



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

THE MERSEY DOCKS AND HARBOUR COMPANY (RSCT) LIMITED

STANDARD TRADING CONDITIONS

RELATING TO RAIL FREIGHT SERVICES

Between

CONTAINER TERMINALS AT THE PORT OF LIVERPOOL

and

DESIGNATED RAIL FREIGHT TERMINALS

1. DEFINITIONS

“Change of Control”	means the obtaining or ceasing of Control of an entity by any person or entity.
“Charges”	means the charges payable by the Customer for the provision of the Services by the Company as agreed pursuant to the Contract.
“Company”	means The Mersey Docks and Harbour Company (RSCT) Limited (registered company number 11853106) whose registered office is at Maritime Centre, Port of Liverpool, L21 1LA.
“Company Container Terms”	means the Standard Terms and Conditions for Container Terminals operated by members of Peel Ports Group as current at the time of the carriage.
“Conditions”	mean these Standard Trading Conditions relating to Rail Freight Services.
“Consignment”	means containerised Goods or other cargo carried pursuant to the Contract (including as appropriate, the Container).
“Consignment Deposit”	means the delivery by vessel or haulage of the Consignment to the Terminal.
“Consignment Delivery”	means the collection by haulage of the Consignment from the Terminal.
“Container”	means any 20ft or 40ft equivalent unit intermodal shipping container specifically manufactured and suitable for the carriage of goods by road, sea, rail or inland waterways and which comply with ISO standards or any other container previously approved in writing by the Company as being a relevant Container for the purposes of the Contract.
“Contract”	means any contract or other transaction between the Company and Customer, including any Special Agreement (such Special Agreement shall be deemed to incorporate these Conditions), in relation to the provision by the Company or by any servant, agent and/or sub-contractor of the Company of the Services and/or any part of the Services.
“Contract Year”	means the period of one year from the date of commencement of the Services under any Special Agreement, or otherwise the annual period running from the date of the first Rail Carriage for the Customer, and any subsequent years.
“Control”	means the power of a person or entity to direct the affairs of an entity as a result of them: holding shares (directly or indirectly) in the entity; and/or possessing voting power (directly or indirectly) in relation to the entity; and/or having powers conferred on them in the entity’s articles of association or any other document.
“Customer”	includes the consignor, holder, consignee or receiver of the Goods, or agent thereof, and/or every party owning or entitled to possession of the Goods, and/or the party who has entered into the Contract with the Company and any party to whom that Contract or any document of carriage may be transferred.
“Dangerous Goods”	means Goods of any nature falling within the definition of dangerous goods given in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulation 2007 as supplemented by the Dangerous Goods – Rail Conditions of Acceptance (GO/RT3421) issues by the Rail Safety and Standards Board, as amended, reissued or replaced from time to time, or such other Goods which are subject to and/or prohibited by the International Maritime Dangerous Goods Code, or which are otherwise liable to combust, cause pollution, infestation or contamination.
“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.

“Force Majeure”	means any circumstance beyond the reasonable control of the Company including: strikes and any other industrial action or dispute; acts of God; war; riot; terrorism; crime; civil commotion; compliance with any law or governmental order; rule; regulation or direction or any other emergency procedures; accident; fire; flood; adverse weather conditions; any IT disruption; failure of material reduction in utility of or inability to use a third party’s infrastructure or refusal due to a physical or operational impediment of any such third party to allow such use.
“Freight Train”	means the rail freight train, its locomotive and wagons, providing the Rail Carriage.
“Goods”	shall mean the contents of any Container which contents are carried or to be carried pursuant to the Contract and shall also mean any intended cargoes received and/or collected from the Customer for stowage in a Container, which cargoes are carried or to be carried pursuant to the Contract.
“Inland Terminal”	means the rail freight facility operated by a third party from/to where Containers are carried from/to the RSCT Terminal.
“Inbound Movement”	means the carriage of any Consignment from the Inland Terminal to the RSCT Terminal.
“IT Disruption”	means any interference, disruption, damage and/or outage of any nature to IT systems and communication networks owned and/or used by the Company and/or its subcontractors and/or assignees including but not limited to: a cyber-attack or other malicious; destruction; corruption or theft of electronic or other information assets and/or data; failure for denial of access to a computer system or network used by the Company and/or its subcontractors and/or assignees.
“Outbound Movement”	means the carriage of any Consignment from the RSCT Terminal to the Inland Terminal.
“RSCT”	means Royal Seaforth Container Terminal at the Port of Liverpool.
“RSCT Terminal”	means the railhead owned and operated by the Company at RSCT for loading and discharge of Containers onto the Freight Train.
“Rail Carriage”	means any single or return carriage from one Terminal to another Terminal undertaken by rail or otherwise pursuant to the Contract.
“Railway Standards”	Industry Means, as the context requires the applicable published rules and regulations including codes of practice and conduct in force from time to time relating to any equipment or activity or service to be provided under or used in connection with the Contract.
“Services”	shall mean the services as defined in the Scope of Work below, together with any additional services as may be provided for elsewhere in these Conditions and/or in the Contract.
“Special Agreement”	means any agreement or special terms concluded between the Company and the Customer which are separate from or ancillary to these Conditions.
“Terminal”	means the RSCT Terminal and/or Inland Terminal as appropriate.
“Train Timetable”	means the weekly timetable for the Company’s rail service published by the Company from time to time.

2. SCOPE OF WORK

- 2.1. Subject to these Conditions the Company undertakes to perform the Rail Carriage of empty or laden Containers (including any Goods contained therein) on behalf of Customer.
- 2.2. All ancillary storage, shunting and lifting on/lifting off containers to/from the Freight Train at the RSCT Terminal is performed subject to the Company Container Terms.

- 2.3. The Company further undertakes in accordance with and subject to the provisions of the Contract to procure the storage of the Containers at the Inland Terminal and procure related loading/unloading services there, between time of Customer Deposit and before Consignment Delivery as the case may be, but subject always to Clauses 2.7 and 24.3 hereof.
- 2.4. The Company shall not provide any further services or accept any additional liabilities save as is set out in this Scope of Work and the Contract. It is, however, accepted by the Customer, that the Customer may in its option perform all or part of the Services in an alternative manner including by other means of transportation.
- 2.5. Where the Customer wishes the Company to carry Containers, either empty or with Goods contained therein, in accordance with this Scope of Work they shall (unless the Company shall agree to a lesser period of notice) give the Company at least two working days written notice of this prior to the train departure in which the Customer is to specify which terminal the Customer wishes the Containers to be collected from and to which terminals it wishes them to be delivered. The Customer in doing so recognises that the Train Timetable may be subject to variation without notice, and that the Customer gives no warranty as to the delivery of the Containers and shall have no liability whatsoever for any loss or damage arising out of delay. Nothing in this Scope of Work shall prevent the Company from declining to provide any Services either in accordance with the Scope of Work or any additional Services requested by the Customer.
- 2.6. Notwithstanding any of the provisions in these Conditions, nothing shall require the Company to vary the Train Timetable and for the avoidance of doubt, the Company shall not be required to delay or vary the same in the event that any Containers and/or Goods are not available to be loaded in time for any intended departure time.
- 2.7. In relation to storage of Goods at the Inland Terminal by the Company on the Customer's behalf:
 - 2.7.1. Unless otherwise agreed in the Contract, risk in the Goods shall remain with the Customer during any such storage (including any related loading/unloading and handling activities) and the Customer shall maintain, or arrange for the relevant Consignee or Consignor to maintain insurances for full replacement value for the relevant Goods in the event of loss or damage;
 - 2.7.2. Subject always to Clauses 2.7.1 and 24.3, and the limitations and exclusions in these Conditions, the Company shall otherwise exercise reasonable skill and care to ensure the safe custody of Goods during any agreed period of storage;
 - 2.7.3. Where Goods which are held by the Company after transit or whilst transit is suspended are Dangerous Goods, then the Company will hold such Goods at the Customer's sole risk and the Company may, if it is satisfied it is reasonable to do so, destroy the Goods and/or return them to the Customer or its Consignor or its Consignee (who shall receive them at once or otherwise dispose of them) (all at the Customer's cost).

3. WARRANTY

The Customer and any other person entering into transactions of any kind with the Company expressly warrant they are the owner of the Containers and any Goods contained therein, or the authorised agents of such owners, and further warrant that they are authorised to accept and are accepting these Conditions not only for themselves but also as agents for and on behalf of all other persons who are or may hereafter become interested in the Containers and/or Goods, and shall indemnify the Company for any loss or damage suffered or any other consequences arising out of or in connection with the fact that such persons referred to shall lack the authority or title referred to above.

4. SUBCONTRACTING

- 4.1. The Company shall be entitled to subcontract the whole or any part of the Services and it is understood by the Customer that the Freight Train is owned and operated by a third party operator under contract to the Company.
- 4.2. To the extent that the Company exercises its rights to subcontract in order to transport the Goods by road (where it is unable to operate the rail services or the rail services are otherwise unavailable), where loss or damage has occurred during the road transport the Company's liability shall (unless otherwise agreed in the Contract) be determined in accordance with the Road Haulage Association Terms and Conditions 2009 or (if different) such other terms and conditions in place between the Company and the relevant road haulier.

5. COMPANY'S RESPONSIBILITY

- 5.1. In consideration of payment of the Charges, the Company accepts liability as principal in contracting with the Customer for the provision of the Services subject to these conditions:
- 5.2. The Company undertakes to perform or (subject to the Company remaining liable as a principal with the Customer) to procure the performance of the Services and, subject to the provisions of Clause 5.2.1. below and save as otherwise provided in these Conditions shall be liable for loss or damage to the Containers and/or Goods subject to the following terms:
- 5.2.1. The Company accepts no liability for loss or damage whatsoever: (a) in relation to Outbound Movements, before completion of loading Containers onto the Freight Train and after Consignment Delivery and (b) in relation to Inbound Movements, before Consignment Deposit and after Freight Train arrival into the RSCT Terminal.
- 5.2.2. The Company shall only be liable for loss or damage occurring as a result of the negligence of the Company, its servants or agents, or the servants or agents of any other parties of whose services the Company makes use in performing the services;
- 5.2.3. Where the Goods are delivered to the Company in a sealed container or the Company is for any other reason unable to check the condition of the Goods on taking them over, the Company will not in any circumstances and notwithstanding the mode of transport in use at the time when the loss or damage occurred be responsible for any loss or damage whatsoever and howsoever arising unless it has been proved to have been caused by the negligence of the Company, its servants or agents, or the servants and agents of any party of whose services the Company makes use in the performance of these services, and occurring during the period described in Clause 5.2.1.
- 5.3. The Company shall further:
- 5.3.1. Transport each consignment between Terminals subject to the terms of the Contract, by such route and means as it shall in its absolute discretion decide;
- 5.3.2. Provide the Services with reasonable skill and care in accordance with the applicable Railway Industry Standards.
- 5.4. The Customer shall be responsible for ensuring that the Goods are loaded into Containers in the correct temperature and in accordance with any other environmental conditions necessary to safeguard the condition of the goods during transit in accordance with best industry practice (from time to time). Responsibility for setting the correct temperature or environment for the Goods shall remain with the Customer, regardless of which loads the Goods. The Company shall not be liable for any loss of or damage to Goods to the extent caused by the incorrect setting or preparation of Containers (including thermostats on refrigerated containers) or whether the loss or damage concerns latent defects, derangements, breakdown, defrosting or failed ventilation of or in a Container howsoever caused.

6. THE GOODS LABELLING AND PACKAGING

- 6.1. The Customer warrants and represents that the description and particulars relating to the Goods are complete, true and accurate in all respects.
- 6.2. The Customer shall give the Company such details for each Consignment as the Company may require from time to time. The Customer will issue the Company with adequate forwarding instructions for each Consignment and shall procure that each Consignment is clearly and properly addressed and labelled in accordance with the Company's requirements. If the Customer should change any aspect of a Consignment after advising the Company of the information required in this Clause 6.2 then the Customer shall as soon practicable notify the Company of such changes (and in any event shall notify the Company prior to the movement of such Consignment).
- 6.3. The Company may sign a document prepared by the Customer or consignor acknowledging receipt of the Consignment, however, any such document shall not constitute evidence of the condition, correctness or declared nature, quality or weight of the Consignment at the time it is received by the Company.
- 6.4. The Customer shall ensure that all Goods:
- 6.4.1. are adequately and properly packaged and that all such packaging complies with all applicable laws, rules, regulations and Railway Industry Standards;

- 6.4.2. will be and at all times whilst in the custody or control of the Company remain safe and fit to be transported; and
- 6.4.3. will no cause death or personal injury to any person or damage to any property or other Goods during transportation and/or storage.
- 6.5. The Customer shall indemnify the Company against all loss or damage arising from a breach of this Clause 6. In the event there is a dispute as to the cause of loss or damage, the Customer shall be required to establish to the reasonable satisfaction of the Company that the cause of the claim was other than the Goods not being adequately and properly packaged and other than the Goods not being safe and fit to be transported.
- 6.6. The Customer confirms that other than as agreed in writing between it and the Company, there are and will be no special requirements for the transport of the Goods. Accordingly, the Company shall have no liability for any deterioration or loss of or damage to the Goods resulting from any such special requirement not so agreed in writing. If the Customer notifies the Company of any such special requirement the Company shall have no obligation to transport such Goods unless it agrees to do so in writing. If the Company agrees to carry any goods which there is a special requirement it may charge the Customer additional sums.

7. DANGEROUS GOODS

- 7.1. The Company shall have no obligation to accept any Dangerous Goods for carriage. The Company shall have no liability for any loss or damage, including where arising as a result of negligence, in respect of any dangerous goods unless, prior to loading, the Company has received in writing precise and correct identification of the Goods and has further agreed in writing to accept the same for carriage.
- 7.2. If the Company accepts any dangerous goods for carriage the Customer shall ensure that the Goods are safely packaged and labelled with the precise and correct identity of the relevant substances and/or articles and/or relevant information as specified by any statutory or regulatory requirements from time to time and that a certificate of readiness is issued by the Customer prior to carriage commencing and the Customer complies with any other requirements of the Company for the time being in force regarding the carriage of dangerous goods.
- 7.3. Without prejudice to any of the provisions of the Contract the Customer shall indemnify the Company in full against all loss or damage arising out of or in connection with the carriage of dangerous goods:
 - 7.3.1. which the Company has not expressly accepted for carriage in writing; or
 - 7.3.2. in respect of which the Customer has not complied with its obligations under Clause 7.1 even where cause by negligence of the Company; or
 - 7.3.3. where damage or injury is caused by the dangerous goods other than as a result of any negligence or act or omission of the Company.
- 7.4. The Company shall have the right to enter and have access to any premises not owned by the Company where dangerous goods have or are to be loaded or unloaded to audit the loading and unloading procedures that are in place and/or which occur in relation to the Dangerous Goods and where such premises are not owned by the Customer, the Customer shall procure that the Company shall have such right to enter and access such premises.

8. LOSS OF OR DAMAGE TO GOODS

- 8.1. The Company shall have no liability for any loss or damage to Goods which arises from any of the following:
 - 8.1.1. Inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
 - 8.1.2. Any act or omission of the Customer, the consignor or the consignee (or any of their employees, agents and/or subcontractors);
 - 8.1.3. Any event of Force Majeure; or
 - 8.1.4. Any loss of or damage to Goods which occurs outside the period of responsibility in Clause 5.2.1.

- 8.2. The Company shall have no liability for any loss of or damage to Goods caused by the manner in which the same are loaded or unloaded by a person other than the Company or a subcontractor or assignee of the Company.
- 8.3. Unless otherwise agreed in writing between the Customer and Company the liability of the Company for loss of or damage to Goods whilst in its custody or control shall be limited to:
- 8.3.1. In the case of loss, the cost (being the manufacturing, production or purchasing cost excluding VAT) to the Customer of the relevant Goods; or
- 8.3.2. In the case of damage, the reduction in value;
- subject to (in all cases) a maximum of £1,300 per tonne of Goods (except in relation to tobacco, wine products, spirits and cased/bottled goods which shall be £12,500 per tonne), and the sum of £2,000 per item in relation to loss or damage to Containers or the Customer's equipment. The Company shall have no other liability for any loss of or damage to Goods even if caused by its negligence or that of its employees, agents and/or subcontractors.
- 8.4. The Company shall be entitled to and the Customer shall as a precondition to the acceptance of any liability by the Company as soon as reasonably practicable provide objective proof to the satisfaction of the Company acting reasonably of the actual value or reduction in value (as the case may be) of any Goods the subject of loss or damage.

9. LIMITATION AND LIABILITY EXCLUSIONS

- 9.1 The Company shall have no liability whether arising under the Contract, under statute, in negligence, statute or breach of duty for:
- 9.1.1 loss of profit;
- 9.1.2 Customer claims for loss other than in relation to physical loss or damage to Goods or equipment (including Containers);
- 9.1.3 loss of business;
- 9.1.4 loss of production (including (a) any line stoppage including the costs of stoppage and/or start up; (b) loss of or damage to, or extra costs of working associated with the completion of any work in progress affected by any delay in delivery or mis-delivery Goods by the Company; or (c) loss of or damage to raw products, depletion or reduction of stock levels or any other similar event;
- 9.1.5 loss of goodwill;
- 9.1.6 loss of reputation; or
- 9.1.7 any special, indirect or consequential loss whatsoever.
- 9.2 The Company shall have no liability for loss of use, payment hire or demurrage on any Containers.
- 9.3 The Company shall have no contractual or non-contractual liability whether under the Contract or otherwise for loss or damage arising directly or indirectly from or in connection with any IT Disruption provided that the Company shall use its reasonable endeavours to rectify or procure the rectification of such IT Disruption as soon as reasonably practicable.
- 9.1. Unless otherwise agreed in the Contract, the maximum aggregate liability of the Company in respect of all claims in a Contract Year concerning breach of the Contract or breach of any obligation whether in contract, tort, by statute or otherwise arising out of or in connection with the Contract or its performance or non-performance (in each case whether caused by negligence or otherwise) shall be the lower of the charges paid and/or payable in the relevant Contract Year and £1 million Sterling (£1,000,000).
- 9.2. Nothing herein shall in any way diminish the Customer's duty to mitigate its losses and the Customer shall be obliged to mitigate its losses where such losses are the subject of any indemnity contained in the Contract.
- 9.3. Any liability of the Company hereunder shall be reduced proportionately to the extent that the act or omission of the Customer, its employees, agents and/or subcontractors may have contributed to the event which gives rise to the relevant liability.

- 9.4. Nothing in these Conditions shall exclude or restrict the Company's liability for:
- 9.4.1. Death or personal injury resulting from its negligence or the negligence of a person to whom it is vicariously liable;
 - 9.4.2. Fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 9.4.3. Any other matter for which it is not permitted by law to exclude or limit or to attempt to exclude or limit its liability.
- 9.5. The exclusions and limitations of liability contained in the Contract shall extend to members of the Company's group and the Company's employees, agents and/or subcontractors all of whom shall be entitled to the benefit of such exclusions and limitations set out in this Contract and shall rely on these provisions in the event that the Customer brings any claim against those third parties directly.
- 9.6. The Company does not accept liability for the acts or omissions of other carriers unless such other carriers have been specifically engaged by the Company as subcontractors or assignees in respect of performing the Company's obligations under the Contract.

10. CLAIMS AGAINST THE COMPANY'S SERVANTS AND OTHER THIRD PARTIES

The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Company or any person or body whomsoever by whom the Services or any part of the Services performed or undertaken (other than the Company) which imposes or attempts to impose upon such person, or any vehicle or property owned by any such person, any liability whatsoever in connection with the Containers and/or Goods whether or not arising out of negligence on the part of such person. Without prejudice to the foregoing, every such person shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for his benefit and, in entering into the Contract, the Company, to the extent of these provisions, does so not only on his own behalf but also as agent and trustee for such person.

11. INDEMNITY

- 11.1. In the event that a claim or allegation of the type described in Clause 10 above is made by the Customer against any of the persons described in that Clause, despite the provisions of that Clause, the Customer shall indemnify the Company against any claim which such person may make against the Company as a consequence.
- 11.2. The Customer shall also indemnify and hold the Company harmless against any costs, fees or expenses of whatsoever nature which may arise either directly or indirectly in connection with the Containers and/or Goods.
- 11.3. The Customer shall be liable for and shall indemnify on demand and hold harmless the Company in full against all loss or damage, incurred or suffered from time to time by the Company or a third party (including without limitation any subcontractors or assignees of the Company) and claimed against the Company arising directly or indirectly from any negligent or wrongful act or omission on the part of the Customer, the consignee or the consignor and/or their employees, agents and/or subcontractors, and/or arising directly or indirectly from any defect in equipment supplied by the Customer (or a third party nominated by the Customer).

12. NOTICE OF LOSS OF DAMAGE

Unless notice of loss or damage to any Consignment, including the general nature of such loss or damage, is given in writing (otherwise than upon a receipt, consignment note or delivery docket) to the Company, or its representatives at the place of delivery before or at the time of removal of any Consignment into the custody of the person entitled to delivery thereof (including the haulier appointed by Customer) or if the loss or damage is not apparent, within seven consecutive days thereafter, the Company shall be deemed to have delivered any Consignment as described in the consignment note in good order and condition.

13. CLAIMS PROCEDURE AND TIME BAR

- 13.1. The Company shall have no liability for any loss of, damage to or delay in the delivery of any Goods and/or Containers unless it is advised of the same in writing within five (5) days of the completion or termination of carriage by the Company of the relevant Consignment, or of the expected date of completion or termination of carriage provided that in any particular case:
 - 13.1.1. The Customer proves it was not reasonably possible for the Customer to advise the Company in writing within the above time period; and

13.1.2. The Customer did not notify the Company of the same within a reasonable time, then the Company shall not have the benefit of this provision.

13.2. Notwithstanding Clause 13.1, the Company shall have no liability to the Customer for any claim, including loss of, damage to or delay in the delivery of any Goods and/or Containers, where proceedings have not been commenced and served on the Company within 12 months of the date of the event allegedly giving rise to the relevant claim.

14. DELAY

The Company does not undertake that any Container and/or Goods will arrive or will be delivered at any particular time or to meet any particular market or use and, the Company shall in no circumstances be liable for direct or indirect or consequential loss or damage including a loss of use or profit caused by delay whereby reason of any compulsorily applicable international convention, the Company is liable for delay, such liability shall be limited to the element of the freight applicable to the relevant stage of transport.

15. CONTAINER PACKING

15.1. The Company will not be required to supply any Containers to the Customer and will bear no responsibility for the provision of the same to the Customer by any third party. Further, the Company will not pack the Containers with the Goods and will bear no responsibility for these operations.

15.2. The Company shall not be liable for loss or damage to any Container and/or Goods caused by:

15.2.1. The manner in which the Container has been packed;

15.2.2. The unsuitability of the Goods for carriage in the Container; or

15.2.3. The unsuitability or defective condition of the Container.

15.3. The Customer shall indemnify the Company against any loss, damage, liability or expenses whatsoever and howsoever arising caused by one or more of the matters referred to in Clause 15.2 above.

15.4. The Customer is responsible for ensuring that a seal is attached to the doors of the Container at the time of packing so as to demonstrate when the Container is to be unpacked that the doors have not been opened in the intervening period. In the event that a seal is not attached in accordance with this Clause, the Company will not be liable for any loss of or damage to Goods packed in the Container or for any other loss whatsoever.

16. FORCE MAJEURE

16.1. The Company shall not be deemed to be in breach of the Contract or otherwise liable to the Customer for any failure or delay in performing its obligations under the Contract due to Force Majeure. If the Company's performance of its obligations under Contract is affected by Force Majeure:

16.1.1. It shall give notice to the Customer, specifying the nature and extent of the Force Majeure as soon as reasonably practicable upon becoming aware of the Force Majeure and will at all times use reasonable endeavours to mitigate the severity of the Force Majeure;

16.1.2. The date for performance of such obligation shall be deemed suspended for a period equal to the delay caused by such Force Majeure and (if necessary) for a reasonable period after the event of Force Majeure has ceased;

16.1.3. Shall not be entitled to payment from the Customer in respect of extra costs and expenses incurred by virtue of the Force Majeure.

17. INSPECTION OF GOODS

The Company or any person to whom the Company has subcontracted the carriage or any person authorised by the Company shall be entitled, but under an obligation, to open any Container or package at any time to inspect the Goods.

18. CUSTOMER'S RESPONSIBILITY

- 18.1. It shall be the duty of the Customer to complete the Transport Documentation, which shall be deemed to be completed on behalf of the Customer in all cases.
- 18.2. The Customer warrants that the particulars relating to the Goods as set out in the Transport Documentation have been checked by the Customer and that such particulars and any other particulars furnished by and on behalf of the Customer are correct.
- 18.3. The Customer shall indemnify the Company against all loss, damages, fines and expenses arising or resulting from inaccuracies in or inadequacy of such particulars or from any other cause in connection with the Goods for which the Company is not responsible.
- 18.4. The Customer shall comply with all regulations or requirements of Customs, port, terminals or any other authorities and shall bear and pay all duties, taxes, fines, expenses or charges or losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of Goods and/or their Containers and shall indemnify the Company in respect thereof.

19. LIEN

The Company shall have a general lien on all Goods and/or Containers and/or documents relating to Goods in their possession for all sums due at any time from the Customer, whether or not such sums relate to the particular Goods, Containers or documents in the Company's possession which are subjected to the said lien and shall be entitled to sell or dispose of such Goods, Containers or documents at the expense of the Customer and supply the proceeds in or towards the payment of such sums on 28 day's notice in writing to the Customer.

20. FREIGHT AND CHARGES

- 20.1. Unless otherwise agreed in writing, Charges are payable to the Company on demand.
- 20.2. Charges (freight) for the Rail Carriage and other charges due from the Customer shall be deemed earned on receipt of the Goods and/or Containers by the Company or subcontractor or agents (whichever first occurs).
- 20.3. In the event that any freight or other charges are stated to be payable by the consignee or receiver of the Goods, the Customer shall nevertheless be and remain liable for payment thereof to the extent that payment is not received from the consignee or receiver.
- 20.4. No claim or counterclaim shall constitute any ground for deferring or withholding payment or monies due to the Company nor shall the same give rise to any legal or equitable set off.

21. ROUTE AND METHOD OF TRANSPORT

- 21.1. Whether the Company shall have agreed to provide all or any part of the Services themselves or to make arrangements for the provision of such Services as the agent of a third party any Containers and/or Goods may be transported:
 - 21.1.1. By any route which the Company, its servants or agents or other personal carrier performing any duties in connection with the transit may in their absolute discretion determine (whether or not the nearest or most direct or customary or advertised route and although in a contrary direction to or out of or beyond the customary or intended or advertised route);
 - 21.1.2. By any means of transport or combination of transports whatsoever provided that where the means of transport has been agreed there shall be no obligation to transport by any other means;
 - 21.1.3. By subcontracting all or any of the Company's duties in connection with the Services;
 - 21.1.4. By road haulage or by feeder vessel (on or under deck of any vessel) if the Freight Train is unavailable;
 - 21.1.5. By at any time trans-shipping any Container and/or Goods.

The Company shall not be obliged to arrange for any Container and/or Goods to be carried, stored or handled separately from any Container and/or Goods of other customers.

22. LIBERTIES

In the event of the existence, imminence or risk of any event which shall appear to the Company, any carrier or the owners or operator of any train or vehicle or other mode of transport in his or their sole discretion as likely to cause unreasonable delay to any Container and/or Goods or to any train, vehicle or other mode of transport the Company may without notice to the Customer treat the performance of the Contract as terminated and place any Container and/or Goods or any part of them at the Customer's disposal at any place or port which the Company may deem safe and convenient whereupon any responsibility of the Company in respect of any such Container and/or Goods shall cease. The Company shall never the less be entitled to payment of full freight and/or charges on Goods received for transportation and the Customer shall pay any additional cost of carriage to and delivery and storage at such place.

23. NO DEVIATION

Anything done by reason of or in accordance with Clauses 21 or 22 above shall be deemed to be done in fulfilment of the Services and nothing so done or not done shall be deemed a deviation.

24. COLLECTION AND DELIVERY

24.1. The Containers and any Goods contained therein shall be delivered to the agreed Terminal for loading on to the Freight Train and, following transportation, shall then be collected by the Customer at the terminal where the Containers and/or Goods contained therein have been unloaded.

24.2. The Customer will collect from the relevant Terminal any Containers and/or Goods contained therein within the agreed free period for collection applicable to such Containers and/or Goods which unless otherwise agreed shall be within 48 running hours of the date of arrival of Containers and/or Goods into the Terminal ("the Collection Period").

24.3. If any Containers and/or Goods therein remain at any Terminal beyond the Collection Period, the Customer accepts that delivery of such Containers and/or Goods shall be deemed to have been made and the Company discharged of any further liability in respect of any loss or damage howsoever caused in respect of the said Containers and/or Goods. In such circumstances the Customer may also be liable for storage rental in respect of the said Containers and/or Goods at such rate as may have been agreed between the parties or in default of such agreement as determined by the Company from time to time, together with all accrued and fees costs and expenses in relation to the Containers and/or Goods. The Company may also in their option sell any Goods and deduct the proceeds from any fees, costs or expenses in relation to the Goods and/or Containers.

24.4. The Company shall be entitled to refuse to receive a Container and/or Goods from or refuse to deliver a Container and/or Goods to the Freight Train or any vehicle at the Terminal if:

24.4.1. The Company has not been presented with the correct information or documentation in respect of such Container and/or Goods; or

24.4.2. Such Container is not sealed; or

24.4.3. In respect of a Container carrying hazardous cargo, such container is not fully and correctly labelled.

24.5. In addition, the Company shall be entitled to refuse to receive/deliver a Container from/to any road vehicle whose driver:

24.5.1. Declines to be photographed in accordance with the Company's security requirements applicable from time to time; or

24.5.2. Has not presented to the Company a current EC driver's licence or a valid passport.

25. VARIATION OF CONTRACT

No servant or agent of the Company shall have power to waive or vary any of the terms hereof unless such waive or variation is in writing and is specifically authorised or ratified in writing by a director of the Company.

26. VALUABLES, LIVESTOCK, PLANTS AND PERISHABLES

Except under special arrangements previously made in writing, the Company will not accept business relating to valuable, livestock or plants. Valuable shall include bullion, coins, precious stones, jewellery,

antiques, pictures, bank notes, security and other documents or articles. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods, other than under special arrangements previously made in writing, the Company shall not be liable for any loss or damage to or in connection with the Goods, howsoever caused. The Company shall similarly not be liable for any loss or damage to or in connection with perishable Goods, howsoever caused, except where the Company has accepted the business relating to the Goods under special arrangements previously made in writing.

27. HM REVENUE & CUSTOMS CLEARANCE

HM Revenue & Customs clearance of Containers and any Goods that are carried on any vessels and which have been imported or are to be exported through the Port of Liverpool must be provided to the Company in electronic form using a Maritime Cargo Processing ("MCP") System prior to such Containers leaving the RSCT Terminal.

28. BYE LAWS AND REGULATIONS

Use of any Terminal and/or Services shall be subject to such Statutes, Bye Laws, Regulations and Directions of the Company as are applicable from time to time.

29. WEIGHING

The Company reserves the right to check the weight of any Container and/or Goods at the expense of the Customer in relation to its current tariffs.

30. CUSTOMER ACCESS TO TERMINALS

The Customer's access to any Terminal shall be restricted to those hours that the Company shall in its absolute discretion from time to time operate within. Neither the Customer nor any of the Customer's servants or agents shall be entitled to deliver to or collect from any terminal Containers and/or Goods outside the said operating hours of the Terminal in question.

31. QUOTATIONS

Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision. If at any time there is an alteration in the rates of freight, rates of exchange, insurance premiums or other charges applicable to the Goods, quotations or charges shall be subject to revision accordingly with or without notice.

32. PARTIAL INVALIDITY

If any provision in these Conditions are held to be invalid or unenforceable by any Court or regulatory or self regulatory agency or body, such invalidity or unenforceability shall attach only to such provisions. The validity of the remaining provisions shall not be affected thereby and the Contract and the Conditions shall be carried out as if such invalid or unenforceable provisions were not contained therein.

33. JURISDICTION

All Contracts shall be governed by and construed in accordance with English Law and the Company and the Customer hereby submit to the exclusive jurisdiction of the High Court of Justice in England.

34. CHANGE OF CONTROL

In the event that a party who has contracted with the Company under these Terms and Conditions (in whole or in part) is subject to a Change of Control, the Company shall have the right to terminate that contract with immediate effect.

35. RELATIONSHIP TO SPECIAL AGREEMENTS

These Conditions are supplemental to any Special Agreement made between the Company and the Customer and except insofar as is expressly excluded thereby or inconsistent therewith in which event the terms and conditions of such Special Agreement shall prevail.

36. GENERAL

36.1. If at any time any Condition or part of the Contract is found by any Court, Tribunal or administrative body or competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of these conditions or the Contract.

- 36.2. If any illegal, invalid or unenforceable provisions of these Conditions or any part of the Contract would be legal, valid and enforceable if some part of it was deleted or amended, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the Condition or part of the Contract which is found to be illegal, invalid or unenforceable.
- 36.3. The failure or delay by the Company in exercising any right, power already available to it under the Contract shall not in any circumstances impair such a right, power or remedy nor operate as a waiver of it. The single or partial exercise by the Company of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 36.4. Any waiver of a breach of, or default under any of the terms of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the terms of the Contract.
- 36.5. The express terms of this Contract are in lieu of all warranties, conditions, terms, understandings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise all of which are hereby excluded to the fullest extent permitted by law.
- 36.6. The Customer warrants that it has not been induced to enter into the Contract by a statement, promise, representation or misrepresentation (if established) not containing within the Contract and whether or not made innocently or negligently by the other party. To the extent that contrary to any such warranty, any statements, promises, representations or misrepresentations are shown to have been given, each party unconditionally waives any claims, rights or remedies which it might otherwise have had in relation to them. Nothing in this Clause 35.6 shall exclude or restrict any liability which a party would otherwise have to the other in respect of any statements, promises or representations made fraudulently by that party.
- 36.7. Subject to any Special Agreement and to any variation thereof or to these Conditions agreed in writing by the Company, these Conditions shall form the Contract and contain all the terms which the parties have agreed to the exclusion of other terms and conditions, previously agreements or understandings in relation to the subject matter of the Contract. The Company shall not be deemed to accept any other conditions or any modification or waiver of these Conditions by failing to object to conditions contained in a communication from the Customer.
- 36.8. Any demand, notice or other communication given or made under or in connection with the Contract will be made in writing and sent to the usual trading address or registered office of the receiving party by the following methods of delivery and in case shall be deemed to have been served on the date and at the time specified below, provided that all other requirements of this provision have been met.
- 36.9. The Company may collect and process information relating to the Customer 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.
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