



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

THE MANCHESTER SHIP CANAL COMPANY LIMITED

TERMS AND CONDITIONS

FOR HANDLING AND STORING BULK CARGO

IN THE HARBOUR AND PORT OF MANCHESTER

THE MANCHESTER SHIP CANAL COMPANY LIMITED

TERMS AND CONDITIONS

FOR HANDLING AND STORING BULK CARGO

Interpretation

1. In these conditions:-
 - 1.1 "the Berth" means any berth in the Port operated by the Company and shall include any quay, transit shed or other area situate thereat.
 - 1.2 "cargo handling services" means any operation or service performed or provided by the Company in connection with the receiving, delivering, loading, discharging, stowing, handling or storage of goods into or from a Shipowner's vessel or which have been or are to be shipped on vessels using or intending to use the Berth or into or from a road vehicle upon the terms and conditions hereinafter mentioned.
 - 1.3 "the Cargo Owner" means the owner of any goods and any bailor bailee consignor shipper consignee or other respective agents in relation thereto (but shall not include the Company).
 - 1.4 "charges" includes charges of every description for the time being payable to the Company in respect of cargo handling services.
 - 1.5 "the Company" means The Manchester Ship Canal Company Limited, whose registered office is situate at Maritime Centre, Port of Liverpool, L21 1LA.
 - 1.6 "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.
 - 1.7 "the Dock Estate" means the Harbour and Port of Manchester and all 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.
 - 1.8 "goods" or "cargo" means any cargo, goods, articles and things of any description (including any packages or containers within which the said cargo, goods, articles and things may be contained) including, but without prejudice to the generality of the foregoing, fish livestock and animals of all descriptions and also liquids and gases but excluding stores and bunkers.

- 1.9 "the Harbour Master" means the Harbour Master or other officer appointed by the Company to act as Harbour Master for the Harbour and Port of Manchester or his assistants.
- 1.10 "the Owner" means the Cargo Owner and/or Shipowner, as appropriate.
- 1.11 "the Port" means the Harbour and Port of Manchester as defined in The Manchester Ship Canal Act 1885 or any statutory modification or re-enactment thereof.
- 1.12 "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.
- 1.13 Words importing the singular shall include the plural and vice versa unless the context otherwise requires.
- 1.14 The headings for clauses are for ease of reference only and shall not affect the construction hereof.
- 1.15 Reference herein to any statutory provision includes reference to any consolidation, re-enactment or modification thereof.
- 1.16 Reference to clauses or schedules are references to the clauses and schedules of these Terms and Conditions unless otherwise stated.

Berths and Services

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

3. Notice and Warranty of Authority

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

Extent

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

Performance of Work

5. The Company shall perform or provide such of the cargo handling services as the Company in its reasonable discretion considers appropriate and expedient for each vessel and its cargo or for particular goods unless instructed to the contrary in writing by the Shipowner or the Cargo Owner and agreed in advance by the Company.

Manning and Performance of Cargo Handling Services

- 6.1 Subject to these Terms and Conditions, the Company shall provide supervision and labour as available and necessary plant and equipment for the discharging, loading, receiving, delivering, stowing, handling and storage of goods at the Berth.
- 6.2 The Company shall not be under any obligation to receive or handle vessels or road vehicles at the Berth in any particular order.
- 6.3 The Company shall be entitled not to commence cargo handling services until a suitable berth, quay and, if required, transit shed or storage area 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 or storage area. After the commencement of cargo handling services, they will be continued as and to the extent that plant and port operations workers and other employees are reasonably available in all the circumstances from time to time.
- 6.4 The Company may decline at any time to perform or provide or (within a reasonable time after detrimental information as to the nature of the cargo handling services required is learnt by the Company) to continue to perform or provide all or any work or cargo handling services.
- 6.5 The Company may use such plant and equipment on cargo handling services as it considers suitable for the type of cargo being handled.
- 6.6 No liability shall attach to the Company in consequence of its not commencing or continuing cargo handling services for the reasons specified in Clause 6.3.

6.7 Without prejudice to the generality of the foregoing when a cargo is exceptionally difficult to work due to unsoundness of the cargo, bad or collapsed stowage, damage to the cargo or the vessel or other matter creating exceptionally difficult working conditions then the Company may in its absolute discretion elect whether to perform or provide or continue to perform or provide cargo handling services and if it should so elect and inform the Shipowner for that vessel or the Cargo Owner thereof then the Company shall not be liable for any loss or damage whatsoever howsoever caused (including where caused by the negligence of the Company its servants agents or independent contractors) to the cargo or the vessel including any claim for loss of use or loss of a particular market and the said Shipowner or Cargo 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 quay or in a shed or store. 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.

Extra charges may be levied by the Company to handle unsound cargo and cargo that is exceptionally difficult to handle, and such extra charges and any costs 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 or the Cargo Owner.

Force Majeure

7. Without prejudice to the generality of Clause 6, the Company shall not be under an obligation to commence or continue to perform or complete cargo handling services nor shall any liability thereby attach to the Company where hindered or prevented as a result of or due to Act of God; Casualty (including fire or explosion); damage; breakdown; any consequence of war or hostilities (whether war be declared or not); riots; civil commotions; strikes, lockouts, industrial disputes or actions of any nature; storm, flood, earthquake, subsidence, epidemic or other natural physical disaster; act of any Government or any other cause or event which could not be avoided and the consequence whereof could not be prevented by the exercise of reasonable care by the Company.

Vessel on Berth

8.1 The Company shall permit a vessel once on a Berth to remain at the Berth until the completion of cargo handling services in relation to that vessel, 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.

- 8.2 The Company shall permit a Shipowner to load and discharge stores and bunkers whilst a vessel is on a Berth.

Arrival of Vessel

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

Working Periods

- 10.1 Cargo handling services may be performed or provided during the following working periods (except for Bank or other National Holidays) unless otherwise agreed between the Company and the Shipowner:-

Basic Working Periods

- (i) Loading/discharging (shipwork)
0700 to 1700 hours Monday to Friday inclusive
- (ii) Receiving/delivery
0700 to 1600 hours Monday to Friday inclusive

Overtime Periods

- (i) Loading/discharging (shipwork)
1700 to 1900 hours Monday to Friday inclusive
0700 to 1700 hours Saturday
0700 to 1700 hours Sunday
- (ii) Receiving/delivery
1600 to 1900 hours Monday to Friday inclusive

- 10.2 Work performed or provided at the request of a Shipowner or Cargo Owner during the above Overtime Periods or on Bank or other National Holidays or otherwise outside the Basic Working Periods indicated above (including work performed or provided during work periods which commence before but cease on or which commence on but cease after the said Holidays) will be subject to additional charges as specified by the Company from time to time. In the context of these Terms and Conditions, Bank and other National Holidays shall be deemed to commence at 0700 hours on the relevant Holiday and be of 24 hours duration.

Time Lost

- 11.1 Where labour has been ordered by the Company in reliance on the provisions contained in Clause 9 and time is lost consequent on a vessel's late arrival or non arrival at the Berth or where a Shipowner wishes cargo handling services to commence at a time other than at the start of any working period mentioned in Clause 10, then the period of working time with labour standing by will be charged for as specified in Clauses 11.2 and 11.3.
- 11.2 Time lost shall be deemed to commence at the start of a work period for which labour has been ordered and to cease when a vessel is safely secured at its intended berth or, in the event of non arrival of the vessel, on the termination of the period for which labour has been ordered and the time lost calculated thereby shall be charged to the Shipowner at the rates specified by the Company from time to time.
- 11.3 Time lost or work delayed due to adverse weather or material delays attributable to the Shipowner or the Cargo Owner, their respective servants agents or independent contractors (other than the Company) shall also be charged to the Shipowner or the Cargo Owner, as appropriate, at the rates specified by the Company from time to time. The Shipowner or the Cargo Owner, as appropriate, shall not be liable to pay for time lost or work delayed if the time lost or work delayed is due to breakdown of the Company's plant or equipment or labour disputes between the Company and its employees but if labour is ordered for a working period referred to in Clause 10.2 any additional charge payable thereby shall nonetheless continue to be payable despite such breakdown or dispute.

Provision and Use of Gear, etc. and Indemnity

- 12.1 The Shipowner shall (if required) 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.
- 12.2 The Shipowner warrants:
- 1.2.1 that all the equipment and gear referred to in Clause 12.1 shall be maintained in class, and in good and safe 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 class and any statute, order or regulation then in force within the United Kingdom.
- 1.2.2 the certified handling/lifting capacity of the vessel's equipment and gear is in all respects accurate and tested in accordance with class and/or regulatory requirements.

- 12.3 To the extent that the equipment and gear referred to in Clause 12.1 is not available to the Company or is not maintained or certified in the manner specified in Clause 12.2, the Company shall be at liberty at its discretion and subject to availability to supply the same at the expense of the Shipowner in accordance with the Company's standard rates current from time to time.
- 12.4 The Shipowner shall indemnify the Company (including its employees, servants, agents and sub-contractors) against any loss, liability, claims, costs (including legal costs), expenses, fines, or penalties whatsoever (including pure financial losses and liabilities) in relation to any accident or incident howsoever arising out of or caused or contributed to by any defect, breakdown, or other shortcoming in the equipment or gear referred to in Clause 12.1 (and even if contributed to by the negligence of the Company, its employees, servants, agents and sub-contractors) , or arising out of any inaccuracy, mis-description or misrepresentation as to its handling/lifting capacity or other deviation from its specification, certification or required standard.

Accuracy of Particulars of Cargo

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

Hazardous Cargoes

14. No goods of a dangerous hazardous poisonous tainted infested or contaminated nature including but without prejudice to the generality of the foregoing those enumerated in the Maritime Dangerous Goods Code (as defined in the Merchant Shipping (Dangerous Goods) Regulations 1981) as applicable from time to time will be handled by the Company except with the consent of the Company and then only in accordance with any conditions prescribed by the Company and in accordance with the statutory and the Company's directions regulations and byelaws governing the handling of such goods. All extra costs charges and expenses incurred by the Company in handling goods of a dangerous hazardous poisonous tainted infested or contaminated nature shall be repaid by the Shipowner of the vessel on which they were or were to be consigned.

Environmental and Other Measures

15. The Company shall be entitled to take all such reasonable measures as it considers in its absolute discretion necessary or desirable to prevent or reduce any possible nuisance or environmental or safety hazard which may be created by or result from

the handling or storing of cargo.

Delivery of Goods

- 16.1 No goods shall be available for delivery by the Company until such time as H.M. Revenue & Customs clearance has been obtained in respect thereof. The Cargo Owner shall be responsible for the clearance of goods with H.M. Revenue & Customs.
- 16.2 Goods will not 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 Cargo Owner named in the original Delivery Order and being in a form satisfactory to the Company and authorising such delivery.
- 16.3 The Company may by not less than 48 hours written notice given to the Cargo Owner require the removal of goods stored at the Berth within the period specified in the notice, after expiry of which time the goods may at the sole risk and expense of the Cargo Owner thereof be disposed of in such manner as the Company 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 Cargo Owner arising out of or in consequence of such disposal.
- 16.4 Cargo Owners requiring delivery of goods from the Berth must make arrangements for delivery with the Company before 1500 hours on the working day prior to delivery (Monday to Friday).
- 16.5 Subject to Clause 16.3, the Company will not execute the delivery of goods from the Berth except upon prior production of one of the following documents:-
- (i) the delivery order of the Owner of the vessel upon which the cargo has been shipped;
 - (ii) the sub-delivery order of the Cargo Owner identifying a haulier whose name has been previously notified to the Company by the said Cargo Owner and is recorded on the Company's Terminal Booking Sheet;
 - (iii) 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.

Demurrage Charges in Relation to Road Traffic

- 17.1 Any appointment made with the owner of a vehicle or with the Cargo Owner 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.

- 17.2 No liability shall attach to the Company in consequence of any failure to permit the loading or unloading of any vehicle at or within the time or interval of time referred to in Clause 17.1, notwithstanding any representation made by any servant or agent of the Company at the time of the making of the appointment, or at any time before or thereafter which may occur, and the owner shall release and indemnify the Company from and against such liability.

Indemnity in Relation to Rail Traffic

18. The Company shall not be responsible to British Rail 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 howsoever caused and the Cargo Owner shall be responsible for and indemnify the Company against such loss, damage or charges.

Check Weighing

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

H.M. Revenue & Customs Examination

20. No extra charges will be raised for routine Customs examination, which includes random weighing but excludes weighing or taring for average for specific commodities. An additional charge will be made if H.M. Revenue & Customs order a more extensive or thorough examination for any reason.

Non-Shipment of Goods

- 21.1 The receiving by the Company for and on behalf of the Shipowner of goods for shipment does not imply that such goods will be shipped. The acceptance or refusal of goods for shipment is the responsibility of the Shipowner concerned, for whom the Company accepts as agent.
- 21.2 Where goods are not shipped the Shipowner or Cargo Owner (as appropriate) shall pay to the Company such reasonable sum as the Company shall determine in relation to the work performed by the Company or in connection with the redelivery of such goods to the Cargo Owner who shall take delivery of the goods at the part of the Dock Estate at which they are lying but the Company shall be at liberty nevertheless to transfer such goods at the expense of the Shipowner to another location if in the opinion of the Company such goods could otherwise cause congestion at their

existing location and to delay or decline to perform the work of redelivery until the reasonable sum aforesaid shall have been paid to them.

Protection of Goods

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

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;-

- 22.1 the Company shall have the benefit of all provisions therein exempting or limiting the liability of the Shipowner
- 22.2 the law governing such provisions so far as relating to the Company shall be English Law determined by English Courts and
- 22.3 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.

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.

Limitation of Liability

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

23.1.1 The Company's liability in respect of physical loss or damage to any vessel of the Shipowner shall not exceed £1,000,000 per occurrence.

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

occurrence or incident.

23.1.3 In relation to goods received for shipment by or handled by the Company, the Company shall not be liable to the Cargo Owner nor to the Shipowner as bailee of the goods for any misdelivery due to misleading or faint markings or absence of markings.

23.1.4 If a deficiency or loss of weight howsoever caused of a consignment of all types of aggregates, minerals, chemical solids, grain or pulses (and their derivatives) in bulk amounts in total to not more than 0.5% of the gross weight of the consignment or, in the case of Maize, to not more than 0.2% of the gross weight, or in the case of sand 2.5% 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 23.1.4, then the Company's liability shall be only be for that amount in excess of either 0.5%, 0.2% or 2.5% (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.

23.1.5 The Company shall be freed and discharged from all liability in respect of any physical loss or damage to any vessel, goods, vehicle 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 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). In the case of any damage to a vessel, the Shipowner shall give to the Company every opportunity to survey the alleged damage before the vessel leaves the Berth.

23.1.6 In the case of latent physical loss or damage to goods the Company shall be discharged from all liability unless notice of such loss or damage and the particular nature thereof has been given to the Company immediately after the Cargo Owner has been notified of 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.

23.1.7 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.

23.1.8 For the avoidance of doubt it is hereby declared that the Company's liability in respect of any physical loss or damage shall not extend outside the minimum and maximum limits specified in Clause 23.1 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 23.1.

23.1.9 Without prejudice to the generality of the foregoing but by way of illustration the Company shall not be under any liability whatsoever for any personal injury (whether fatal or otherwise) except where the Company is proven negligent nor for loss damage or delay caused to vessels, cargoes or vehicles or any other description of property caused by the gangways of the vessel or arising as a result of unsuitability of the vessels, cargoes or vehicles for mechanical handling operations including but without prejudice to the generality of the foregoing the use of grabs and machines (including track vehicles).

In particular, but without limiting the generality of the foregoing, the following will render the vessel, cargo or vehicle (as appropriate) unsuitable:-

- (a) the vessel being a general cargo vessel;
- (b) vessels, cargoes or vehicles whose construction or condition in any respect renders them unsuitable for mechanical bulk cargo handling operations, in particular but without limiting the generality of the foregoing by reason of such vessels not complying with Lloyds Regulations in force for the time being for bulk carriers or having inadequately protected tanks;
- (c) obstructions and impedances on decks and in hatches, including overhanging hatch covers;
- (d) appendages/fittings/structures projecting into stowage space and/or otherwise attached, and other parts of the vessel or its equipment which are vulnerable to damage by grabs and machines for example but without limiting the generality of the foregoing shell frames, shell frame heel brackets, beam knees, temporary bulkheads, hold pillars, deck beams, hopper steps, conduit casings, CO₂ piping, trimming plates, brackets, frames, girders, floorings, bearers, unprotected tank tops and lids and/or protections, ladders/platforms and associated fittings, shaft tunnels, bolted plates, door screws and bolts, sounding/air pipes, wooden sheathing and securings, cargo battens/cleats, cross beam shelves or shoes, loops or cleats, stanchions or hold pillars, shifting board channels, retractable hatchcovers protruding into square of hatch;
- (e) vessels, cargoes or vehicles in respect of which all reasonable steps have not been taken to protect same from such damage as may otherwise occur as a result of mechanical bulk handling operations.

23.2 Save as expressly provided by Clause 23.1, 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 Cargo Owner howsoever caused or arising, and in particular the Company shall not be liable for indirect or consequential damage including any claims for loss of use or profits or the loss of a particular market.

Indemnity

24. The Shipowner or Cargo Owner as the case may be shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever arising from the use of or the presence of his vessel or goods in the Port including the Dock Estate and its facilities and will indemnify the Company against all proceedings and claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any act neglect or default of the master of the vessel or the Shipowner or Cargo Owner their respective contractors agents or servants or of any inherent quality or defect of any goods on the Dock Estate or on the vessel.

Protection of Company's Servants and Agents

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

Charges

- 26.1 The charges for cargo handling services are those specified from time to time by the Company and are (subject as hereinafter provided) payable by the Shipowner or (where agreed) the Cargo Owner on demand unless otherwise agreed by the Company without reduction or deferment on account of any claim counterclaim or set off.
- 26.2 Interest at the rate of 4 percentum above the then prevailing Bank of Scotland Base Rate calculated on a day to day basis will be payable on the charges aforesaid remaining unpaid twenty eight days after the date of the Company's invoice. Notwithstanding the foregoing the Company reserves the right to require a deposit of 80% of the estimated total charges for the cargo handling services to be performed or provided before the commencement of such services and which deposit shall be payable on demand and failing receipt of which such services will not be commenced.
- 26.3 The charges aforesaid are in addition to Conservancy ships and goods dues as defined by the Harbours Act 1964 (or any statutory modification or re-enactment thereof) Pilotage charges Boatmen charges and charges for ancillary services levied by the Company.
- 26.4 The charges for cargo handling services specified by the Company from time to time cover the provision of such of the services as are specified by the Company in relation thereto (other than the provision of plant gear and equipment except as expressly stated) where the cargo is sound cargo under normal conditions on a normal vessel such that a reasonable rate of receiving loading or discharging in relation to that particular vessel or cargo is achievable PROVIDED that where time is

lost for any reason referred to in Clause 11 hereof such time shall in addition be charged in accordance with the rates specified by the Company from time to time.

- 26.5 Any cargo handling services (including, but without prejudice to the generality of the foregoing, the provision of all plant gear and equipment) not specified by the Company shall be a Special Service, the provision of which shall be at the discretion of the Company. Special Services shall be charged for in accordance with the rates specified by the Company from time to time and be in addition to the rates per tonne specified by the Company from time to time.
- 26.6 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 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 rates specified by the Company from time to time.

Rent Charges

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

Lien on Goods and Vessels

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

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

28.2.2 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).

Relationship to Special Agreements

29. 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.

Byelaws and Regulations

30. Use of berths in the Port and or services described herein shall be subject to such Statutes Byelaws Regulations and Directions of the Company as may be in force from time to time.

Variation of Conditions

31.1 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.

31.2 These Terms and Conditions are to be read in conjunction with a discharge agreement made between the Shipowner or the Cargo Owner and the Company. Any variation to these Terms and Conditions must be agreed in writing by the Company prior to the vessel's nomination for discharge or loading at the Berth.

Jurisdiction

32. 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.

Miscellaneous

33.1 Vessel Type

The Company will only handle vessels which are self trimming, single deck, bulk

carriers requiring loading or discharging through the main hatches only. Such vessels shall be gearless vessels, unless otherwise agreed in writing by the Company prior to the vessel's nomination at the Berth.

The Company will not work wing tanks, deep tanks or any other restricted spaces on a vessel nor will it handle twin hatch vessels.

Vessels must be suitable for grab discharge and the cargo must be in bulk. Cargo in bags will not be handled.

33.2 **Maximum Dimensions of Vessels**

The maximum dimensions for a vessel to be handled by the Company at QEII Dock are-

Draft	9.00 Metres
LOA	208.79 Metres
Beam	28.35 Metres

The maximum dimensions for a vessel to be handled by the Company at Eastham Locks are-

Draft	8.78 Metres
LOA	170.68 Metres
Beam	21.94 Metres

Details of maximum dimensions for vessels using different berths in the Port, including maximum distance from Waterline to hatch coming, are available from the Company upon request. Details of maximum drafts available are also given in the Notices to Mariners issued by the Company from time to time.

Draft available is subject to height of tide and depth of controlling approach channel.

Air draft restrictions apply upstream of Runcorn Docks – details available from the Company upon request.

33.3 **Berth**

The Company reserves the right to nominate any other safe berth within the Port, should it so desire. A safe berth is defined as any berth deemed to be safe by the Company.

All vessels must be acceptable to the Company.

33.4 **Nomination of Vessel**

At least 5 clear days before the vessels expected date of arrival, the Shipowner shall give notice in writing to the Company stating the following information:-

- Name of vessel
- Estimated quantity required to be discharged
- DWCC
- Draft

L.O.A.
Beam
Number of holds/hatches and dimensions.

The Shipowner is responsible for ballasting the vessel as necessary to remain within the maximum distance from Waterline to hatch coming at all times during discharge. In the event of the vessel not discharging the entirety of its cargo the Shipowner must supply to the agents, a complete stowage plan and details of which hatches are to be discharged.

A notice of readiness under the vessel discharge rate guarantee cannot be given unless the provisions of this clause have been fully met.

33.5 Opening & Closing Hatches

If vessel is under British Flag then costs of opening and closing hatches, including costs of shore riggers if used, are for Cargo Owners account.

33.6 Vessel Lights & Crew Overtime

All vessels are to give free use of lights and crew members overtime as required for the discharge of the cargo.

33.7 Gangways

The Shipowner is responsible for ensuring that any gangways are positioned close to the vessel clear of the stevedoring operations, and for the provision of safety nets as necessary.

33.8 Derricks

The Shipowner, except in respect of a gearless vessel, is responsible for ensuring that derricks are positioned so as to avoid any contact with the cranes belonging to the Company.

34. Security

34.1 The provision of any security services or anti-terrorist measures in respect of the Vessels shall be the responsibility of the Shipowner.

34.2 The Owner shall comply in every respect with the International Ships and Ports Facility Security Code ("the ISPS Code") together with all relevant UK and EU Regulations including in particular Regulation 11 of the Ship & Port Facility (Security) Regulations 2004 (SI 2004/1495) and any instructions or directions issued by the Transport Security Directorate (TRANSEC) relating to any of the said Regulations, and in particular the Owner shall at all times comply fully with the instructions of the Port Security Officer and the Port Facility Security Officer(s) in accordance with the Port of Manchester Port Facility Security Plan and any other such Plan approved

from time to time by TRANSEC relating to any other property of the Company thereat.

- 34.3 In the event that ISPS conditions, and/or the level of security threat, in the Port increases at any time, the Company reserves the right to then charge the Owner an additional charge proportional to the increase in port security costs thereby incurred by the Company in relation to the performance of the services referred to in Clause 4.

35. Data Protection

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

OPERATIONAL ENQUIRIES:

01928 508 581 + 593 or 0151 949 6371

ARRANGEMENTS FOR BERTHING & UNBERTHING OF VESSELS:

Harbour Master's Department
Port Operations Control Centre

0151-949 6145
0151-327 4638

INFORMATION ON CHARGES & GENERAL ENQUIRIES:

Peel Ports Group (Liverpool)
Marine Commercial

0151-949 6000
0151-949 6222

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Port of Liverpool
L21 1LA

APPENDIX

In the event that the Company and the Shipowner or Cargo Owner are desirous of entering into a Despatch/Demurrage Agreement in respect of a vessel, such Agreement shall be based upon the following additional terms and conditions.

The Company shall be entitled to alter the said terms and conditions in such respects and at such times as they shall determine from time to time.

A. **Discharge Rate Guarantee**

Vessels will be discharged at such an average rate of metric tonnes per weather working day of 24 consecutive hours as shall be agreed between the parties. Time from 1700 hours on Friday until 0800 hours on Monday and from 1700 hours on days preceding holidays until 0800 hours on the next working day is not to count even if used.

B. **Optional Clause**

The Company may if agreed with the Shipowner or Cargo Owner as appropriate pay demurrage at charter party rates (or such other rates as the parties shall agree) for all time used in excess of allowed laytime, in which event receivers of cargo will pay despatch to the Company for all lay time saved at half demurrage rates as above. Time lost by opening hatches shall not count as laytime. Any delays caused by ice, flood, fog, quarantine or by cases of Force Majeure as defined in Clause 7 shall not count as laytime.

C. **Laytime Counting**

Time to count from the start of the first working period on the next business day after vessel is safely secured on the discharge berth and following vessel's custom clearance and receipt at the office of the Shipowner's Agents of written Notice of Readiness ("NOR") accompanied by pass of any national and/or regulatory bodies as may be required, and/or independent surveyor as selected attesting to the fact that the vessel is ready in every respect in all compartments and in possession of valid documents of authorisation.

Acceptance and rotation of vessels in the Port shall at all times to be at the absolute discretion of the Company.

D. **Turn Clause**

In the event of buyers nominating more than one vessel against the contract, time will not count on the second and subsequent vessel(s) until the Berth becomes available after completion of discharging of the preceding vessel.

E. **Weather**

Rain times during hours worked will be as per statement of facts. Rain time outside hours worked will be as per the Institute of Oceanographic Sciences, Birkenhead, or other. If the vessel is unable to discharge due to Environmental Pollution Restrictions beyond the Company's control, time will not count.