



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

**THE MERSEY DOCKS AND HARBOUR COMPANY LIMITED**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**ROYAL SEAFORTH GRAIN TERMINAL**

February 2021

Liverpool

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# THE MERSEY DOCKS AND HARBOUR COMPANY LIMITED

## STANDARD TERMS AND CONDITIONS

### FOR ROYAL SEAFORTH GRAIN TERMINAL

#### **1. Interpretation**

In these conditions:-

1.1 "the Berth" means any berth operated by the Company at the Grain Terminal and shall include any quay, shed, silo or other area situate thereat.

"the Cargo Owner" means the owner of any grain and any bailor bailee consignee shipper 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 The Mersey Docks and Harbour Company Limited of 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 2018, the GDPR (Regulation (EU) 2016/679) (as amended or re-enacted from time to time and including any replacement or subordinate legislation). Terms in this agreement shall, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.

"the Dock Estate" means the docks locks passages 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.

"grain" means all types of grain and soya beans and their derivatives in bulk.

"the Grain Terminal" means the Company's Royal Seaforth Grain Terminal at the Port including the dock and silos thereat and any other area on the Dock Estate that is being used pursuant to Clause 4.

"the Grain Terminal Manager" means the manager appointed from time to time by the Company to manage the operation of the Grain Terminal.

"the Harbour Master" means the Harbour Master or other Officer appointed from time to time by the Company to act as Harbour Master as defined by The Mersey Docks and Harbour Acts 1857 to 1992 or any statutory modification or re-enactment thereof and shall include his assistants.

"Long Term Storage" means any storage of grain at the Grain Terminal where such storage is arranged with the Grain Terminal Manager on an annual basis and for which the Cargo Owner pays to the Company a charge per tonne per annum.

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

"the Port" means the Port of Liverpool as defined in The Mersey Docks and Harbour Act 1971 or any statutory modification or re-enactment thereof.

"the Services" means any operation or service performed or provided by the Company in connection with the loading, discharging, trimming in hold, handling, receiving, weighing, storing and delivering of grain.

"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.

"Short Term Storage" means any storage of grain at the Grain Terminal other than Long Term Storage.

"vehicle" means any vehicle, including a trailer used or to be used for the carriage of grain.

- 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 are references to the clauses of these Terms and Conditions unless otherwise stated.

## **2. Berths and Services**

The Company will provide the use in common with vessels in other ownerships of a Berth at the Grain Terminal and will provide or perform the Services thereat upon the terms and conditions hereinafter mentioned.

## **3. Notice**

- 3.1 Users of the Grain Terminal (including persons making arrangements for and on behalf of others intending to use the Grain Terminal) warrant that, if not the Owner of grain to be deposited or handled thereat or if not the Owner of the vessel to be berthed thereat (as the case may be), the authority of the appropriate owner has been obtained to accept these terms and conditions.
- 3.2 Use of a Berth (or other area on the Dock Estate referred to in Clause 4) and/or 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.

## **4. Extent**

These Terms and Conditions shall be applicable during such time as a Berth is being used by a vessel for the loading or discharging of grain by the Company or the loading or discharging of ship's stores or bunkers and at any time the Grain Terminal or other area on the Dock Estate is being used for the loading, discharging, handling, receiving,

weighing, storing or delivering of grain.

## **5. Manning and Performance of Services**

- 5.1 Subject to these Terms and Conditions, the Company shall provide supervision, labour, plant and equipment as available for the provision of the Services at the Grain Terminal.
- 5.2 The Company shall be entitled not to commence any work or Services until a suitable berth at the Grain Terminal and suitable plant and equipment and sufficient port operations workers and other employees are available to perform the Services on the vessel or at the Grain Terminal. After commencement of the Services, they will be continued as and to the extent that suitable plant and equipment and sufficient port operations workers and other employees are reasonably available in all the circumstances from time to time, having regard to the need to meet the requirements of other users of the Port.
- 5.3 The Company shall not be under any obligation to receive or handle vessels or road vehicles at the Grain Terminal in any particular order.
- 5.4 No liability shall attach to the Company in consequence of its not commencing or continuing any work or Services for the reasons stated in Clause 5.2 or in consequence of any decision taken under Clauses 5.3 or 5.6.

### **5.5 Plant and equipment**

The Company may use such plant and equipment on the Services as its considers appropriate and expedient for the type of grain being handled

### **5.6 Unsound Cargo**

Without prejudice to the generality of the foregoing when a cargo is exceptionally difficult to work due to unsoundness of the cargo, overheating, bad or collapsed stowage, inadequate separations, 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 the Services and if it should so elect and inform the Owner of that vessel thereof in writing then the Company shall not be liable for any loss or damage whatsoever howsoever caused to the cargo or the vessel including any claim for loss of use or loss of a particular market and the said Owner 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 quayside or in a silo. 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 Owner of the vessel on which the cargo was consigned.

#### 5.7 Working practices

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.

#### 5.8 Check weighing

The Company reserves the right to check the weight of any consignment of grain received into the Grain Terminal from a vessel berthed thereat at the expense of the Owner of the vessel and any consignment of grain delivered from the Grain Terminal at the expense of the Owner of the grain.

#### 5.9 Turning

The Company reserves the right at the discretion of the Grain Terminal Manager to "turn" grain at the expense of the Owner of the grain. However, the Company shall not be responsible for cooling grain at the Grain Terminal nor for storing grain at the Grain Terminal at a given temperature.

#### 5.10 Storage

The storage of grain at the Grain Terminal shall be subject at all times to the availability of suitable and sufficient storage space thereat. Subject to the prior written agreement of both parties, the Company may enter a Long Term Storage arrangement with the Cargo Owner.

### 6. Force Majeure

The Company shall not be liable for any failure to perform or comply with any of these Terms and Conditions or for any loss and/or damage, breakdown or deterioration 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, any infestation or suspected infestation or from any action by whomsoever taken for the purpose of preventing or remedying such infestation or limiting the spread or extent thereof (unless caused by the negligence of the Company its servants or agents), any mixture of consignments resulting from the provision of services in connection with loading or discharging of separations, 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 its servants or agents.

### 7. Vessel on Berth

- 7.1 The Company shall permit a vessel once on the Berth to remain at the Berth until the completion of loading and discharging in relation to that vessel, 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 In the event that the discharging of a vessel on the Berth is or may in the reasonable opinion of the Company be delayed due to the non-availability of sufficient and suitable storage space at the Grain Terminal, and another vessel wishes to berth at the Berth for the purposes of discharging grain for which there is sufficient and suitable storage space at the Grain Terminal, then in such event and if so requested by the Company the owner of the former vessel shall without delay and at its own cost move the said vessel off the Berth so as to enable the latter vessel to berth at the Berth in a position that will enable the Company to discharge such vessel in an efficient manner.
- 7.3 A Shipowner may with the prior approval of the Grain Terminal Manager load/discharge stores and bunkers whilst a vessel is on the 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**

- 8.1 Subject to these Terms and Conditions the Company shall provide the use of the Berth on dates to be agreed from time to time between the Company and the Owners of the vessel.
- 8.2 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 to the Harbour Master and the Grain Terminal Manager for discharging vessels not later than the vessel's date of sailing from the last port of loading prior to discharging at the Port and for loading vessels not later than 24 hours prior to the expected date of loading at the Berth. All changes to the said dates shall be promptly notified by the Owner to the Harbour Master and the Grain Terminal Manager. A discharging vessel's final expected time of arrival shall be given in writing to the Harbour Master and the Grain Terminal Manager together with written receiving instructions for the grain (other than ship's delivery order) between the hours 0800 to 1600 Monday - Thursday inclusive, 0800 to 1200 Friday and not later than 24 hours (excluding the hours comprising Bank or other National Holidays) prior to the said final expected time of arrival.

## **9. General Operations**

- 9.1 Subject to these Terms and Conditions, the Company shall provide the services listed hereunder:-
- (a) Discharging grain in bulk from vessels which have no obstructions, including trimming in hold.
  - (b) Loading grain in bulk into vessels which have no obstructions, including trimming in hold.

- (c) Receiving grain from vessels, weighing, storing and delivering grain either direct from vessels or the Grain Terminal as required to craft, road vehicle or mill feed.
- (d) Receiving grain from road vehicles, weighing, storing and delivering grain to craft, road vehicle or mill feed as required.
- (e) Recording the weight of consignments of grain landed and delivered.
- (f) Issuing weight tickets on receipt and delivery of grain into and from the Grain Terminal.
- (g) Freeport procedural facilities upon reasonable prior notice being given to the Grain Terminal Manager.

9.2 Subject to these Terms and Conditions, the Company may at their discretion provide at the Berth the Services in connection with the loading and discharging of vessels with separations and/or wing tanks, where prior arrangements for the Services have been agreed between the relevant Shipowner or Cargo Owner and the Grain Terminal Manager, but such Services will be subject to additional charges payable by the Cargo Owner.

## 10. Working Time

10.1 The Services will be performed or provided (except on Christmas Day, Boxing Day and New Year's Day) during the following working periods unless otherwise agreed between the Company and the Owners:-

- 0700 to 1900 hours Monday to Friday inclusive – all shipwork and deliveries
- 0700 to 1300 hours Saturday and Sunday - shipwork and mill delivery only
- 6 hours from whichever is agreed of 0700/0800/0900 hours Saturday and Sunday – road delivery only (by prior arrangement with the Grain Terminal Manager)

### 10.2 Overtime

Work may at the discretion of the Grain Terminal Manager be carried out at the request of the Owner on Bank and other National Holidays or outside the periods stated in Clause 10.1 ("Overtime") but such work shall be subject to additional charges as specified by the Company from time to time.

The additional charges in respect of work performed at the request of the Owner outside the periods specified in Clause 10.1 shall be subject to a minimum number of hours determined from time to time by the Grain Terminal Manager. As at 1<sup>st</sup> September 2005, the minimum number of hours to be charged for shipwork undertaken in overtime (except on Bank and other National Holidays) are as follows:-

- (a) Where shipwork gangs are employed during the working periods specified in Clause 10.1 and, at the discretion of the Grain Terminal Manager, work for a maximum of two hours after the end of such periods to complete a vessel in order to enable such vessel to sail from the Port, a minimum charge of 2 overtime hours per gang shall apply;
- (b) Where shipwork gangs are employed during the working periods 1300 to 1900 hours Saturdays or Sundays, a minimum charge of 6 overtime hours per gang shall apply;
- (c) Where shipwork gangs are employed during the working periods 1900 to 0700 hours on any day, a minimum charge of 12 overtime hours per gang shall apply;



10.3 In the context of this Clause 10, Bank and other National Holidays shall be deemed to commence at 0700 hours on the relevant Holiday and be of 24 hours duration.

## **11. Time Lost**

11.1 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 8.2 or in compliance with the Shipowner's request that work should commence at or finish before a particular time, and time is lost or work delayed by reason of or in consequence of a vessel's late arrival or non-arrival on the Berth, or time is lost or work delayed due to material delays attributable to the Shipowner, his servants, agents or independent contractors (other than the Company) or to adverse weather, then the period of working time with labour standing by shall be charged for in accordance with Clauses 11.2 and 11.3.

11.2 Time lost due to the late or non-arrival of a vessel shall be deemed to commence at the time for which labour has been arranged and to cease in the event of the late arrival of a vessel - when a vessel is safely secured at its intended berth and ready to work, or in the event of the non-arrival of a vessel - 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 such rates as are specified from time to time by the Company.

11.3 Time lost or work delayed due to adverse weather, or material delays attributable to the Shipowner, his servants, agents or independent contractors (other than the Company) shall be charged to the Shipowner at such rates as are specified from time to time by the Company Provided always that the Shipowner shall not in any event be liable to pay the time lost or work delayed charge if and to the extent that such time lost or work delayed is caused by breakdown of the Company's plant or equipment or labour disputes between the Company and its employees unless such is occasioned by or results from the act neglect or default of the Shipowner or his servants agents or independent contractors or any other circumstances not being the act neglect or default of the Company. Any additional charges payable pursuant to Clause 10.2 ("Overtime Charge") shall remain payable notwithstanding the above proviso.

11.4 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 8.2, 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 preceeding 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.

## **12. Operational Charges**

- 12.1 The Company's charges for the use of the Berth (including Berth and Conservancy Charges on vessels) and for the Services of discharging (including trimming in hold) provided by the Company under Clauses 2 and 9, are those specified from time to time by the Company and are payable by the Shipowner on demand unless otherwise agreed by the Company.
- 12.2 The Company's charges for the use of storage facilities and for other services (including receiving and weighing and delivery to craft, road vehicle or mill feed) provided by the Company under Clauses 2 and 9 are those in force from time to time and are payable by the Cargo Owner on demand unless otherwise agreed by the Company.
- 12.3 Inward Grain shall be permitted to be stored at the Grain Terminal free of charges in respect of Short Term Storage for the first 5 calendar days commencing at 0700 hours on the second, or final if earlier, day of discharge of the vessel from which such grain is discharged. Thereafter, grain that is not the subject of Long Term Storage shall be charged weekly in arrears in respect of Short Term Storage at the rates specified by the Company from time to time, for each period of 7 calendar days or less that such grain is stored thereat beyond its free storage period, such charges being based on the tonnage of such grain stored at the Grain Terminal at 0700 hours on the first day of each such 7 day period for which such charges apply. Such charges, and those specified by the Company from time to time for Long Term Storage, are payable by the Cargo Owner on demand unless otherwise agreed by the Company.
- 12.4 The charges payable hereunder shall be paid by the party responsible therefor without reduction or deferment on account of any claim counterclaim or set off. Interest at the rate of 4 per centum above the then prevailing Lloyds TSB Bank plc Base Rate calculated on a day to day basis will be payable on the charges remaining unpaid twenty eight days after the date of the Company's invoice.
- 12.5 The Company reserves the right to require the Shipowner to pay a deposit equal to such percentage as the Company may in its absolute discretion determine of the estimated total charges for the Services to be performed or provided in respect of the vessel, together with such other charges as may be payable to the Company in respect of such vessel, before the commencement of the Services. Such deposit shall be payable on demand and, failing receipt of which, such Services may not be commenced. In addition, the Company reserves the right not to commence/continue Services in respect of any vessel in the event that any charges payable to the Company by the Shipowner of such vessel in respect of previous vessels of such Shipowner handled in the Port have not been paid.
- 12.6 The above charges are in addition to goods dues as defined by the Harbours Act 1964, Pilotage Charges, Boatmen Charges and the Environmental Levy charged by the Company.
- 12.7 Notwithstanding the provisions above, if any Statute or Statutory Instrument shall become compulsorily applicable to the operations performed hereunder, the Owners 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 operational charges.

### **13. Removal and delivery of grain**

- 13.1 As the Grain Terminal is primarily a transit facility, the Company may by written notice given to the Cargo Owner not less than 48 hours beforehand require the removal of grain stored at the Grain Terminal within the period specified in the notice, after expiry of which time the grain may at the sole risk and expense of the Owner thereof be disposed of in such manner as the Grain Terminal Manager shall see fit and without any responsibility whatsoever on the part of the Company in respect of any loss or damage sustained by the said Owner arising out of or in consequence of such disposal
- 13.2 In the event that the Company operates a vehicle booking system, Owners requiring delivery of grain from the Grain Terminal must make arrangements for delivery with the Company before 1500 hours on the working day prior to delivery (Monday to Friday). The Company will use its reasonable endeavours to execute delivery orders promptly and in accordance with appointments so made when the requirements of Clause 13.4 are complied with, but any appointment made with the owner of a vehicle or with the Cargo Owner or their respective employees, servants or agents for the receipt or delivery of grain from or to road vehicles at any particular time or within a particular interval of time shall (notwithstanding any representation made by any servant or agent of the Company at the time of making the appointment or at any time before or thereafter) be construed merely as the anticipated time when the grain may be received or delivered and shall not oblige the Company to exercise receipt or delivery at that time nor determine the order in which vehicles or vessels may be handled.
- 13.3 No liability shall attach to the Company in consequence of any failure to receive from or deliver to any vehicle at or within the time or interval of time stated in Clauses 13.1 or 13.2.
- 13.4 Subject to Clause 13.1, the Company will not execute delivery of grain from the Grain Terminal except upon prior production of one of the following documents:-
- (a) the delivery order of the Shipowner on whose vessel the grain has been shipped,
  - (b) the sub-delivery order of the Cargo Owner identifying a haulier whose name has been previously notified to the Grain Terminal Manager by the said Owner and is recorded on the Company's Terminal Booking Sheet
  - (c) in exceptional circumstances only, a fax (in lieu of a delivery/sub-delivery order) sent by the Cargo Owner to the Company authorising the Company to deliver to a specified person named therein.

### **14. Lien on Goods and Vessels**

- 14.1 The Company shall be entitled to refuse to allow grain discharged from a vessel to leave the Dock Estate until:-
- (a) all charges claimed by the Company for cargo handling services whether in relation to that cargo or to other cargo of the relevant Cargo Owner have been paid or secured to the satisfaction of the Company, and

- (b) 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).

14.2 The Company shall be entitled to refuse to allow a vessel to leave the Dock Estate until:-

- (a) all charges claimed by the Company for cargo handling services whether in relation to that vessel or to any other vessel of the relevant Shipowner have been paid or secured to the satisfaction of the Company, and
- (b) 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 any other vessel of the Shipowner).

## 15. **Bill of Lading**

15.1 The Shipowner of a vessel which it is intended to sail to or from the Berth shall be the agent of the Company for the purposes of agreeing with the Cargo Owner 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;-

- (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,

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.

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 Bill of Lading and the Shipping Note.

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 consequent on 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, subject as

hereinafter provided, for physical loss of or damage to any vessel or other property of the Shipowner or to any grain 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 the Services provided that:-

- 16.1.1 The Company's liability in respect of loss or damage to any vessel of the Shipowner shall not exceed £1,500,000 per occurrence or incident.
- 16.1.2 The Company's liability in respect of loss of or damage to grain shall not exceed a maximum amount of £1.20 per kilo of the gross weight of the grain lost or damaged but shall not in any event exceed an aggregate amount of £150,000 per occurrence or incident.
- 16.1.3 The Company shall not be liable for any physical loss or damage, including without limitation contamination or deterioration of grain, arising from:
- (a) inadequate separation between different types of grain onboard a vessel, grain overheating onboard a vessel, or from any other poor or inadequate storage onboard a vessel, or
  - (b) the Company complying with any instructions given by the Shipowner or Cargo Owner requesting the Company to handle or store grain at the Grain Terminal in a manner other than in accordance with the Company's normal working practices as applicable from time to time.
- 16.1.4 If a deficiency or loss of weight howsoever caused of a consignment of grain amounts in total to not more than 0.25% of the gross weight of the consignment or, in the case of Maize, to not more than 0.2% of the gross weight of the consignment, the Company shall be exempt from any liability whatsoever. For the avoidance of doubt, in the event that there is a loss of weight of a consignment(s) as described in this clause 16.1.4, then the Company's liability shall be only be for that amount in excess of either 0.25% or 0.2% (as applicable), of the gross weight of the consignment and such liability shall be subject to the limitations and exclusions otherwise stated in these Terms and Conditions.
- 16.1.5 Subject to the provisions of Clause 16.1.6, the Company shall be freed and discharged from all liability in respect of any physical loss or damage to any vessel or grain 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 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.
- 16.1.6 In the case of latent physical loss or damage to grain 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 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 grain by the Company to or from a vessel or 14 days after delivery of the grain to final consignee whichever shall be the earlier.

16.1.7 The Company shall in any event be freed and discharged from all liability for any loss or damage to any vessel, grain or equipment or any other matter or thing unless suit is brought against the Company within twelve months of the said occurrence causing such loss or damage. In the case of loss of or damage to any vessel or any other property of the Shipowner, the Shipowner shall grant all reasonable facilities and access to the Company to survey such loss or damage.

16.1.8 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.

16.2 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 16.1 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 16.1.

16.3 The Company shall not be liable for indirect or consequential damage nor for any claims for loss of use or loss of profits or the loss of a particular market.

## **17. Indemnity**

17.1 The Shipowner and/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.

17.2 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 pursuant to Clause 17.1.

## **18. 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 the Services does so on its own behalf and as agent for all its employees, independent contractors and agents.

## **19. Security**

- 19.1 The Owner of the vessel shall take all reasonable steps to ensure the security of the vessel berthing at the Grain Terminal.
- 19.2 The provision of any security services or anti-terrorist measures in respect of each vessel shall be the responsibility of the Owner of the vessel.
- 19.3 The Owners their servants agents and independent contractors shall comply with all directions and requirements concerning security measures in relation to any areas designated as a Restricted Area ("RA"), Restricted Zone ("RZ") or Controlled Zone ("CZ") set up pursuant to (i) EU Regulation – (EC) No. 725/2004 on Enhancing Ship and Port Facility Security, (ii) the International Ships and Port Facility Security Code (iii) the Aviation and Maritime Security Act 1990 or (iv) the Merchant Shipping and Maritime Security Act 1997, and comprising part or all of the Grain Terminal and/or other property of the Company.

In addition, the Owners shall comply with all reasonable instructions given by the Company for the proper operation and security of any such RA/RZ/CZ.

- 19.4 The Owners shall comply in every respect with the ISPS Code together with all relevant UK and EU Regulations and any instructions or directions issued by the Transport Security Directorate (TRANSEC) relating to the said regulations, and in particular the Owners shall at all times comply fully with the Port of Liverpool Port Facility Security Plan and any other such Plan approved from time to time by TRANSEC relating to the Grain Terminal and/or any other property of the Company adjacent thereto.
- 19.5 The Company's charges include port security costs appropriate to ISPS conditions current as at 1<sup>st</sup> September 2005. In the event that the level of security threat in the Port increases at any time thereafter, the Company reserves the right to then charge the Owners an additional charge proportional to the increase in port security costs incurred by the Company in relation to the Services performed or provided by the Company hereunder.

## **20. Byelaws and Regulations**

Use of the Berths and or the 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.

## **21. 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.

**22. Data Protection**

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.

**23. Jurisdiction**

23.1 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.

23.2 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.

**24. 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.



**OPERATIONAL ENQUIRIES**

Grain Terminal Manager

Tel: 0151 949 6201 + 6458 ; after 17.30 hours 0151 949 6246

**ARRANGEMENTS FOR BERTHING & UNBERTHING OF VESSELS:**

MDHC Marine Operations Department

Tel: 0151 949 6222 + 6140

**INFORMATION ON CHARGES & GENERAL ENQUIRIES:**

The Mersey Docks and Harbour Company Limited (Liverpool)

Tel: 0151 949 6000

**PRINTED AND PUBLISHED BY:**

The Mersey Docks and Harbour Company Limited

Maritime Centre

Port of Liverpool

Liverpool L21 1LA

England.

Registered in England 7438262