



New Holland Dock Wharfingers Ltd

Standard Terms and Conditions of Trade Incorporating Berthing and Stevedoring Conditions

1st January 2024

Standard Terms and Conditions of Trade

1. Definitions

Applicable Laws	means all applicable laws and legislation including all statutes, rules, regulations, treaties, directives, decisions, recommendations, codes of practice, byelaws, orders, of any jurisdiction including the flag state of any Vessel,		and 0600 to 1600 Monday to Friday (excluding Holidays) for deliveries and collections
Company	means New Holland Dock Wharfingers Limited having its principal place of business at The Dock, New Holland, North Lincolnshire, DN19 7RT including any of its trading divisions or subsidiaries.	Late Payment	means the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Regulations Payment of Commercial Debts Regulations 2002 (both as amended).
Customer	means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the provision of Services by the Company including, without limiting the foregoing, the owner, charterer and master of any Vessel.	Services	means any of the Services undertaken by the Company under the Contract.
Contract	means any contract between the Company and the Customer, written or implied for the provision of Services or for the use of the Dock by any Vessel..	Site	means the place where the Services are being provided by the Company.
Dock	means New Holland Dock.	Vessel	means any Vessel entering the Dock.
Environment	means (Whether alone or in combination) a) ecological systems and living organisms (including humans); b) air (including air within buildings); c) land and soil (including buildings and any other structures in, or under land and soil, anything below the surface of the land and land covered with water); and d) water (including water under or within land or within pipe or sewerage systems);	Warehousing	means the conditions of contract of the United Kingdom Warehousing Association
Goods	means goods in the care of the Company as part of the provision of the Services by the Company to the Customer.	2. These Terms and Conditions to Prevail	
Holidays	means official United Kingdom Public Holidays.	2.1	All Contracts between the Company and the Customer, whether made orally or in writing, are subject to these Terms and Conditions which shall be deemed to be incorporated into any Contract or transaction between the Company and its Customers. The acceptance of these Terms and Conditions, if not express, shall be implied from any one of the following: i) the Customer's request for the Company to provide Services, ii) entry of a Vessel into the Dock
Hours of Work	means 0600 to 1600 Monday to Friday (excluding Holidays) for vessel operations	2.2	These Terms and Conditions shall supersede all prior understandings between the Company and the Customer and shall not be modified or varied unless specifically accepted by the Company in writing.
		2.3	In the event of any conflict between these Terms and Conditions and any other terms and conditions, whether express or implied, incorporated or referred to in any communication from the Customer then these Terms and Conditions shall prevail.
		2.4	In as far as relevant (and to the extent that they do not contradict these Terms and Conditions) the terms and conditions of any sub-contractor or third party used by the Company in providing the Services shall apply to any Contract.
		3. Quotations and Acceptance of Order	
		3.1	A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Customer's order. Unless otherwise stated all prices quoted shall be deemed to be withdrawn 30 days after the date of quotation.
		3.2	The Company's acceptance of the Customer's order (including telephone, email and fax orders) shall be effective, and the Contract shall be deemed to come into existence, only where such acceptance is made on the Company's headed paper, duly countersigned by a Director or Departmental Manager of the Company, or where the Company commences performance of the Services or production of the Goods for the Customer.
		3.3	No cancellation or variation of an order by the Customer shall be accepted unless approved in writing by a Director or

Departmental Manager of the Company and on such terms that the Customer shall indemnify the Company in full against all and any loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

3.4 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods or Services unless confirmed in writing by the Company and, in entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings which are not so confirmed.

3.5 The Customer shall be deemed to be acting on their own account at all times.

4. Handling Methods / Handling Loss

4.1 Subject to express written instructions by the Customer, the Company reserves the right to solely determine the means, route, handling method and procedure to be followed in the handling, storage and transportation of the Goods. If in the sole opinion of the Company it is at any stage necessary or desirable in the Customer's interest to depart from the Customer's instructions the Company reserves the right to do so without the need to seek the Customer's prior approval.

4.2 Pending distribution or delivery, Goods may be warehoused or otherwise held at any place or places at sole discretion of the Company and the cost thereof shall be for the account of the Customer. The Company shall not be responsible for any losses, damage or deterioration to the Goods except upon proof that this was due solely to the wilful default of the Company or its employees.

4.3 Where proof has been proved in relation to 4.2 the Company's liability will be limited to no more than the limited stated in 20.2.

5. Prices

5.1 All prices shall be calculated and paid in Sterling.

5.2 All prices are quoted exclusive of VAT or other relevant taxes.

5.3 All rates, prices and discounts quoted to the Customer or published in the Company's catalogues, lists and other documents are subject to variation at any time prior to acceptance of the Customer's order by the Company. If (1) no rate or price is quoted or published at the time of acceptance of the order by the Company, or if (2) performance of the Services is to take place at the request of the Customer more than 30 (thirty) days after the acceptance of the order by the Company, the price shall be that ruling at the date of performance, as determined solely by the Company.

5.4 Unless agreed in writing between the Company and the Customer, all prices shall be subject to an annual rate review applicable from 01st January or the anniversary date of any existing agreement.

5.5 The Company reserves the right, by giving notice to the Customer at any time before performance (or during performance where the Contract is being performed in stages or over a period of time) to increase the price of the Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, fuel or other costs of providing the Services), any change in performance dates, quantities or specifications for the Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

6. Customers Responsibilities and Warranties

6.1 The Customer by entering into transactions of any kind with the Company expressly warrants that he is either the owner or the authorised agents of the owner of the Goods and further warrants that he is authorised to accept and is accepting these Terms and Conditions not only for himself but also as agent for and on behalf of all other persons who are or may thereafter become interested in the Goods or Services.

6.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order submitted by the Customer, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

6.3 The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for any purposes including Customs, Consular and any other regulatory purposes. The Customer undertakes to indemnify the Company against all losses, damages, expenses and fines whatsoever arising from any inaccuracy or omission even if such inaccuracy or omission is not due to any negligence. In the absence of written description, the Company will accept, handle and deal with the Goods on their face value and in the discretion of the Company evaluate its quality. The Company will not be liable if the Customer seeks to attribute a higher quality than the Company in its discretion has evaluated on face value of the Goods.

6.4 The Customer shall fully indemnify the Company against any losses, costs, claims, damages and expenses awarded against or incurred by the Company, or its employees or agents arising as a result of any negligent act or omission or any deliberate act or instruction of the Customer, or its employees or agents while they are working on the Site.

6.5 The Customer shall be liable for any duties, taxes, imposts, levies, deposits or outlays of any kind levied by the authorities of any port, wharf or place for or in connection with the Goods and for any payments, fines, expenses, losses or damage whatsoever incurred or sustained by the Company in connection therewith.

6.6 In addition (and without prejudice to the foregoing) the Customer undertakes that it shall in any event indemnify the Company against all liabilities whatsoever suffered or incurred by the Company arising directly from or in connection with the Customers' instructions or their implementation or the Goods. In particular the Customer agrees to indemnify the Company in respect of any liability whatsoever it may be under to any employee, agent or sub-contractor or any haulier, carrier, warehouseman, stevedore or other person whatsoever and at any time involved with the Goods arising out of any claim made directly or by any person interested in the Goods or by any other person whatsoever. The Customer agrees to indemnify the Company for claims for damage from third parties against whom the Company cannot invoke these Terms and Conditions in so far as the liability of the Company would be excluded if the said third parties would be bound by these Terms and Conditions.

6.7 The Customer shall ensure and undertake to the Company that at all times :-

- a) The means of transportation (vessel or vehicle) complies with Applicable Laws and, in the case of Vessels, is fully seaworthy, and is fully suitable in every respect for the applied working method;
- b) Operations in relation to the Vessel or on the means of transportation can immediately be commenced and these operations can be continued and completed without delay (and in particular that the Customer will immediately remove or move any Vessel or means of transportation when required to do so by the Company);

- c) On board Vessels, winches, derricks, deck cranes, winch gear, tackle or other gear, plant or machinery shall always be ready for use for the purpose of handling or carrying out stevedoring tasks; Vessels shall have sufficient lighting for carrying out Services;
- d) After completion of operations the Vessel or means of transportation shall at the first request of the Company be moved or removed.

6.8 The Customer shall indemnify the Company, in full, and on demand, for any and all losses and expenses incurred or suffered by the Company arising from a breach of the Customer warranties. The indemnity shall include any loss of revenue suffered by the Company as a result of the Dock or Site not being available to other Customers by reason of a breach of the Customer of the warranties in this condition 6.

6.9 Except where the Company is instructed in writing to pack the Goods, the Customer warrants that the Goods have been properly and sufficiently packed and/or prepared.

6.10 It is the Customer's sole responsibility to direct the sequence of loading/unloading of the Goods at the Site at the time of delivery or collection of the Goods to or from the Site.

6.11 Without prejudice to the generality of condition 6.8 the Customer shall conduct its activities at the Dock and Site at all times in such a way as to minimise any nuisance or disturbance to the Company or any other person at the Dock and any other Vessel using the Dock and the owners and occupiers of other land within or adjacent to the Dock or Site. The Customer shall not do anything (or omit to do anything) which may present a danger or give rise to a risk to health, security safety or the Environment.

7. Invoicing / Payment

7.1 The Company reserves the right to invoice separately Services provided in relation to the discharge, loading and/or storage of Goods.

7.2 The costs for the Services shall be as agreed in writing between the Company and the Customer from time to time.

7.3 Unless the Company confirms in writing that account facilities have been opened for the Customer, payment is due on completion of the Services.

7.4 Where the Company has confirmed in writing that account facilities have been opened for the Customer, payment of any invoice must be made in full within 30 days of the date of that invoice.

7.5 Any amount due by the Customer to the Company under the Contract shall be payable in full without any compensation, set-off or counterclaim.

7.6 Time of payment shall be of the essence of all Contracts.

7.7 Payment must be made when due, notwithstanding that property in the Goods has not passed to the Customer.

7.8 Where any account, or any part thereof, is overdue for payment the Customer shall cease to be entitled to the benefit of any discount specified in that account and the Company shall be entitled to charge interest and compensation as provided in Late Payment Regulations.

7.9 If the Customer fails to make timeous payment in accordance herewith then, in addition to any other remedies available to the Company, the Company may either suspend all further performance of the Services under the Contract until payment is made in full or, at its option, treat the Contract as repudiated.

7.8 If the Customer repudiates the Contract for any reason, or is deemed to have repudiated the Contract in accordance with Clause 7.7, then the Company shall, in addition to any other

remedy available to it, be entitled to seek damages for any loss suffered by it as a result of the Customer's repudiation.

7.9 The Company, at its sole discretion, may require full or partial payment of the price prior to or during performance of the Services or may require the provision of security for payment by the Customer, in a form acceptable to the Company.

8. Lien

8.1 All Goods (and documents relating to such Goods) are subject to a particular and general lien and right of detention for all and any monies due to the Company from the Customer howsoever arisen. If monies due are not paid within 4 (four) weeks of notification of lien to the Customer, any goods held under such lien may be disposed of by the Company at its sole discretion and at the Customer's expense and the net proceeds shall be applied towards the discharge of the Customer's debt. On disposal of the Goods the Company shall not be obliged to ensure the Goods obtain their true value provided any disposal transaction is conducted at arm's length.

8.2 The Company's particular and general lien shall also apply with immediate effect if:

- (i) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (iii) the Customer ceases, or threatens to cease, to carry on business; or
- (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the customer accordingly

In such circumstances (and without prejudice to any other right or remedy available to the Company) the Company shall be entitled to cancel any contract or suspend any further deliveries under any contract without any liability to the Customer and shall be entitled to immediately enforce the said lien without the necessity for a 4 (four) week notification period.

8.3 If the Customer transfers property in the Goods to a third party by way of a purported sale and following such transfer any of the events outlined in Clause 8.2 above occur (the **Events**), then the Customer hereby acknowledges and agrees that any monies still due for payment by the third party for the Goods at the time of the occurrence of any of the Events are the exclusive property of the Company and the Customer hereby agrees that the Company is entitled to collect such monies directly from the third party. The Customer hereby agrees to immediately provide the Company on request with a written confirmation to that effect. Any monies already paid to the Customer (or its receiver, administrator, administrative receiver or liquidator) shall be held by the Customer (or its receiver, administrator, administrative receiver or liquidator) as fiduciary agent of the Company in a separate account and shall be paid to the Company immediately on demand.

9. Right to Dispose of Goods and to move Vessels.

9.1 The Company shall be entitled to sell or dispose of the Goods which in the opinion of the Company cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Customer or his consignee or any other person upon giving 21 (twenty one) days' notice in writing to the Customer. All charges and expenses arising in connection with

the storage and sale or disposal of the Goods shall be paid by the Customer.

- 9.2 The Company shall have an absolute discretion whether to allow a Vessel into the Dock.
- 9.3 The Customer shall comply at all times with any direction given by the Company.
- 9.4 Any Vessel which has completed discharge or loading at a berth may only be permitted to remain in the Dock with the Company's permission and may be required to leave the Dock if directed to do so by the Company.
- 9.5 Where a Vessel refuses to move in accordance with the Company's directions, the Company shall be entitled, but not bound, to take such steps as it deems appropriate to move the Vessel including chartering tugs and engaging pilots and the Customer shall indemnify the Company for all costs and expenses incurred by the Company in the exercise of this power as well as indemnify the Company for all losses suffered in accordance with condition 6.8.

10. Hazardous Goods

Except under special arrangement previously made in writing the Company will not accept any noxious, dangerous, hazardous and inflammable or explosive goods or any goods likely to cause damage at the Site. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing he shall be liable for all loss or damage whatsoever caused by or to or in connection with the goods however arising and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with on account of risk to other goods, property, life or health. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests.

11. Performance of Services

- 11.1 Unless otherwise specified, performance dates, times or periods given by the Company are estimates only and shall not be essential terms of the Contract. Delivery dates, times or periods shall apply as set out in the Company's written order confirmation.
- 11.2 Performance of the Services shall be deemed to have taken place when, in the sole opinion of the Company, the work required to be performed by the Company under the Contract has been completed.
- 11.3 Any receipt obtained by the Company from the Customer, or its employee or agent, accepting or taking delivery of the Goods or acknowledging performance of the Services (or such part thereof as is indicated by the receipt) shall be conclusive evidence of delivery in perfect condition or satisfactory performance of the Services by the Company.
- 11.4 The Company may elect to perform the Services in instalments and no failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as a whole as repudiated.
- 11.5 If the Customer fails to take delivery of the Goods or accept performance of the Services (or any part(s) thereof) on the due date, or to give adequate instructions to enable the Goods to be collected or the Services performed on the due date, the Company may issue a written notice to the Customer stating that risk in the Goods shall be deemed to have passed to the

Customer on the date delivery was due or, in the case of Services, that the Customer is in breach of the Contract. Thereafter the Company shall store the Goods at the Customer's expense or attempt to mitigate the Company's loss in respect of the Services but, regardless of whether or not a written notice has been given to the Customer by the Company, the Customer shall indemnify the Company in respect of all losses, costs, claims, damages, and expenses incurred by the Company arising as a result of the Customer's failure or breach.

12. Services not conform to Contract

- 12.1 The Customer shall be deemed to have examined the Services upon performance thereof (time being of the essence) and to have satisfied itself that they conform to Contract. A claim that Services are not in accordance with the Contract will not be accepted by the Company unless notice in writing, specifying the alleged default and stating what is required of the Company to remedy the alleged default, is received by the Company within 7 (seven) days of taking delivery of the Goods.
- 12.2 Failure to notify the Company of the non-, part- or sub-standard performance of the Services within 7 (seven) days of the due date from performance will release the Company from liability for claims for non-, part- or substandard performance.
- 12.3 Any Goods considered to be damaged or defective (together with their packaging materials, if any) shall be retained by the Customer intact as delivered for a period of 14 (fourteen) days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods or work carried out under the Services and, if possible, to remedy any defect. Any breach of this condition will release the Company from any liability for Services which are alleged not to conform to Contract.
- 12.4 If the Company disagrees with the Customer that the Goods are damaged or defective, or that the work carried out under the Services was sub-standard, or disagrees in relation to how such a defect should be remedied then the dispute shall be referred to an independent third party appointed jointly by the Company and the Customer or, failing agreement within 7 (seven) days, by a party appointed, on the application of either the Company or the Customer, by the President for the time being of The Law Society of England and Wales. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Company and the Customer.
- 12.5 The Company shall have no liability to the Customer in respect of damaged or defective Goods or sub-standard Services (and the Customer shall be required to pay the full contract price) where: -
 - (a) any claim made by the Customer is not in accordance with these terms and conditions; or
 - (b) defects are caused by any person other than the Company or its employees or agents; or
 - (c) a receipt has been obtained by the Company, duly signed by the Customer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition or the Services performed in a satisfactory manner.
- 12.6 In any event the Company shall be discharged of all liability in respect of: -
 - a) Damage wholly or partly resulting from the nature and/or condition of the means of transport or the nature and/or condition of the goods;
 - b) Damage which is unavoidable in the applied method of work if no objection has been raised to such method by or on behalf of the Customer or those interested;
 - c) Damage due to any difference in weight, quality, contamination,

mingling including damage caused by dust and/or presence of foreign objects or particles in the Goods unless caused by the gross negligence or recklessness of the Company or its employees;

- d) Damage caused by or resulting from work other than the loading, unloading, handling, storage, warehousing, stockpiling and delivery. This exemption would include such activities as placing of lamps, carrying out repairs, manipulating hatches, beams, cross beams or moving or removing vessels or vehicles;
- e) Damage resulting from failure breakage or other defects of the equipment used by the Company unless it can be proved that the equipment was not in a good state of maintenance and did not conform to the requirements if any laid down by the authorities in this respect;
- f) Damage resulting from regulations laid down by the authorities or issued by the Company not being fully observed by the Customer, his agent or any third parties;
- g) Damage arising from any act or any neglect of a third party whether or not the third party was employed by or on behalf of the Company;
- h) Damage done to other goods on board during the performance of the work otherwise than through the gross negligence or wilful default of the Company or its employees;
- i) Damage arising or resulting from war, riots, measures taken by the authorities, sabotage, strike (organised or unorganised), lockout of workers, labour unrest, burglary, fire, flood, explosion, nuclear reaction, acts of God, vermin, insects or pests of any description, high or low water, howsoever arising and no matter whether they have taken place and whether or not the cause is wholly or partly due to the Company or persons employed by it;
- j) Despatch money lost or demurrage due in respect of barges, lighters, railway wagons, trucks, unless caused by the gross negligence or wilful default of the Company or its employees;
- k) Loss of time arising from repairing damage carried out during or after completion of the loading or unloading or for the consequences of such loss of time unless it has been caused by the gross negligence or wilful default of the Company or its employees;
- l) Loss caused through the early or late arrival of ships and/or lorries operated by the Customer, his agents or any other third party.

13. Declaration of Value

- 13.1 The Company shall not be obliged to make any declaration for the purposes of any statute or convention or contract as to the nature or value of the Goods or as to any special interest in delivery unless expressly instructed to do so by the Customer in writing;
- 13.2 Where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, the Goods will be handled, dealt with and forwarded at Customers' risks or other minimum charges and no declaration of value (where optional) will be made unless express instructions in writing to the contrary have previously been given by the Customer.

14. Perishable Goods

If the Goods are of a perishable nature and are not taken up immediately upon arrival or are insufficiently addressed or marked or otherwise not readily identifiable they may be sold or otherwise disposed of without any notice to the Customer and payment or tender of the net proceeds of any sale after deduction of charges and expenses shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Customer.

15. Charges for Demurrage and Standing Time

The Customer shall be responsible for the Company's charges (including loss of profit) according to the Company's tariff as amended from time to time for detention of equipment and/or cargo and standing time for idle machinery and plant caused by the Customer, including wagons, trailers, flats, containers, sheets, barges, lighters, ship or other craft, hoppers, balers, cranes or other machinery and plant.

16. Berth, Accommodation, Availability

The Company cannot guarantee that the necessary berth or accommodation shall be available immediately on arrival of the means of transportation to be unloaded or to be loaded. The Company shall not be responsible for any loss, loss of time nor for demurrage nor for moving expenses resulting therefrom. The allocation of a berth, accommodation or waiting place is done at the discretion of the Company and with the exclusion of any responsibility for the safety of the allocated place.

17. Making Good of Damage to Third Parties

If a Customer is liable to a third party for damages which the Company is under obligation to reimburse no payment or offset settlement shall be made by the Customer without the agreement of the Company.

18. Contamination/Defects

Whilst every effort is being made by the Company to avoid defects or cross-contamination of goods, the Company cannot accept any liability for cross-contamination or defects (in particular, without limitation, caused by material, disease or dust) common in the type of loading/unloading and warehousing operations carried out by the Company.

19. Weighing Loss

The weight of the Goods is determined solely on arrival at the Site by way of weighing on the Company's Site scales (the **Scale Weight**). The Company takes no responsibility for any loss of product in case of discrepancy between the Scale Weight and the weight shown on the bill of lading or any other document or other evidence whatsoever.

20. Limitation of Liability

- 20.1 The Company shall be under no liability: -
 - (a) in respect of any defect in the Goods or Services arising from any act or omission of the Customer, its employees or agents or any other third party; or
 - (b) where any of the circumstances referred to in Clause 12.5(a) to (c) occur; or
 - (c) to the extent that the total price for the Goods or Services has not been paid by the due date for payment; or
 - (d) for any consequential loss howsoever caused.
- 20.2 In no case whatsoever shall any liability of the Company howsoever arising exceed the value of the relevant Goods or sum at the rate of £100 per tonne of 1,000 kilos of the gross weight of the goods whichever is the lesser, with a maximum of £100,000 per claim and irrespective as to whether the interests of more than one party are involved in such damage.
- 20.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 20.4 No employee or agent of the Company performing the whole or any part of the Services shall, in any circumstances whatsoever, be under any liability to the Customer for any loss, damage or delay of whatsoever kind arising or resulting, directly or indirectly, from any act, neglect or default on their part while

acting in the course of, or in connection with, their employment or appointment and every exemption, limitation and condition contained in these terms and conditions to which the Company is entitled shall be applicable to any employee or agent of the Company.

21. Export of Goods

- 21.1 Where the Services supplied relate to the export of Goods from the United Kingdom, the provisions of this Clause shall apply notwithstanding any other provision of these terms and conditions.
- 21.2 The Customer shall be responsible for complying with any legislation or regulations governing the Goods and their importation into the country of destination.
- 21.3 The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection, and which is made after shipment or in respect of any damage during transit.

22. Force Majeure

- 22.1 The Company shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside the Company's control, whether an Act of God or otherwise.
- 22.2 For the avoidance of doubt, the term force majeure shall include any failure of mechanical components (such as, without limitation, gearboxes, bearings, belts or shafts).

23. Notices

Any written notice to be given under the Contract shall be given by way of first class Recorded Delivery post or e-mail transmission or by personal delivery by the party giving it to the other, at his last known business address notified to the other, and shall be deemed to be delivered either 48 (forty eight) hours after posting (in the case of a letter) or immediately after receipt (in the case of e-mail transmission or personal delivery).

24. Set Off

The Company shall be entitled to set-off any monies due to a Customer against any invoices whatsoever outstanding from Customer to the Company.

25. Assignment/Sub-Contracting

The Company shall be entitled to assign or sub-contract all or any part of its rights or obligation under the Contract without the need to obtain the Customer's prior approval. The Customer shall in all circumstances be required to obtain the Company's prior written approval to the assignment or sub-contracting of all or any part of the benefit or burden of any Contract.

26. No Insurance

No insurance shall be affected except upon express instructions given in writing by the Customer and all insurance effected by the company is subject to the usual exception and conditions of the policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to affect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by the Customer.

27. General

- 25.1 The rights and remedies of the Company set out in these conditions shall be in addition, and without prejudice, to any

- 25.2 other rights and remedies which may be available to the Company at common law or under statute
- The headings in these Terms & Conditions are for convenience only and all terms set out herein are of general application and shall not be restricted by such headings.

28. Invalidity

If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

29. Governing Law

These terms and conditions and all Contracts shall be governed by and construed in accordance with the Law of England and except where otherwise expressly provided for herein the parties hereto hereby choose and submit to the express and exclusive jurisdiction of the English courts.

Berthing and Stevedoring Conditions

1. Definitions

Company means **New Holland Dock Wharfingers Limited** having its principal place of business at The Dock, New Holland, North Lincolnshire, DN19 7RT including any of its trading divisions or subsidiaries.

Customer means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the provision of Services by the Company.

Contract means any such contract between the Company and the Customer, written or implied.

Goods means goods in the care of the Company as part of the provision of the Services by the Company to the Customer.

Holidays means official United Kingdom Public Holidays.

Hours of Work means 0600 to 1600 for all operations and Monday to Friday (excluding Holidays)

Late Payment means the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 (both as amended).

Services means any of the Services undertaken by the Company under the Contract.

Site means the place where the Services are being provided by the Company.

Stevedore means New Holland Dock Wharfingers Limited

Terminal means the Stevedore's terminal at New Holland Dock incorporating the berth, the quayside and all associated warehousing and open storage areas

Warehousing means the conditions of contract of the United Kingdom Warehousing Association

2. Definitions

Company means **New Holland Dock Wharfingers Limited** having its principal place of

ADDITIONAL TERMS AND CONDITIONS – New Holland Dock Wharfingers Ltd

All transactions entered into by **New Holland Dock Wharfingers Ltd** (hereinafter "the Company") in connection with or arising out of the Company's business shall be subject to the following terms and conditions (hereinafter "the Conditions") unless otherwise agreed or stated by the Company in writing.

THESE CONDITIONS CONTAIN PROVISIONS RELATING TO THE EXCLUSION AND LIMITATION OF LIABILITY AND TIME LIMITATION AND PROVISIONS WHICH REQUIRE THE PRINCIPAL AND MERCHANT TO INDEMNIFY THE COMPANY. YOU MAY WISH TO INSURE AGAINST THESE RISKS.

If any international convention or transport law or other regulation or directive is compulsorily applicable to the Services provided by the Company, these Conditions shall, with regard to such Services only, be subject to such compulsory legislation. However, nothing in these Conditions shall be construed as a waiver by the Company of any of its rights or an increase of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is in any way contrary to such legislation, such part shall, in connection with such Services, be overridden to that extent and no further.

- (1) In these Conditions the following expressions have the following meanings respectively:
- a. "The Company" means New Holland Dock Wharfingers Ltd
 - b. "Services" means the services which are provided by the Company to the Merchant and Principal, whether or not for reward, whether same be by way of charge, fee, commission or remuneration of any other kind.
 - c. "Supplier" means the company firm or person who

contracts to supply Services or Goods to the Principal or Merchant through the Company.

- d. "Merchant" means the company firm or person (or any agent thereof) who ships, receives, owns or forwards Goods or holds the bill of lading in respect of which the Company, whether as agent or principal, has agreed to provide or procure services.
- e. "Principal" means the company firm or person who has or whose representatives have instructed the Company and who is the owner or charterer or operator or manager of the vessel represented by the Company and / or the carrier under the bill of lading in connection with which Services are provided by the Company.
- f. "Goods" means any wares, merchandise and articles of every kind whatsoever including any container, chassis, trailer or similar equipment used for the purpose of carrying cargo.
- g. "SDR" means a Special Drawing Right as defined by the International Monetary Fund.
- h. "Direct Representative" means the Company acting in the name of and on behalf of the Merchant and/or the Principal with H M Revenue and Customs ("HMRC"), as defined by Council Regulations (EEC) No. 92/2913 or as amended, or any other authority.
- i. Words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall incorporate bodies corporate, unincorporated associations and partnerships.
- j. The headings in these Conditions are for convenience only and shall not affect their interpretation.

Transactions with the Principal

The following terms and conditions shall apply to transactions with the Principal:

- (2) The Principal shall indemnify the Company in respect of all liabilities incurred by the Company when acting as a port agent or liner agent or booking agent on the Principal's behalf. This indemnity shall include but not be limited to all third-party claims, charges, losses, damages, taxes, duties and expenses that the Company may incur during the performance of the Services, notwithstanding any termination of the contract between the Principal and the Company. This indemnity shall not extend to matters arising by reason of the negligence or willful misconduct of the Company.
- (3) The Principal shall pay forthwith by telegraphic transfer to the Company's bank account such sums as the Company may request as an advance on port disbursements which the Company estimates will be incurred whilst the Principal's vessel is in the Company's agency. If the Principal should fail to comply with the Company's request, the Company may at any time give notice of the termination of its agency.
- (4) The Company shall be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company from the Principal.
- (5) The Company, with the consent of the Principal, shall have authority to appoint sub-agents to perform Services on behalf of the Principal, including such Services as may be subject to these Conditions, remaining at all times

responsible for the actions of the sub-agent.

- (6) Where the Company acts as liner agent and / or booking agent for the Principal, the Principal shall give six months' written notice of termination of the agency. For the purposes of this clause "written notice" shall also include notice by facsimile transmission or by electronic means.
- (7) In the event that the Company is required by the Principal to file data with a port facility in compliance with the ISPS Code, the Company will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines. However, the Company cannot accept any responsibility or liability for the correctness and accuracy of the information provided by the Principal or if the Principal fails to provide the data in a timely manner or there are technical problems or human error beyond the Company's control. The Company provides the filing process as a data exchange service only. Any losses or liabilities resulting from the filing of such data, whether or not the Company was or is claimed to have been negligent or at fault in any way, rest with the Principal.

Transactions with the Supplier

The following terms and conditions shall apply to transactions with the Supplier:

- (8) Unless otherwise stated in writing, when the Company is acting as a port agent or liner agent or booking agent it acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Supplier as agent for Principal. The Company shall not be personally liable to pay any debt or expense to the Supplier from the Principal.
- (9) Where the Company is acting as a forwarding agent, unless it is acting as agent for the Principal in accordance with clause (8) hereof or otherwise agreed in writing, it acts at all times as agent for and on behalf of the Merchant and has authority to enter into contracts with the Supplier as agent for the Merchant. The Company shall not be personally liable to pay any debt due from the Merchant.

Transactions with the Merchant

The following terms and conditions shall apply to transactions with the Merchant:

- (10) When acting as port agent or liner agent or booking agent, the Company acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Merchant as agent for the Principal. The Company shall not be personally responsible for the Principal's liabilities.
- (11) The Company may provide the Services to the Merchant as its agent or as a principal. The Merchant warrants that it is either the owner of the Goods or the authorised agent of the owner and that it accepts these terms for itself and as agent for and on behalf of the owner.
- (12) (a) Where the Company arranges Services for the Merchant's Goods which are or will be carried in accordance with a contract with the Principal contained in or evidenced by a bill of lading, charter party or other contract of affreightment, all Services including forwarding Services are arranged by the Company as agent for and on behalf of the Principal. The provision of such Services shall be subject to the terms and conditions of the Principal's bill of lading and tariff rules (if any), which may be inspected on request, or other contract between the Principal and the Merchant.

(b) Where the Company arranges Services for the Merchant's Goods as a forwarder (whether as principal or agent) the provision of such Services are subject to these Conditions.

(c) The Company may from time to time issue a house bill of lading covering the transportation of the Merchant's Goods. In the event of any conflict between these Conditions and the house bill of lading, the latter shall prevail.

(13) When the Company contracts as a principal for any Services, the Company shall have full liberty to sub-contract the whole or any part of its contracted Services to third parties as may be necessary to fulfil the customer's instructions and subject to the trading conditions of the sub-contractors.

(14) The Company shall be relieved of any liability, and the Merchant shall hold the Company harmless, for loss or damage if such loss or damage resulted from:

- a) the act or omission of the Merchant or his representative or any other party from whom the Company took charge of the Goods;
- b) inherent vice of the Goods, including improper packing, labelling or addressing (except to the extent that the Company undertook to be responsible therefor);
- c) handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on his behalf other than the Company;
- d) seizure, forfeiture or detention under legal process;
- e) riot, civil commotion, strike, lock out, general or partial stoppage or restraint of labour from whatever cause;
- f) any consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, acts of terrorism or sabotage, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to any property or Goods by or under the order of any Government or public or local authority.
- g) any cause or event which the Company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of due diligence.

(15) The Company shall not arrange insurance for the subject matter of the Services save upon express instructions given in writing by the Merchant in relation to which there shall be a specific agreement as to charge. All insurance arranged by the Company is subject to the conditions of the insurer. If the Company agrees to arrange insurance, it acts as agent of the Merchant in doing so.

(16) Where the Company agrees to provide or arrange Services for the Merchant's Goods, the Merchant shall be deemed to have authorised the Company to conclude all and any contracts necessary to provide those Services. The Merchant shall reimburse on demand the Company with all taxes, charges or fines whatsoever incurred by the Company as a result of providing or arranging the Services, or undertaking any liability in connection with the Services, particularly in respect of any bond issued to Customs or any other statutory authority by the Company.

(17) The Company is deemed to be appointed as and acts as a Direct Representative only in all and any dealings with

HMRC, and any other authority, for and on behalf of the Merchant.

- (18) Unless the Company has previously so agreed in writing, the Company will not provide Services for Goods of a dangerous or damaging nature. If such Goods are accepted pursuant to a special arrangement, and, thereafter (in the opinion of the Company) constitute a risk to health or to other goods or property, the Company shall, where reasonably practicable, contact the Merchant in order to require him to remove or otherwise deal with the Goods, but reserves the right, in any event, to do so at the expense of the Merchant. Should the Merchant fail to provide such details at the time of contract the Merchant shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right exercisable on behalf of itself or its Principal to rescind the contract.

Liability

- (19) The Company shall exercise reasonable care and diligence in providing Services.
- (20) Unless otherwise agreed in writing, the liability of the Company shall in all circumstances be limited to the lesser of sums calculated in the following manner: -
- a) where Goods are lost or damaged:
 - (i) the value of Goods so lost and damaged; or
 - (ii) a sum calculated at the rate of SDRs 2.00 per kilo of the gross weight of any Goods lost or damaged;
 - b) in all other circumstances the amount of the direct loss or SDRs 75,000.
- (21) The Company will not provide Services in connection with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants but if the Company should, in the course of providing the Services, handle or deal with such Goods (otherwise than under special arrangements previously made in writing) the Company shall be under no liability whatsoever for or in connection with such Goods however arising.
- (22) The Company shall perform the Services with due despatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent. Without prejudice to the foregoing, in the event that the Company is deemed to be liable for delay its liability shall not exceed the amount of the Company's charges in respect of the transaction.
- (23) Except in those cases of loss or damage referred to in Clauses (21) and (22) above and Clause (24) below, no liability whatsoever for consequential loss, be it direct or indirect, shall attach to the Company. Such loss shall include (but not be limited to) loss of profit, loss of market or the consequences of delay or deviation, however caused.
- (24) The Company shall not be liable for loss of or damage to Goods unless it is advised thereof in writing within three days after the completion of provision of the Services and the claim is made in writing within 42 days, provided always that these limits shall not apply if the Merchant or Principal can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time. Notwithstanding the above provisions, the Company shall in any event be discharged from all liability whatsoever and howsoever arising in

connection with the Services unless suit is brought within nine months of the delivery of the Goods or of the date they should have been delivered or of the date of the event giving rise to any other loss.

General

- (25) If the Merchant or the Principal, as the case may be, fails to make payment in full of any sums due to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding with effect from the date of first demand at the rate of 2 % above the average of the London Inter Bank Ordinary Rate (LIBOR) applicable during the period when the sums are outstanding.
- (26) The Company shall have a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time from the Merchant or Principal and shall be entitled to sell or dispose of such Goods or Documents as agent for and at the expense of the Merchant or Principal and apply the proceeds towards the monies due and the expenses of the retention, insurance, sale and disposal of the Goods. Reasonable notice of 28 days of the intention to sell will be given by the Company to the Merchant or Principal unless the Goods are liable to perish or deteriorate in which case the Company shall have the right to sell or dispose of the Goods immediately. The Company shall, upon accounting to the Merchant or Principal for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.
- (27) Where liability for General Average arises in connection with the Goods, the Customer shall promptly provide security to the Company or any other party designated by the Company in a form acceptable to the Company.
- (28) It is hereby expressly agreed that no servant or agent of the Company (which for the purpose of this clause includes every independent contractor from time to time employed by the Company) shall in any circumstances whatsoever be under any liability whatsoever under these Conditions for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment.
- (29) Without prejudice to the generality of the foregoing provisions, every exemption from liability, limitation, condition and liberty herein contained and every right, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled, shall also be available and shall extend to protect every such servant and agent of the Company acting as aforesaid.
- (30) The Company shall be entitled to retain and be paid all customary brokerages, commission, allowances and other remuneration.
- (31) The Merchant, the Supplier and the Principal each undertake with the Company that no claim or allegation of any kind shall be made against any of the Company's directors officers employees servants or agents (herein collectively called "the Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting directly or indirectly from any negligent act error or omission of the Beneficiaries in the performance of the Services the subject of these Conditions. The Beneficiaries shall have the benefit of this undertaking and in entering into this contract the Company, to the extent of this provision, does so not only on its own behalf but also as agent or trustee for the Beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to this contract.
- (32) These Conditions and any act or contract to which they apply shall be subject to English Law. Any dispute arising in connection with the Company's business shall be determined

by arbitration in London pursuant to the LMAA Terms for the time being in force by a sole arbitrator appointed for that purpose by the parties. Failing agreement as to the identity of the sole arbitrator, each party shall nominate its own arbitrator, and the two so chosen, if they cannot agree, shall nominate an umpire, whose decision shall be final.

- (33) If there is any conflict between the terms set out herein and any other terms and conditions agreed between the parties these Conditions shall prevail unless the Company specifically agrees otherwise in writing.