

**GENERAL CONDITIONS COVERING THE SERVICES UNDERTAKEN BY  
PD PORT SERVICES LTD**

1. EFFECTIVE DATE AND NOTICE

- i) These Conditions were adopted on 1 January 2002 and thereafter the Company only contracts or provides any Services or Facilities on the basis of these Conditions
- ii) **These Conditions contain provisions by way of indemnity and also exclusion and limitation of liability in favour of PD Port Services Limited ('the Company') and the Company has no obligation to insure for sums in addition to the limits set out in these conditions. Where the Customer considers it necessary in the interests of the Customer it must take steps to procure such additional insurance as is necessary in the circumstances**

2. DEFINITIONS

- i) Charges : includes charges, rates, tolls and dues of any description for the time being payable to the Company
- ii) the Company : means PD Port Services Limited and includes its subsidiaries
- iii) Customer : includes any person corporation, firm or body of persons whether incorporated or unincorporated who:
  - a) visits the Estate
  - b) is the Owner of Goods or Equipment delivered, brought into or which come howsoever to be upon the Estate
  - c) are the Owners, Master or Crew or a passenger on a Vessel which uses the Facilities of the Company
  - d) by itself, its servants or agents avails itself or seeks to avail itself of any facility or service provided by the Company
- iv) Estate : means all land owned and occupied by the Company and includes the Facilities

- v) Facilities : means any quay, wharf, land, road, berth, shed, Plant or property of every description for the time being vested in or occupied by the Company
- vi) Force Majeure : means any circumstances beyond the reasonable control of the Company, including, without prejudice to the generality of the foregoing, act of god, storm, tempest, flood, fire, explosion, radioactive contamination, impact by aircraft or objects dropped or falling from them, strikes, lockouts or other industrial action or trade dispute, war, revolution, riot or civil commotion, restrictions imposed by the government or other body acting under statutory powers, theft or willful damage not committed by the personnel of the Company or any other circumstance beyond the reasonable control of the Company
- vii) Goods : means goods of any description whatsoever, including any container (and goods within a container) and livestock, but excluding Equipment.
- viii) Equipment : means any plant, machine, lifting equipment container, flat or similar ISO unit, any vehicle, locomotive, trailer or wagon belonging to or supplied by the Customer
- ix) Plant : means any plant, machine, lifting equipment, vehicle, locomotive, trailer or wagon belonging to or supplied by the Company
- x) Services : means any operation or service performed or provided by the Company in connection with the berthing, unberthing, mooring and servicing of any Vessel, the shipping and unshipping of Goods and the provision and use of Plant, the use of Equipment, the sorting, weighing, marking, checking, and general handling and movement of Goods and the embarking disembarking and movement of passengers and shall include the provision of manpower, advice and administration, and any constituent part of any entire service and shall further include the provision of Facilities. For the avoidance of doubt Services shall not include the provision of storage services or onward transportation in respect of Goods which, where provided by the Company, are governed by separate conditions
- xi) Vessel : means any ship, boat or craft of any class or description however navigated or propelled and includes any barge, hover vehicle, or hydrofoil vessel.

### 3. SCOPE

Save as otherwise specifically provided, the following terms and conditions shall apply:

- i) to all Services performed or Facilities provided by or on behalf of the Company whether directly or by subcontractors, with or without charge, and

- ii) to all or any physical access by any person, vehicle or company to or from the Estate, and
- iii) to all other relationships whether contractual or otherwise, whether covered by i) and ii) above or not and whether created with or without the agreement or licence of the Company

to the exclusion of any other conditions, save as agreed in writing by a director of the Company.

#### 4. APPLICATION OF CONDITIONS

- i) The acceptance by the Customer of these Conditions may be express but if not made expressly will be implied from the entry by the Customer into any legal relationship with the Company. In particular such acceptance will be deemed to have been made in the event of the entry or delivery of any persons, Vessels, Goods or Equipment upon the Estate and/or the submission of any shipping or unit load note or other similar documentation or the making of any other written or oral application to the Company for entry to the premises of the Company or for any Service or the use of any Facility by or on behalf of any Customer.
- ii) In the event that any obligation is owed or any liability arises on the part of more than one Customer pursuant to these Conditions, such liability shall be joint and several in nature.

#### 5. WARRANTY OF AUTHORITY BY CUSTOMER

- i) Each Customer who avails himself of any Service provided by the Company in respect of any Goods, Equipment or Vessel warrants that he has the authority as duly authorised agent of all persons having any title to or interest in such Goods, Equipment or Vessel to accept these Conditions on their behalf, as well as on his own behalf
- ii) Each Customer warrants that the rights, defences and limits available to the Customer either by statute or by contractual terms are extended to the Company (as servant, agent or independent contractor, including stevedores)
- iii) Each Customer warrants that his servants agents and independent contractors are trained and competent to carry out any task assigned to them in relation to the giving of any instruction, advice or information to the Company whether given in writing, verbally or by other means. The Customer further warrants that such persons have authority to give such instructions, advice or information to the Company.

## 6. RIGHTS RESERVED IN RESPECT OF SERVICES

The Company reserves the right to:-

- i) sub-contract any part of the Services or Facilities
- ii) at any time before or during the performance of any Services or the provision of any Facilities, to serve notice upon the Customer declining to undertake or complete such performance and giving reasons for so declining
- iii) suspend the provision of the Services or Facilities in the event of a breach or proposed breach by the Customer of any provision of these Conditions

provided that no liability shall attach to the Company in consequence thereof and the Customer shall at his own expense and risk proceed and remove the said Goods or Equipment from the Company's premises within 30 days of any request by the Company, failing which the Company may do so at the expense and risk of the Customer.

## 7. WARRANTIES IN RESPECT OF GOODS AND EQUIPMENT

The Customer warrants that any Goods or Equipment that he delivers to or otherwise causes to be on the Dock Estate

- i) are not liable to become hazardous or flammable or toxic or liable to omit any injurious dust, gas fumes or liquid in the form that they are delivered and/or which they are to remain upon the Estate.
- ii) are not infested, verminous, rotten or subject to fungal attack or liable to become so whilst on the Dock Estate
- iii) will not contaminate or cause danger, injury, pollution or damage to any person, property or any other goods or equipment on the Dock Estate or the water, ground or air adjacent thereto
- iv) do not require for their safekeeping any protection (other than has been previously agreed in writing between the Customer and the Company) arising from vulnerability to heat, cold, moisture, salt, theft or proximity to other goods or equipment or from inflammability but will remain safe if left standing in the open on the Dock Estate or in covered accommodation where agreed with the Company
- v) contain no unauthorised controlled drugs, contraband, pornographic or other illegal matter

- vi) are processed in compliance with any rules and requirements of H M Customs and Excise
- vii) are properly and sufficiently packed, marked, accurately documented and labeled for all shipping, cargo handling, dispatch, customs and similar purposes and in accordance with all regulations and rules prevailing from time to time.
- viii) are properly and sufficiently marked/labeled with any warning or other information as may be required as to the hazardous nature of any contents and the precautions to be taken in handling the same and in the event of an escape or spill therefrom as is necessary to ensure the health and safety of all persons who may handle or be likely to come into contact with such goods or equipment
- ix) are in compliance with all relevant local, national and international legislation and Regulations relating to their carriage, handling and movement.
- x) Are not radioactive as defined by relevant legislation without the prior agreement of the Company
- xi) are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by the Company
- xii) are properly insured by the Customer

## 8. WARRANTY IN RESPECT OF VESSELS

The Customer warrants that any Vessel visiting the Facilities;

- i) shall be suitable in all respects to berth safely at the Facilities allocated to it
- ii) is not the subject of any order, litigation or other impediment which may result in the arrest or other form of detainment of the Vessel whilst at the Facilities

## 9. DOCUMENTATION

- i) Orders  
The Company will only perform or provide any Services or Facilities upon receiving orders in respect thereof in writing from the Customer either at the time such Services are required (with reasonable notice allowing the Company to comply) or in accordance with any separate contractual arrangement to provide such Services over a period of time. All orders by telephone must immediately be confirmed in writing and the Company will not in any circumstances be responsible for failure to comply with any order or any specific instruction in respect of such order where such order has not been confirmed in writing.

ii) Release of Goods  
Orders for shipment of Goods or delivery of imported Goods can only be acted upon after receipt of written authority (or in compliance with an otherwise agreed procedure) from the Customer.

iii) Description of Goods  
In addition to the warranties set out in Condition 8 hereof, the Customer shall;

- a) provide to the Company a written account of the contents and quantities of each Vessel discharging or loading at the Dock Estate before the discharge commences or immediately after loading has been completed.
- b) ensure that the Company is given a full written description and particulars of Goods (including hazards) sufficient to identify them prior to loading, unloading or delivery

and the Customer warrants the accuracy of the all such descriptions, values and other particulars supplied to the Company and shall indemnify the Company in respect of any losses, damages, expenses and fines which may arise from inaccuracy or omission from the said particulars even if such inaccuracy or omission does not result from the negligence of the Customer.

#### 10. LOADING AND DISCHARGE OF VESSEL

The Company undertakes only to load or discharge any Vessel as instructed by or agreed with the Customer and shall have no responsibility for the consequences of carrying out such instructions so far as stability, trim and heel are concerned, or for the consequences of improperly allocated stowages so far as Goods are concerned.

#### 11. INDEMNITY FOR BREACH OF WARRANTY

Where the Company incurs any liability or expense due to the Customer's failure to comply with the warranties set out in these Conditions or in taking any step that the Company considers reasonable in rectifying any such failure, the Customer shall indemnify the Company in respect of any such liability and reimburse the Company in respect of any such expense.

#### 12. PROMPT SHIPPING AND REMOVAL OF GOODS AND EQUIPMENT

Except where a longer period has been agreed in writing with the Company, all Goods or Equipment deposited on the Estate shall be shipped or removed therefrom promptly.

#### 13. GENERAL LIEN WITH POWER OF SALE

- i) The Company shall have a general as well as a particular, lien on all Goods and Equipment (and documents relating to such Goods and Equipment) in its

possession in respect of all sums at any time owed by the Customer to the Company. The Company shall upon 7 days notice in writing to the Customer have the right to sell or dispose of all or part of such Goods and Equipment or documents as agent for, and at the risk and expense of, the Customer by public auction or private treaty (at its sole discretion) and apply the proceeds in or toward firstly the cost and expense of the sale and the exercise of such lien and thereafter towards the payment of such sums owing.

- ii) in the event that the Company exercises any lien (whether conferred by these conditions or otherwise) against any Goods or Equipment which are perishable and in the sole discretion of the Company it is impracticable to give the notice required by 11 (i) above, because the condition and/or value of the Goods or Equipment will or may deteriorate by reason of delay, the Company may (but is not obliged to) sell the goods without giving such notice.
- iii) the balance (if any) remaining following the sale and exercise of such lien shall be paid to the Customer.

#### 14. LIABILITY

- i) Without prejudice to the exclusions of liability set out in Condition 14 hereof and subject to the limits of liability set out in clause 15 hereof, the Company shall be liable for any loss damage or misdelivery of Goods or Equipment in the custody of the Company or injury to any person arising as a result of the proven negligence of the Company
- ii) The benefit of the exclusions and limitations of liability set out in these Conditions is hereby conferred to the servants, agents and independent contractors of the Company.

#### 15. EXCLUSIONS OF LIABILITY

Notwithstanding the provisions of condition 14 above, the Company shall have no liability whatsoever for any loss cost misdelivery damage expense or delay sustained in the provision of the Services and/or the Facilities arising as a result of:

- i) the breach of any warranty set out in these Conditions
- ii) operations performed by personnel or persons not in the employ of the Company and any acts or omissions performed by such persons
- iii) operations involving the use of any plant or equipment not owned by the Company where any loss or damage etc arises as a result of a defect or the malfunction of such plant

- iv) any lack of information in respect of goods vessels or plant or the supply of improper or incorrect information by the Customer
- v) the Company complying or attempting to comply with the instructions of the Customer
- vi) errors of judgement on the part of the Company in the sorting, grading or selection processes
- vii) improper, insufficient, indistinct or erroneous marking of Goods or equipment
- viii) the insecure, frail or otherwise inadequate packaging of goods
- ix) cranes, grabs and ship's gear equipment working directly to/from road and rail vehicles
- x) the improper or inadequate mooring of vessels or the movement of vessels during the cargo handling operation
- xi) Deterioration of or theft or pilferage of Goods held in open storage or in transit sheds otherwise than under separate arrangements whereby the Company becomes the custodian of the goods as warehousekeeper
- xii) the handling of radioactive materials where any loss or damage arises as a result of the radioactive properties of the Goods
- xiii) vermin, insects, fungal attack, rot or corrosion
- xiv) Force Majeure

## 16. LIMITS OF LIABILITY

Subject to the provisions of Conditions 14 and 15, the total liability of the Company for any loss or damage proved by the Customer to have been caused by the negligence of the Company shall be the lowest of the following, as applicable:

- a) Vessel
  - i) the value of that part or parts of the Vessel to which the claim relates at the time of the damage or loss
  - ii) the cost of repairs as agreed with the surveyors appointed by the Customer and the Company
  - iii) the sum of £50,000 any one occurrence
- b) Equipment
  - i) the cost of repairs



- ii) the value of the Equipment to which the claim relates at the time of the damage or loss
  - iii) the sum of £2,500 any one occurrence
- c) Goods
- i) the value of the Goods to which the claim relates (including any duty or similar levied on the Goods))
  - ii) the cost of repairs
  - iii) the sum of £1,100 per tonne

provided only that the Company has been notified in writing about the alleged loss or damage within 7 days of such loss or damage occurring and given reasonable opportunity to inspect.

#### 17. CUSTOMER'S INSURANCE

Where the Customer considers the above limits too low it shall be the responsibility of the Customer to affect such additional insurance cover as it considers necessary.

#### 18. CONSEQUENTIAL LOSS

The Company shall have no liability whatsoever (whether in negligence or otherwise) for any delay (including delay to a vessel), loss of market, loss of profit or other consequential or indirect loss.

#### 19. LIABILITY: TIME BAR FOR CLAIMS

Notwithstanding the liability provisions set out in these conditions, the Company shall in any event be discharged from all liability whatsoever and howsoever arising unless suit be brought and written notice given to the Company within one calendar year from the date of the event giving rise to a cause of action. Any claim not made in accordance with this Condition shall be deemed to be waived, extinguished and absolutely barred.

#### 20. HOURS OF WORK

At all times subject to the provisions of Clause 6:

- i) The Company is under no obligation to perform any work or provide any Facilities outside of normal hours, details of which can be provided on request.
- ii) The Company reserves the right to vary normal hours at its discretion
- iii) Where the Company agrees to perform any Service or provide any Facilities outside normal hours, it shall be entitled to make an additional charge and shall advise the Company of the applicable charge upon request.

## 21. PAYMENT OF CHARGES

- i) Unless otherwise agreed in writing, all charges shall be paid within 30 days of the date of the relevant invoice.
- ii) The Company reserves the right to charge interest at the rate of 5% per annum above the base rate of the NatWest Bank on any account overdue and such interest shall accrue on a daily basis until payment is received.

## 22. HEALTH AND SAFETY

For the avoidance of doubt these conditions are in addition to all legislation concerned with the shipment of goods through the Estate and in particular legislation governing the health safety and welfare of person on the Estate.

## 23. WORK ON VESSEL

The Customer must request permission to carry out repairs to the Vessel or its Equipment whilst at the Facilities. Where the Company grants permission for such works to proceed the Customer shall indemnify the Company and hold the Company harmless against any losses costs proceedings claims demands damage or liabilities which arise as a result of the works including (without prejudice to the generality of the foregoing) damage to the Facilities.

## 24. HIRE OF PLANT

The Customer may from time to time request the loan of Plant from the Company. The Company may (at the entire discretion of the Company and at a Charge to be agreed between the Parties) agree to permit such use and may supply an operator in connection with such use. Alternatively the Company may permit a person appointed by the Customer to operate such Plant, provided such person is trained and competent in its operation. In such circumstances the Plant and its operator (if any) shall be under the management supervision and control of the Customer who shall hold the Company harmless in respect of any losses arising and shall indemnify the Company in respect of any costs claims demands damages or liabilities arising as a result of such use and shall further indemnify the company in respect of loss of or damage to the Plant on loan.

## 25. COMPLETION OF SERVICES

Upon completion of the loading of Goods onto any Vessel, rail or wagon and the departure of such Vessel, rail or wagon from the Dock Estate or the Facilities the liability of the Company for any loss of or damage to Goods shall cease absolutely forthwith.

26. SECURITY

- i) The Company reserves the right to search (without limitation) any vessels, persons or vehicles delivering and uplifting goods to and from the Dock Estate and to take any such steps as the Company may consider necessary in the interests of security.

27. LAW AND JURISDICTION

- i) These conditions shall be construed in accordance with the laws of England and the parties hereto submit to the jurisdiction of the English courts

28. GENERAL

- i) Each condition shall be construed as a separate and independent provision, severable from all and any other provision
- ii) Words in the single shall include the plural and vice versa, and reference to any gender shall include a reference to all other genders.
- iii) Reference to any statute or statutory provision shall include any amendment, extension, consolidation or replacement of the same.
- iv) In the event of any one or more of the provisions contained in these conditions being illegal, invalid or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions shall not be in any way affected thereby
- v) No failure or delay by the Company to exercise any right or power under the conditions shall operate as a waiver thereof nor shall any partial exercise preclude any further or other exercise.
- vi) The parties to these conditions agree that the conditions are fair and reasonable having regard to the commercial nature of the transaction to which the conditions apply.