, court order or any governmental or regulatory authority.
- 17.3. Neither the Company or the Customer shall use any of the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

18. AUDIT

- 18.1. The Company reserve the right, upon the giving of reasonable notice to the Customer, Master, Owner, Vessel Agent, Operator, Cargo Receiver or Cargo Shipper, to require the production of, and to receive, view and / or copy, any relevant document or material within that party's reasonable control that demonstrates and evidences the quantum or movement of any cargo or other throughput that may be received, loaded, discharged, stored or otherwise handled within the Port. Such documentation and materials shall be provided to the Company upon request, without charge and during Company normal working hours.
- 18.2. For the purposes of undertaking periodic audits, the Company also reserve the right to review any recordings, data, reports, measurements produced from equipment under the control of any party and used to load, discharge or store and monitor cargo e.g. including but not limited to CCTV / ANPR etc.

19. NOTICE

- 19.1. Any notice to be given under the Agreement shall be in writing and shall be deemed to be duly given if left at or sent by first class registered or recorded delivery post or express or other fast postal service to the address set out at the head of the Agreement.
- 19.2. Any such notice shall be deemed to be served at the time when the same is left at the office of the Party to be served on the third business day following the day of posting.

20. TERMINATION

- 20.1. The Agreement may without prejudice to any other rights be terminated at any time by the Company if:-
- 20.1.1. The Customer fails to comply with any part of the Agreement or the terms and conditions referred to herein, or commits a material breach of the Agreement and fails to remedy such breach (where the breach is capable of remedy) within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied. Any material breach of the Agreement shall be notified in writing in accordance with the provisions of Clause 19; or
 - 20.1.2. The Customer enters into liquidation whether compulsory or voluntary (but not if the liquidation is for amalgamation or reconstruction of a solvent company) or has a receiver or administrator appointed; or
 - 20.1.3. The Customer ceases or threatens to cease to carry on its business or to dispose of the whole or any part of its undertaking to a third party; or
 - 20.1.4. There is a change in control of the Customer. For the purposes of this sub-clause, "control" means the ability of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons).
- 20.2. Termination of the Agreement shall not affect or relieve any Party of any liability or obligation that may have accrued prior thereto.

Part 2 – Cargo Handling and Dock Operations

21. CUSTOMER'S OBLIGATIONS

- 21.1. Without derogation from any other obligations and duties the Customer may have under the terms of the Agreement, the Customer shall have the following obligations:-
- 21.2. Declaration of Description
- 21.2.1. The Customer shall ensure that all Goods sent to the Company for export are accompanied by a National Standard Shipping Note stating the gross weight of each consignment. Weights must be verified before despatching Goods to the Company and, if the gross weight is omitted on the National Standard Shipping Note, it will be taken as instruction to the Company for the Goods to be weighed at the Company's premises at the expense of the Customer.

21.2.2. The Company will not be responsible for the accuracy of the weighbridge or for any error in entering on the ticket the weight of any Goods weighed. The Customer's representative in charge of the Goods shall examine the ticket and ascertain that it gives the correct weight as shown by the scale of the weighbridge.

21.2.3. The Company may check the validity of any declarations and if the weight or bulk proves to be in excess of that declared, all charges will be based on actual gross weight. The customer will also be liable for the costs of weighing or checking the measurement of the Goods in question.

21.2.4. The Customer 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 and shall indemnify the Company against all proceedings claims expenses and pecuniary penalties that the Company may suffer or incur as a result of any inaccuracy or omission therein.

21.3. Protection of Goods

21.3.1. Customers should take reasonable measures to protect their Goods from loss or damage and shall ensure that at all times their Goods are packed in a proper manner with particular care being taken to protect fragile goods.

21.4. Clearance of goods through H.M. Revenue & Customs

21.4.1. It shall be the Customer's responsibility to prepare the necessary documentation for the clearance of Goods through H.M. Revenue & Customs, to obtain such clearance and to comply with all Customs' formalities.

22. RELEASE OF GOODS

22.1. 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.

22.2. 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 Customer named in the original Delivery Order and being in a form satisfactory to the Company and authorising such delivery.

22.3. If the document of title is lost, or there is an irregularity, the Company will not deliver the Goods until it is satisfied that the person claiming delivery is entitled to delivery and against an indemnity by a bond or otherwise as the Company may require by or on behalf of the person taking delivery of the Goods.

23. DOCUMENTATION

23.1. Orders for Delivery of Goods

23.1.1. Every order for the delivery of Goods shall be emailed to the Company by or on behalf of the Customer and must detail:-

- a) Vessel's name;
- b) The port of loading and bill of lading number;
- c) Marks, quantity and description of Goods;
- d) The person to whom charges are to be rendered;

and must be signed by or on behalf of every person in whose name the Goods stand in the books of the Company,

23.2. Manifests, Shipping Notes and orders for Cargo Handling Services

23.2.1. All manifests, shipping notes/advices, consignment notes, packing lists documents of title and instructions and orders concerning Cargo Handling Services must be emailed to the Company 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.

23.2.2. Where requested to do so by the Company, the Customer, master or owner of every vessel discharging or loading cargo must supply to the Company the following documents confirming the quantity of cargo discharged or loaded in the Port and the days upon which discharging or loading took place:

- a) Bills of Lading or Cargo Manifest (indicating the weight of cargo and details of the shippers, consignees and freight payers); and
- b) Statement of Facts

23.2.3. Where the quantity of cargo discharged does not match that shown on the relevant Bill of Lading, then a certified discrepancy report (including details of supporting surveys etc.) must be provided.

23.2.4. These documents must be supplied by the Customer, master or owner, or the appointed agent, to the Company within two working days of the day upon which the vessel completes discharging or loading as appropriate. The documents must be submitted (as PDF-format attachments) via e-mail to the Company.

23.3. Tally of Goods

23.3.1. 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. 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 email by the Company in respect of the document in question.

24. SHIPOWNER'S OBLIGATIONS

24.1. Acceptance of Goods

- 24.1.1. The Customer shall ensure that the vessel receiving Goods for shipment shall accept same if tendered for loading from the quay.
- 24.1.2. 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.

24.2. Provision and Use of Gear

- 24.2.1. 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.
- 24.2.2. All the equipment and gear referred to in Clause 24.2.1 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.
- 24.2.3. To the extent that the equipment and gear referred to in Clause 24.2.1 is not available to the Company or is not maintained or certified in the manner specified in Clause 24.2.1, 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.
- 24.2.4. 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 24.2.1.

25. REMOVAL OF GOODS FROM THE COMPANY'S PREMISES

- 25.1. The Customer shall ensure that all Goods delivered to the Company by the Customer for export shall be received by the Shipowner within a period of twenty-one days from such date of delivery. If for any reason whatsoever the Goods are not so received by the Shipowner within the said period, then on the expiration of the said period the Company may remove the Goods at the Customer's expense.
- 25.2. All imported Goods shall be removed by the appropriate Customer from the Company's premises within a period of twenty-one days from the date on which the Goods were received from a Vessel. If for any reason whatsoever the Goods are not so removed by the Customer, the Company may remove the Goods at the Customer's expense.

26. WAREHOUSING

- 26.1. All warehousing undertaken by the Company is subject to the United Kingdom Warehousing Association Conditions of Contract. Copies are available on request.

27. TEMPERATURE CONTROLLED STORES AND COOL STORES

- 27.1. The following additional conditions are applicable to Goods stored in the Company's temperature controlled stores and cool stores.
- 27.2. The Company will not accept Goods that require any special treatment unless by prior agreement with the Company and then only if the Goods are accompanied by written instructions. Customers requiring special treatment for any Goods must specify in the written instructions exactly what treatment is required. The Company will not be liable for any damage caused to the Goods from following such instructions.
- 27.3. Goods shall be presented in good and wholesome condition, and in the form and at such temperature as may be required by statute or any relevant regulations.
- 27.4. The Company will not accept Goods that require any special treatment unless by prior agreement with the Company and then only if the Goods are accompanied by written instructions. Customers requiring special treatment for any Goods must specify in the written instructions exactly what treatment is required. The Company will not be liable for any damage caused to the Goods from following such instructions.
- 27.5. Goods shall be presented in good and wholesome condition, and in the form and at such temperature as may be required by statute or any relevant regulations.
- 27.6. Goods which in the reasonable opinion of the Company appear either not to be in good and wholesome condition or to be likely to cause personal injury or damage to other Goods or property, must be removed by the Customer forthwith on receipt of notice requiring the same.
- 27.7. If speedy removal is required to mitigate such damage, the Company may at the Customer's expense and risk arrange for alternative storage or disposal or, if appropriate, destruction of such Goods. The Customer will be liable to the Company for, and shall indemnify the Company in respect of, all claims against and damage, cost and expenses suffered or incurred by the Company in consequence of the condition of the Customer's Goods.
- 27.8. When Goods are presented to the Company for storage, it shall be entitled to open packages to ascertain whether or not there exists any deficiency in the Goods.
- 27.9. If as a result of the presence or handling of the Customer's Goods the Company incurs any expenses in complying with the Prevention of Damage by Pests Act 1949, or in complying with any other statutory duties or with EC Directives imposed from time to time in relation to the Goods, then the Company shall be entitled to recover from the Customer the expense incurred in complying with the said statutory duties.

28. HAZARDOUS GOODS AND LIVE ANIMALS

- 28.1. No Goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature or other Dangerous Substances will be handled by the Company except with the consent of the Company and in accordance with statutory and the Company's directions regulations and byelaws governing the handling of such Goods.
- 28.2. All extra costs charges and expenses incurred by the Company in handling Goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature or other

Dangerous Substances shall be repaid by the Shipowner of the vessel on which they were or were to be consigned.

28.3. The Customer shall be responsible for and shall indemnify the Company against all injury, loss or damage however and whenever caused and against all claims whatsoever made against the Company for which they may be or become liable in respect of death or injury to persons or loss of or damage to property or delay arising out of, caused or contributed to by:-

28.3.1. a failure to comply with the conditions, directions and regulations referred to in Clause 28.1;

28.3.2. or live animals exported or intended to be exported, or imported by the Customer.

29. CONTAINERISED CARGO

29.1. Any Containerised Cargo handled by the Company shall be subject to the 'Standard Terms and Conditions for Container Terminals Operated by Members Of Peel Ports Group' as the same may apply from time to time.

30. PERFORMANCE OF CARGO HANDLING SERVICES

30.1. Subject to these Terms and Conditions, the Company shall provide supervision labour plant and equipment as available for the discharging, loading, receiving and delivering of Goods at the Docks and operations ancillary thereto, as requested by the Customer and agreed by the Company.

30.2. The Company shall be entitled not to commence Cargo Handling Services 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, they will be continued as and to the extent that the necessary plant and port operations workers and other employees are reasonably available in all the circumstances from time to time bearing in mind the Company's obligations to meet the requirements of other customers of the Docks.

30.3. No liability shall attach to the Company in consequence of its not commencing or continuing Cargo Handling Services for the reasons specified in Clause 30.2.

30.4. The Company shall perform or provide such 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 Customer.

30.5. 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 or not to perform or provide or continue to perform or provide Cargo Handling Services and if it should so elect and informs 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 Goods or the vessel, including any claim for loss of use or profit or the loss of a particular market, and the said Shipowner shall indemnify the Company against all proceedings claims and expenses arising out of or consequent to any such election by the Company, including all proceedings claims and expenses relating to the handling of the Goods 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.

- 30.6. 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.
- 30.7. 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.
- 30.8. 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.
- 30.9. 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 shall be repaid by the Shipowner of the vessel on which the cargo was or was to be consigned.
- 30.10. 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 extra costs shall be incorporated in the Company's charges for such Cargo Handling Services.
- 30.11. All times agreed for the performance or provision of Services are approximate only (notwithstanding any representation made by any servant or agent of the Company) and the Company shall have no liability for its failure to meet any such times.
- 30.12. Any appointment made with the owner of a vehicle or with the Customer or their respective employees servants or agents for the receipt from vehicle of Goods for shipment, or for the delivery of Goods to vehicle, at any particular time or within a particular interval of time shall (notwithstanding any representation made by any servant or agent of the Company) be construed merely as the anticipated time when the Goods may be received or delivered and shall not oblige the Company to accept such Goods (nor refrain from accepting other Goods) at that time nor determine the order in which vehicles may unload or load.
- 30.13. No liability shall attach to the Company in consequent of any failure to permit the

loading or unloading of any vehicle at or within a particular time or interval of time, including any time or interval of time expressly stated in this Agreement, notwithstanding any representation made by any servant or agent of the Company, and the Customer shall release and indemnify the Company from and against such liability.

31. SECURITY

- 31.1. The provision of any security services or anti-terrorist measures in respect of a vessel shall be the responsibility of the relevant Shipowner.
- 31.2. The Shipowner and the Customer shall comply in every respect with the International Ship and Port 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 (S1 2004/1495) and any instructions or directions issued by the Department of Transport 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 Port of Sheerness Port Facility Security Plan and Chatham Docks' Port Facility Security Plan and any other such Plan approved from time to time by the Department of Transport relating to the Docks and/or any other property of the Company adjacent thereto.

Part 3 – Pilotage Services

32. PILOTAGE DIRECTION

- 32.1. In accordance with Section 7 of the Pilotage Act 1987, the Port of Sheerness Ltd., the competent harbour authority, has directed that pilotage be compulsory for all vessels in excess of 50 metres Length Overall throughout the Pilotage Area.
- 32.2. The Port of London Authority Pilotage Direction No. 2 dated 1st January 1991 which took effect from 1st February 1991, and any subsequent relevant Directions issued by the Port of London Authority, shall apply to all vessels bound to or from the Pilotage Area.

33. PROVISION OF SERVICE

- 33.1. The Provision of the Pilotage Service is in accordance with the terms of the Pilotage Act 1987.

34. CHARGES

- 34.1. Pilotage and associated charges are made pursuant to Section 10 of the Pilotage Act 1987, in accordance with the Schedule of Published Charges as may be levied by the Company.

35. PILOTAGE EXEMPTION CERTIFICATES

35.1. Pilotage Exemption Certificates may be granted to certain regular traders by application, pursuant to Section 8 of the Pilotage Act 1987, & subsequent Pilotage Directions promulgated by The Port of Sheerness Ltd.

36. LIABILITY

36.1. The provision of pilotage services is subject to availability and the Company accepts no liability for any delay, loss or damage, directly or indirectly arising out of, or caused or contributed to by an inability to supply or continue to supply such services or for any charges or expenses incurred in such circumstances.

36.2. Limitation of Liability in respect of Pilots is covered under Section 22 of the Pilotage Act 1987.

Part 4 – Chatham Docks

37. LOCKING-IN AND LOCKING-OUT

37.1. The Company shall only become bound to provide the service of locking-in or locking-out vessels to or from Chatham Docks upon its acceptance of a request from the Customer submitted in accordance with this Clause. The Company shall be under no obligation to accept any such request.

37.2. Vessels will be accepted for locking-in to Chatham Docks up to the maximum dimensions of either 139m length (including tugs and towing ropes), or North Lock beam: 22.6m, South Lock beam: 19.6m or 8m draft at the discretion of the Harbour Master. Vessels in excess of 139m length (including tugs and towing ropes) may be canalised through subject to the conditions contained in Clause 37.6.

37.3. Chatham Docks are operational on a 24 hour basis but the locks are normally manned only between the hours of 0600-2200 Monday to Friday. If the Service of locking-in or locking-out is required outside of these hours, an overtime charge will be applied at such rates as may be notified from time to time by the Company.

37.4. Notification of a request for the service of locking-in or locking-out at Chatham Docks shall be given by the Customer to the Company in writing or by fax to arrive at least 24 hours in advance of the estimated time of arrival, or at least four hours prior to the estimated time of departure, of the vessel concerned and no booking shall be considered firm unless written or faxed confirmation of acceptance is received from the Company.

37.5. The locking-in and locking-out of vessels at Chatham Docks will be carried out in accordance with the priorities and procedures which the Company shall from time to time and in their absolute discretion determine.

37.6. Ships in excess of 139 metres in length (including tugs and towing ropes) may be

accepted for passage through the lock provided their beam does not exceed 22.6 metres and there is sufficient water for them to cross the sill. The arrangement for taking through the lock ships in excess of 139 metres in length (including tugs and towing ropes) is known as “canalling” and will be carried out subject to the following conditions:-

37.6.1. Canalling will be carried out only between the 90 minutes and 45 minutes approximately prior to high water in order to safeguard the basin level.

37.6.2. Bookings for canalling operations must be made in writing at least 48 hours prior to the high tide required.

37.6.3. The decision whether or not canalling may be carried out is at the sole discretion of the Harbour Master.

37.7. Canalling only by written consent.

All enquiries regarding canalling shall be made in the first instance to Flagstaff House – Tel: 01634 814936.

38. OTHER SERVICES

38.1. The Company shall be under no obligation to provide or perform at Chatham Docks any Services other than the services of locking-in and locking-out vessels to any Customer in the absence of express prior written agreement to do so.

38.2. If any Customer shall require the provision by the Company of any Services other than the service of locking-in and locking-out vessels, it shall submit a written request therefore to the Company. The Company shall become bound to provide the Service requested only upon its written acceptance of the request and subject to any additional terms or conditions therein stated.

39. CHARGES

39.1. Charges and dues for Services performed or provided by the Company at Chatham Docks shall be payable in accordance with the Schedule of Published Charges, or at such other rates as shall be agreed from time to time between the Company and the Customer or the Shipowner.

40. PAYMENT

40.1. Dues in respect of the Services performed or provided by the Company at Chatham Docks, including the service of locking-in and locking-out vessels, shall be payable by the Customer or Shipowner at the time that the service is provided, save where the Company has agreed otherwise in writing.

41. PERFORMANCE OF SERVICES

41.1. The Terms and Conditions contained in Parts 1 and 2 hereof shall apply to all quotations, orders, Agreements and contracts entered into by the Company for the performance or provision of Services at Chatham Docks.

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