

# General Trading Terms and Conditions

Effective Date: 1 May 2013

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following words shall have the following meanings:

“**Charges**” includes all charges set out in the Supplier’s published tariff and any other charges imposed by the Supplier from time to time;

“**Customer**” includes any person who:

- (a) visits the Dock Estate;
- (b) is the Owner of Goods or Equipment delivered, brought into or come howsoever to be upon the Dock Estate;
- (c) is the Owner, master or crew of or a passenger on a Ship which enters the Dock Estate;
- (d) by itself, its employees, contractors or agents avails itself or seeks to avail itself of any facility or Services provided by the Supplier;

“**Community System**” means the computer system used by the Supplier, shipping lines, agents, forwarders, hauliers, freight operating companies and others for customs clearance and inventory control of imports and exports, and any electronic data system that may succeed it. For the purpose of these Terms and Conditions Community System also includes any additional electronic systems or interactive services provided by or on behalf of the Supplier for use by the Customer;

“**Dock Estate**” means:

- (a) when the Supplier is FDRC or FPCSL, the port and the port premises as defined in The Felixstowe Dock and Railway Acts and Orders 1879 – 2009;
- (b) when the Supplier is MTSL, the port and the port premises at Thamesport, Isle of Grain, Kent, ME3 OEP;
- (c) when the Supplier is HIPL, the port and the port premises at Harwich International Port, Parkeston, Harwich, Essex CO12 4SR;

“**Dock Manager**” means any manager duly appointed from time to time by the Supplier to be in charge of a department, division or operation at or on the Dock Estate and/or the dock master and shall include his deputies and assistants;

“**Equipment**” means any plant, machinery, container, package, case, pallet, vehicle (private or commercial), trailer, truck, train or wagon of any description;

“**FDRC**” means The Felixstowe Dock and Railway Company;

“**FPCSL**” means Felixstowe Port Container Services Limited;

“**Goods**” means cargo of whatever nature;

“**HIPL**” means Harwich International Port Limited;

“**LTP**” means Thamesport (London) Limited;

“**MTSL**” means Maritime Transport Services Limited;

“**Owner**”:

- (a) when used with reference to Goods or Equipment includes the owner, container owner, container lessee, agent, bailee, consignor, consolidator, consignee, freight operating company or other person in charge of the Goods or Equipment and their respective agents in relation thereto;
- (b) when used with reference to any Ship includes the registered owner, agent, charterer (time, voyage or demise), line operator, manager, master or other person in charge of the Ship; and
- (c) when used with reference to any road or rail vehicles includes the owner, agent, driver or other person in charge of the vehicle.

“**RHIDES**” means the road haulage identity system operated by the Supplier;

“**Services**” means any operation, work or services performed or provided by the Supplier in connection with Goods, Equipment or a Ship and in particular with the berthing, unberthing, moving and servicing or repairing of any Ship or Equipment, the shipping and unshipping of Goods, the sorting, weighing, marking, checking, recording, cooping, storing, devanning or revanning and general handling and movement of Goods and Equipment by road, rail or otherwise, the embarking, disembarking and movement of crews and passengers and the provision of RHIDES and VBS;

“**Ship**” means any vessel, containership, barge, lighter or other vessel of any description or any part thereof;

“**Supplier**” means the relevant entity providing the Services and shall be either FDRC, FPCSL, HIPL, LTP or MTSL (as applicable); and

“**VBS**” means the vehicle booking system operated by the Supplier.

1.2 Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.3 Clause headings are for ease of reference and do not form part of or affect the interpretation of these Terms and Conditions.

- 1.4 References to each party herein include references to its successors in title and permitted assignees and novatees.
- 1.5 Any phrase introduced by the terms "including", "include", "in particular", or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms.
- 1.6 Any reference to "person" includes any natural person, company, body corporate or unincorporate, or other judicial person, partnership, firm, joint venture or trust.
- 1.7 References to any statute or statutory provision shall be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced except to the extent that any amendment, consolidation, modification, extension, re-enactment or replacement after the date the parties entered into a relationship would extend or increase the Supplier's liability.
- 1.8 In the event that any liability or duty arising hereunder attaches to more than one "Customer" or more than one "Owner" such liability or duty shall be joint and several.

## **2. APPLICATION OF CONDITIONS**

- 2.1 Save as otherwise specifically provided, these Terms and Conditions shall apply:
  - (a) to all Services performed by the Supplier whether directly or indirectly and whether within the area of the Dock Estate or elsewhere; and
  - (b) to all or any physical access by any person or vehicle to or from the Dock Estate; and
  - (c) to all other relationships, whether contractual or otherwise and whether created with or without the agreement of the Supplier.
- 2.2 In the absence of express acceptance by the Customer of these Terms and Conditions, acceptance shall be implied in the event of the entry or delivery of any Ship, person, Goods or Equipment into or onto the Dock Estate and/or the submission of any documentation via the Community System or otherwise or oral application to the Supplier for entry to the Dock Estate or for any Services or the use of any facility by or on behalf of any Customer.
- 2.3 Subject to clause 2.6, no terms or conditions whether express or implied which are at variance with these Terms and Conditions shall apply. These Terms and Conditions shall constitute the entire agreement between the Supplier and the Customer and supersede any previous agreement or arrangement between them relating to the subject matter hereof and it is expressly declared that no variation to these Terms and Conditions shall be effective unless made in writing and signed by the duly authorised representatives of both parties.

- 2.4 Where the Supplier is FDRC, these Terms and Conditions are in addition to and not in substitution of the rights and powers of FDRC conferred by The Felixstowe Dock and Railway Acts 1879 - 2009. Furthermore the Customer, its employees, agents, contractors, Goods, Equipment and Ships are subject to FDRC's general bye-laws (made pursuant to its powers under The Felixstowe Dock and Railway Acts 1879-2009) for the time being in force. In the event of any conflict between these Terms and Conditions and FDRC's byelaws then the latter shall prevail to the extent of such conflict.
- 2.5 Where the Customer is issued with any security pass or identification card in connection with its access to the Dock Estate, the Customer shall comply with any terms and conditions governing the use of such security pass or identification card.
- 2.6 The Supplier may issue separate terms and conditions governing the provision of specialist services. Unless specified otherwise in writing, such additional terms and conditions shall apply in respect of the specialist services and these Terms and Conditions shall continue to apply to the extent they are applicable.
- 2.7 For the avoidance of doubt, where the Customer is acting or purports to act as an agent for a principal then it contracts with the Supplier on these Terms and Conditions.

## **3. PROVISION OF SERVICES**

- 3.1 The Supplier warrants that the Services shall be carried out with all reasonable skill and care.
- 3.2 The Supplier shall exercise all reasonable despatch in executing orders for its Services but will not be liable for any delay whatsoever, howsoever caused.
- 3.3 Goods and Equipment which for any reason cannot be delivered at the time of landing ex-ship or ex-train will be placed on the quays, in a transit shed or elsewhere within the Dock Estate at the expense and sole risk of the Customer. The Charges for transit shed and quay rental will be charged where appropriate.
- 3.4 The Supplier reserves the right to:
  - (a) appoint sub-contractors to perform all or any part of the Services;
  - (b) at any time before it commences the performance of any Services, serve written notice on the Customer declining to undertake the performance of such Services and giving reasons for so declining;
  - (c) suspend the provision of any Services in the event of any breach of these Terms and Conditions by the Customer;
  - (d) suspend the provision of any Services in the event that the Supplier reasonably believes the Customer is attempting to damage or disrupt the Community System or any other electronic system provided by or on behalf of the Supplier.

- 3.5 Subject to clause 8, in the event the Supplier declines to perform the Services or suspends performance of the Services in accordance with clauses 3.4 (b) or 3.4 (c) respectively, the Supplier shall not have any liability. In the case of the Supplier declining to perform any Services by written notice in accordance with clause 3.4(b), for any reason other than its own inability to perform the Services, the Customer shall, at its own expense, remove any Goods or Equipment from the Supplier's premises within 30 days of the date of said notice failing which the Supplier may so remove them at the expense and risk of the Customer. In the event the Supplier suspends provision of the Services in accordance with clauses 3.4(b) or 3.4 (c) and declines to recommence the provision of the Services, the Supplier shall notify the Customer and the Customer shall, at its own expense, remove any Goods or Equipment from the Supplier's premises within 30 days of the date of said notice failing which the Supplier may so remove them at the expense and risk of the Customer.
- 3.6 The Customer acknowledges and agrees that the Supplier has absolute discretion in the allocation of berths, rail terminal capacity, quay plant, machinery, labour and storage space.
- 3.7 The acceptance by the Supplier of Goods for shipment or carriage by rail does not imply that such Goods will be shipped or carried by rail. The acceptance or refusal of Goods for shipment or carriage by rail is the responsibility of the Owner and not the Supplier.

#### **4. CUSTOMER'S WARRANTIES**

- 4.1 Each Customer which avails itself of any Services provided by the Supplier in respect of any Goods, Equipment or Ship warrants to the Supplier that it has the authority of all persons having any title to or interest in such Goods, Equipment or Ship to accept these Terms and Conditions on their behalf as well as on its own behalf as principal and has specifically notified these Terms and Conditions to such persons. Finance companies, lessors and others having or claiming to have title to or an interest in such Goods, Equipment or Ship are advised that unless the Supplier is notified in writing of their title or interest in any particular Goods, Equipment or Ship prior to the commencement of any relationship between the Supplier and the Customer, these Terms and Conditions shall be deemed to have been accepted with the authority of such persons. Such persons' rights over and in respect of the Goods, Equipment or Ship shall be subordinated to the rights of the Supplier hereunder.
- 4.2 The Customer warrants that the rights, exceptions, defences and limits available to the Customer either by statute or by contractual terms are extended to the Supplier (as employee, agent or contractor).
- 4.3 The Customer warrants that its employees (and those of any agents or contractors it may engage including without limitation hauliers) are properly trained and competent (which for

this purpose, includes the ability competently to read and speak English) to carry out the tasks at any time assigned to them including in relation to the giving of any instructions to the Supplier or the inputting of any information into any electronic service or system operated or managed by or on behalf of the Supplier whether such instruction or input of information is given in writing, orally, electronically or by any other means. The Customer further and separately warrants that such persons have the full authority to give such instructions or input such information.

- 4.4 The Customer warrants that it shall obtain and maintain at its own expense, all necessary licences and authorisations and comply with all applicable laws, regulations, regulatory requirements and codes of practice relating to the carriage, handling, storage and movement of the Goods and or Equipment.
- 4.5 The Customer warrants (unless otherwise specified in writing to the Dock Manager) that any Goods, Equipment or Ship which it delivers, directs to or causes to be upon the Dock Estate:
- (a) are not dangerous, hazardous, poisonous or flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on the Dock Estate;
  - (b) are not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
  - (c) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Dock Estate;
  - (d) are not over-heated or under-heated or liable to become so while on the Dock Estate;
  - (e) will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods, Equipment or Ship or the Dock Estate or the water or air adjacent thereto;
  - (f) do not require for their safekeeping any special protection (other than as may be agreed in writing between the Supplier and the Customer) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will remain safe if left standing in the open on the Dock Estate or in covered accommodation (if agreed with the Supplier);
  - (g) contain no unauthorised controlled drugs, contraband, pornographic or other illegal matter;
  - (h) are properly and sufficiently packed and marked in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accurately documented and labelled for all shipping, cargo handling, despatch, customs and like purposes;

- (i) are fit for their intended purpose and are in a fit and proper condition to be handled or otherwise dealt with by the Supplier, its equipment and its employees, agents and contractors.

4.6 The Customer warrants that it shall immediately inform the Dock Manager of any occurrence or incident which might affect the safe and efficient operation of the Dock Estate or other persons at the Dock Estate or result in adverse environmental impact and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience as may be required by the Supplier. Without prejudice to the foregoing, the Customer shall indemnify the Supplier in respect of any and all claims including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) whether directly or indirectly incurred by the Supplier and howsoever caused and even if the occurrence has been caused or contributed to by the negligence of the Supplier.

4.7 The Customer warrants that it shall not:

- (a) use any devices which transmit radio signals or attempt to block radio signals (including without limitation GPS) whilst on the Dock Estate;
- (b) interfere with any systems, communication links and equipment or computer hardware and software whilst on the Dock Estate;
- (c) use or attempt to use any devices or software to gain access to unauthorised data and information;

without the prior written consent of the Supplier except that the Customer may use marine band and radar radio frequencies.

## **5. HAZARDOUS GOODS AND WASTE**

5.1 No waste material or Goods of a dangerous, hazardous or poisonous nature will be handled by the Supplier except by prior agreement with the Supplier's dangerous goods officer and then only in accordance with the conditions prescribed by him and all applicable laws, regulations, regulatory requirements and codes of practice. The Supplier's policy for handling such material can be provided upon request. Without prejudice to the above, the handling of goods requiring fumigation shall be in accordance with the Supplier's Safe Code of Practice for Fumigation (also available upon request).

5.2 The Customer warrants that any waste material or Goods of a dangerous, hazardous or poisonous nature are properly marked with any warning as to the hazardous nature of any contents and the precautions to be taken in handling the same (in the event of the escape of anything injurious therefrom) as may be necessary to ensure the safety and health of all persons likely to handle or come into contact with the same.

## **6. DOCUMENTATION, FORMALITIES AND SEALS**

6.1 All documentation submissions including manifests, delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, goods handling instructions and orders for any Services must be submitted to the Community System (where the facility for submission is generally available), or otherwise, such submissions shall be subject to the Dock Manager's written approval not less than 24 hours (or such shorter time as may be agreed in writing by the Supplier) before the Services are required to be performed. Any order given orally must be confirmed by or on behalf of the Customer via the Community System (where the facility for submission is generally available) or, in writing within 24 hours (where the facility for submission is not generally available).

6.2 The Supplier shall not be liable for any failure, disruption or other malfunction of the Community System.

6.3 The Customer shall be entirely responsible for formalities and procedures prescribed by HM Revenue & Customs, HM Immigration Service, the relevant Port Health Authority, Department for Environment Food and Rural Affairs or other statutory, Government or local Government department. The Supplier shall not be liable for any acts or omissions of any of the foregoing bodies or any losses, claims or delays resulting from those acts or omissions including without limitation in respect of damaged Goods and Goods not satisfactorily reworked by the Supplier.

6.4 Unless agreed otherwise in writing, the Supplier shall not be responsible for checking seals or seal numbers and shall not be required by the Customer to carry out any seal check or to note seal numbers on any document at any time whatsoever. Where seal numbers are noted for whatever reason by the Supplier then no representation is made by the Supplier as to the accuracy of the number noted or to the condition of the seal.

## **7. IMPORT AND EXPORT GOODS**

7.1 Authorisation for the removal of imported Goods and Equipment shall not be granted by the Supplier unless such Goods and Equipment are correctly released and cleared with no statutory authority holds applied via the Community System, or local holds that may be applied via equipment control systems operated by or on behalf of the Supplier. Goods and Equipment which fall outside the scope of the Community System shall be subject to acceptance of other documentation as prescribed from time to time by the Dock Manager so that the Goods and Equipment may be released to nominated persons.

7.2 All Goods and/or Equipment brought to the Dock Estate by road for shipment shall only be accepted if correctly entered on the Community System by or on behalf of the Customer and arriving at the Dock Estate within the receiving period agreed by the Dock Manager. Any hazardous Goods must be pre-entered as such on the Community System and must include the IMDG class and UN number and the Goods shall be labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accompanied by a duly

authorised dangerous goods note. Goods which fall outside the scope of the Community System must be accompanied by a standard shipping note, unit load note, dangerous goods note, vehicle condition report or temperature control document, as agreed with the Dock Manager not later than the arrival of trucks/lorries conveying such Goods and/or Equipment at the Dock Estate.

7.3 All Goods and/or Equipment brought to the Dock Estate by rail for shipment shall only be accepted if correctly entered on the Community System and arriving at the Dock Estate within the receiving period agreed by the Dock Manager. Any hazardous Goods must be pre-entered as such on the Community System and must include the IMDG class and UN number and shall be labelled in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accompanied by a duly authorised dangerous goods note. Goods which fall outside the scope of the Community System must be accompanied by a standard shipping note, unit load note, dangerous goods note, vehicle condition report or temperature control document, as agreed with the Dock Manager not later than the arrival of rail wagons conveying such Goods and/or Equipment at the Dock Estate. Prior notification must be given to the Dock Manager to allow any necessary wayleave or other arrangements to be made with Network Rail or any other operator of rail services.

7.4 Subject to alternative arrangements being agreed in writing with the Supplier, a standard shipping note, unit load note, dangerous goods note, vehicle condition report, temperature control document or other document accompanying the Goods or Equipment must specify marks and number of packages, description of Goods, gross weight, any weight imbalances, cubic measurement, name of the Ship, port to which the Goods or Equipment are to be shipped, any special carriage or storage requirements of the Goods and the name and address of the Customer or Customer's agent to whom Charges are to be rendered.

7.5 The Customer shall be responsible for all import duties, export duties, fines, charges and imposts relating to the Goods. The Customer shall indemnify the Supplier against any claims made against the Supplier by HM Revenue & Customs and any other costs, charges and expenses in respect of any Goods under bond.

## 8. LIABILITY

8.1 The Supplier shall be exempt from all liability whatsoever for deficiency, loss, damage, delay, or misdelivery of or to Goods and/or Equipment and/or to a Ship however or whenever caused except upon proof by the Customer (otherwise than by evidence only of such deficiency, loss, damage, delay, or misdelivery) that the deficiency, loss, damage, delay or misdelivery was caused by the negligent or unlawful act or omission of the Supplier.

8.2 The Supplier shall have no liability whatsoever (whether for negligence or otherwise) for deficiency, loss, damage, or misdelivery or

delay to a Ship and/or Equipment and/or Goods or any deficiency therein if the same arises out of or is caused by any of the following:

- (a) force majeure including, storm, tempest, lightning, flood;
- (b) fire (including steps taken for the extinguishment thereof), explosion, smoke;
- (c) strikes, combinations, lock-outs, go-slows, blockades, or other industrial action (whether lawful or not) by any person or anything done in the course of furtherance of a trade dispute;
- (d) improper, insufficient, indistinct or erroneous marking or addressing of Goods or Equipment;
- (e) improper or insufficient packaging of Goods or Equipment;
- (f) any inherent vice or quality of the Goods or Equipment;
- (g) any act of the Supplier, its employees, agents or contractors reasonably necessary for the safety or preservation of persons, the Dock Estate, a Ship and/or any Goods and Equipment;
- (h) theft or wilful damage unless proved by the Customer to have been committed by the Supplier;
- (i) vermin, insects, fungal attack, rot or corrosion;
- (j) heat or cold;
- (k) any act directly or indirectly occasioned by happening through or in consequence of war, threat of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, terrorism or acts of terrorism;
- (l) any act of any person or persons acting on behalf of any organisation with activities directed towards the overthrow by force of any *de jure* or *de facto* government;
- (m) civil disobedience at or in the vicinity of the Dock Estate.
- (n) shortage of berthing space, labour, plant deficiency, fuel or power or secure covered storage accommodation;
- (o) insufficient depth of water at any berth or the approaches thereto or the unsafe condition of any berth;
- (p) late receipt of HM Revenue & Customs entries or deliveries or landing orders, disputes in respect of documents, or declarations made for entry purposes by or on behalf of any person, delay in passing HM Revenue & Customs entries or obtaining clearance of the Goods, or omission of information from or an incorrect statement in any order to the

- Supplier relating to the Goods or Equipment;
- (q) the total or partial failure of the Community System or any other electronic services or systems offered at any time by or on behalf of the Supplier including the total or partial failure of any communication links with those services or systems;
  - (r) voluntary use of a grounding berth;
  - (s) human error on the part of the Supplier, its employees, agents or contractors in inputting any information into any electronic service or system operated or managed by the Supplier or its contractors;
  - (t) compliance with the instructions of HM Revenue & Excise or any other regulatory or statutory body;
  - (u) any other cause or event which the Supplier is unable to avoid and the consequences of which the Supplier is unable to prevent by the exercise of reasonable care.

8.3 The Supplier shall be under no liability whatsoever (whether for negligence or otherwise) for any delay (including delay to a Ship, Goods or Equipment) or the consequences thereof of for any loss of income, loss of profits or loss of contracts, hire costs, survey costs, legal expenses, devanning/revanning costs, packing costs or for any indirect or consequential loss or damage of any kind, in each case howsoever arising and whether caused by tort (including negligence), breach of statutory duty, contract or otherwise.

8.4 Nothing in these Terms and Conditions shall exclude or in any way limit the Supplier's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

8.5 Subject to clause 8.4, the total liability of the Supplier for any loss, damage, claim, cost and/or expense in respect of any one event or occurrence shall in no case be more than £5,000,000 and shall be the lowest of the following as applicable:

**Ship:**

- (a) the value of that part or parts of the Ship to which the claim relates at the time of the damage or loss;
- (b) the reasonable cost of repairs (as agreed between surveyors appointed by the Supplier and the Owner).

**Equipment:**

- (a) the reasonable cost of repairs;
- (b) the value of the Equipment to which the claim relates at the time of the damage or loss;

- (c) the sum of: (i) £2,000 per dry van/general purpose container; (ii) £5,000 per refrigerated container; or (iii) £3,000 per any other unit of Equipment.

**Goods:**

- (a) in the case of loss or damage to Goods arising out of the performance of the/a contract of carriage, the defences and limits available to the carrier under the said contract of carriage;
- (b) the value of the Goods affected to which the claim relates; and if any claims in respect of a part consignment, then the value only of the part consignment as a proportion of the whole consignment (to be calculated by weight in the absence of specific values for the damaged part);
- (c) the reasonable cost of repairs;
- (d) in any other case the sum of £1300 per tonne (or pro rata for any part of a tonne) unless the nature and value of the Goods had been declared to the Supplier and the Supplier has agreed a higher limit of liability with the Owner (as evidenced in writing) prior to such Goods arriving at the Dock Estate.

8.6 Notwithstanding clause 8.5, the Supplier shall have the right, in any circumstance, to elect to rely on (in the alternative) any relevant statutory provision providing for limitation and/or exclusion of liability including, but not restricted to, the provisions of the Merchant Shipping Act 1985.

8.7 It is a condition precedent to the liability of the Supplier that the Supplier is notified in writing by sending an email to the [claimsdept@hpuk.co.uk](mailto:claimsdept@hpuk.co.uk), followed up with a copy of the email sent by post to the Supplier:

- (a) of any damage alleged to have been caused to a Ship and to permit inspection thereof prior to sailing;
- (b) within 30 days of their arrival at the Dock Estate (in the case of import Goods) or 60 days of their removal from the Dock Estate, of any alleged misdelivery or loss of or damage to Goods or any deficiency therein together with particulars of the nature and the amount of any claim to be made;
- (c) of any damage alleged to have been caused to Equipment prior to such Equipment leaving the Dock Estate.

In any event the Supplier shall be entitled (and the Customer and Owner hereby grant permission) to inspect any such Goods or Equipment prior to their disposal or destruction by the Owner. The Customer and/or Owner shall not bring any claim in respect of any single incident below the *de minimis* limit of £200.

8.8 Notwithstanding the provisions of clause 8.7, the Supplier shall in any event be discharged of all liability whatsoever howsoever arising unless proceedings are brought within 12 months from the date of the event or

occurrence alleged to have given rise to a cause of action against the Supplier.

8.9 The Supplier shall have the following powers in respect of Goods and Equipment abandoned on the Dock Estate:

- (a) the power immediately to remove Goods and Equipment in the case of a hazard or other emergency (and to dispose of such Goods and Equipment where necessary) without notice;
- (b) the power generally to remove, store, dispose of or sell Goods and Equipment on reasonable notice to the Customer (the length of such notice to be determined by the Supplier on a case by case basis);
- (c) in the case of FDRC, the statutory power to remove, dispose of or sell Goods and Equipment in accordance with the provisions of the Harbour Docks & Piers Clauses Act 1847 as incorporated in The Felixstowe Dock and Railway Acts 1879 - 2009. Any such sale to be on the basis of the best offer immediately available, which may or may not amount to as much as the Customer (or any other person interested) may believe the Goods or Equipment to be worth in any specialist market place,

and in each case to charge for the reasonable costs incurred in respect of the removal, storage and disposal of the Goods or Equipment.

8.10 These Terms and Conditions and in particular the limitations on liability are intended to inure for the benefit of both the Supplier and its employees, agents and contractors to which end the Supplier contracts on these Terms and Conditions on its own behalf and as agent for and trustee for the benefit of its employees, agents and contractors.

8.11(a) The Supplier shall have a general, as well as a particular lien on all Goods, Equipment and documents relating to Goods and Equipment in its possession custody or control for all and any sums due to the Supplier at any time from the Customer or any other person interested in the Goods or Equipment whether in relation to the same Goods and Equipment or otherwise. The Supplier shall be entitled to sell or dispose of such Goods or Equipment or documents as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums upon 14 days' written notice to the Customer.

- (b) In the event that any Goods or Equipment held pursuant to the lien under clause 8.11 (a) are perishable and in the view of the Dock Manager it is impracticable to give the notice required by clause 8.11 (a) because the Goods or Equipment will, or may, deteriorate in value during the delay occasioned by the giving of the notice, the Supplier may sell the Goods and Equipment without giving the said notice, but shall as soon as practicable inform the person to whom the notice would have been given of the action being taken.

- (c) Upon accounting to the Customer for any balance remaining after payment of any sum due to the Supplier or its agents (including all costs) pursuant to clauses 8.11 (a) and (b) the Supplier shall be discharged of any liability whatsoever in respect of the Goods, Equipment or documents.

8.12 Where applicable, the Supplier's statutory right to detain a Ship shall (to the extent not already granted by statute) apply to all Charges due to the Supplier arising out of any call of the Ship including quay rent incurred by Goods or Equipment discharged from or awaiting loading onto the Ship.

8.13(a) If the Supplier handles any Goods or Equipment (i) whose gross weight is incorrectly stated or (ii) whose gross weight exceeds the maximum gross weight appropriate for any handling equipment used (whether or not the Supplier knows at the time of such handling that the gross weight exceeds the appropriate gross weight for such handling equipment) or (iii) whose weight distribution does not facilitate the safe onward transportation of such Goods or Equipment, whether by rail, road or otherwise, such handling by the Supplier shall be at the sole risk of the person tendering the Equipment or Goods.

- (b) In particular, subject to clause 8.4, the Supplier shall be exempt from all liability whatsoever for deficiency, loss, damage or misdelivery of or to the Goods or to the Equipment or for delay arising out of, caused or contributed to by the handling by the Supplier of the Goods or the Equipment and the person tendering the Goods or the Equipment shall be responsible for and shall indemnify the Supplier against all injury (including fatal injury), loss or damage however or whenever caused and against all claims made against the Supplier for which it may be or become liable in respect of injury to persons (including fatal injury) or loss or damage to property arising out of or caused or contributed to by the handling by the Supplier of the Equipment and/or Goods. Should, as a result of such overloading/uneven loading, there be any failure of a load bearing part of any lifting appliance or of the Equipment, this is a reportable dangerous occurrence and may incur legal action. For the avoidance of doubt, the expression "the person tendering the Goods or the Equipment" includes in particular:

- (c) in the case of imported Equipment or Goods, the owner of the carrying Ship;
- (d) in the case of Equipment or Goods for export, the exporter;
- (e) in the case of Equipment or Goods for groupage Services, the owner;
- (f) in the case of Equipment or Goods discharged from a train, the freight operating company;

(g) in the case of Equipment or Goods loaded on to a train, the freight operating company.

8.14 The Customer shall be responsible for insuring the Goods and/or Equipment for any loss or damage which they may sustain within the Dock Estate.

8.15 The Supplier shall be entitled, in its absolute discretion, to reduce a claim for betterment.

8.16 The Customer is under a duty to mitigate its losses, including for example, obtain salvage.

## 9. INDEMNITY

The Customer shall be liable for and shall indemnify the Supplier against any and all fines, claims, including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by the Supplier, its employees, servant, agents or sub-contractors howsoever caused, even if caused or contributed to by the negligence of the Supplier which arise out of or in connection with:

- (a) the failure of the Customer to comply with any of these Terms and Conditions or taking any step which the Supplier shall consider to have been reasonably required to remedy the same or to comply with the requirements of any authority;
- (b) any act, omission or instruction, misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty of the Customer, the Owner or any other person interested in the Goods, Equipment or Ship.

Any sums payable hereunder shall be chargeable to and payable by the Customer in addition to and subject to the same provisions as the Charges.

## 10. PAYMENT

10.1 Unless otherwise agreed in writing all Charges shall be paid within 28 days of invoice date.

10.2 The Customer or other person liable for the Supplier's Charges (including where applicable, agents) shall pay to the Supplier in cash or as otherwise agreed in writing all sums immediately when due without deduction, withholding, abatement, set-off, or any counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law, or due to overpayment by the Customer or an undisputed credit owed by the Supplier to the Customer.

10.3 All payments hereunder shall be in GB pounds sterling.

10.4 Interest shall be payable upon all sums payable by the Customer which shall have become due and owing in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

10.5 In the event that any payment is not made within the periods set out in clause 10.1, or such other period as has been agreed in writing, then the Supplier shall be entitled to immediately recover from the Customer or

other person liable for the Supplier's Charges all sums then due to or levied by the Supplier (including any accrued interest and other Charges properly levied in accordance with these Terms and Conditions) and all losses arising to the Supplier as a result of such non-payment. In addition the Supplier reserves the right to suspend or withdraw Services.

10.6 All sums payable under these Terms and Conditions are exclusive of value added tax and any other duty or tax, which shall (if and to the extent applicable) be payable by the Customer at the rate and in the manner from time to time prescribed by law.

10.7 If the Customer ceases to trade (either in whole, or as to any part or division involved in the performance of these Terms and Conditions), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or (being an individual) the Customer shall become bankrupt or make any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, then the Supplier shall be entitled to immediately recover from the Customer or any other person liable for the Supplier's Charges (notwithstanding that the periods stated above or any period of credit extended to the Customer may not have expired) all sums then due to the Supplier (including any accrued interest and other Charges properly levied in accordance with these Terms and Conditions) and all losses arising to the Supplier as a result of such circumstances arising.

10.8 Notwithstanding clause 10.7, if the Supplier reasonably considers that Charges levied or to be levied will not be paid within the periods stated in clause 10.1, the Supplier shall be entitled forthwith upon giving the Customer notice in writing, to withdraw any period of credit extended to the Customer or other person liable for the Supplier's Charges and to require payment of all such charges forthwith upon receipt of the said notice or subsequent invoice.

10.9 Any bona fide query to be raised by the Customer on any invoice issued by the Supplier shall be made in writing within 30 days of the date of the invoice or the Customer shall be deemed to have accepted the invoice. Disputed portions of invoices may be withheld until the dispute is resolved but undisputed amounts shall be paid on the due date.

## 11. GOVERNING LAW AND JURISDICTION

11.1 The construction, validity and performance of these Terms and Conditions shall be governed by English law.

11.2 All claims or disputes arising out of or related to these Terms and Conditions shall be submitted to the jurisdiction of the English courts, provided that the Supplier shall have



the right, as claimant, to initiate proceedings against the Customer either (a) in the jurisdiction of the courts of the country of the principal domicile of the Customer or (b) in the jurisdiction of the Courts of the country in which any ship or other asset (including a bank account) of the Customer is or might at the instigation of the Supplier be detained or frozen.

## 12. GENERAL

12.1 The failure of the Supplier to enforce or to exercise at any time or for any period of time any term of or any right pursuant to these Terms and Conditions does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect the Supplier's right later to enforce or to exercise it.

12.2 If any provision of these Terms and Conditions is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from these Terms and Conditions and shall in no way affect the legality, validity or enforceability of the remaining terms.

12.3(a) Subject to clauses 12.3 (b) and 12.3 (c), the Supplier and Customer agree that these Terms and Conditions may be relied upon and shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("1999 Act") by the Supplier's agents and contractors against a Customer or Owner.

(b) The third party rights referred to in clause 12.3 (a) may only be enforced by the relevant third party with the consent of the Supplier and subject to and in accordance with the provisions of the 1999 Act and all other relevant terms of these Terms and Conditions.

(c) Notwithstanding any other provision of these Terms and Conditions, the Supplier and Customer may rescind or vary any of these Terms and Conditions without the consent of any third party, and accordingly section 2(1) of the 1999 Act shall not apply.

(d) Except as provided in clause 12.3 (a), a person who is not a party to these Terms and Conditions has no right under the 1999 Act to rely upon or enforce any of these Terms and Conditions.

12.4 Any Charges agreed with the Supplier are commercially confidential and the Customer may not disclose Charges to any third party without the prior written consent of the Supplier, except where disclosure is required by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the Customer gives the Supplier as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the Supplier in relation to the content of such disclosure.

12.5 The Supplier may update or amend any of these Terms and Conditions from time to time without notice.

## 13. BRIBERY AND CORRUPTION

The Customer represents and warrants that it and its agents, directors, employees, officers and sub-contractors shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Regulations") and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and the Customer represents and warrants that it shall have and shall maintain in place its own policies and procedures, including "adequate procedures" under the Bribery Act 2010, to ensure compliance with the Relevant Regulations.

## THE FOLLOWING ADDITIONAL TERMS SHALL APPLY WHERE THE SUPPLIER IS HARWICH INTERNATIONAL PORT LIMITED

## 14. DEFINITIONS

In clauses 14-21 the following words shall have the following meanings:

**"Customer for Passenger Services"** or **"(CPS)"** means any person at whose request and/or on whose behalf the Supplier provides Passenger Services and any other person having an interest in any Passenger Ship and the respective agents of all such persons;

**"Luggage"** means any property travelling with a Passenger but excludes any Goods contained in or carried on board a Ship;

**"Passenger"** means any person using the Dock Estate as the point of embarkation or disembarkation in connection with travelling on a Passenger Ship;

**"Passenger Services"** means services provided to or in connection with Passengers, their Luggage and Passenger Vehicles including but not limited to the provision of terminal facilities for the embarkation or disembarkation of Passengers, their Luggage and Passenger Vehicles, provision of facilities for loading or unloading Passenger Vehicles onto or off Passenger Ships, clearance through HM Revenues & Customs of Passengers, their Luggage and Passenger Vehicles and any other ancillary services related to Passengers, their Luggage and Passenger Vehicles not specifically referred to;

**"Passenger Ship"** means a cruise vessel or a passenger ferry. For the purposes of these Terms and Conditions, a Passenger Ship shall be considered to be the CPS's Passenger Ship irrespective of whether the Passenger Ship is beneficially owned by the CPS in whole or in part or chartered by the CPS;

**"Passenger Vehicle"** means any vehicle which is driven by a Passenger onto or off a Passenger Ship;

**"Units of Account"** is the special drawing right as defined by the International Monetary Fund.

## 15. APPLICATION OF CONDITIONS

Save as specifically provided, clauses 14-21 shall apply to all Passenger Services.

## 16. LIABILITY

16.1 The Supplier shall have no liability whatsoever (whether for negligence or otherwise) for any partial or total loss, damage, deficiency or delay or failure in performing the Passenger Services caused by any of the following:

- (a) Act of God including, storm, tempest, lightning, flood;
- (b) fire (including steps taken for the extinguishment thereof), explosion, smoke;
- (c) strikes, combinations, lock-outs, go-slows, blockades, or other industrial action (whether lawful or not) by any person or anything done in the course of furtherance of a trade dispute;
- (d) improper, insufficient, indistinct or erroneous packaging, marking or addressing of Luggage;
- (e) any inherent vice or quality of the Luggage itself or the content of the Luggage (including any dangerous goods);
- (f) any act of the Supplier, its employees, agents or contractors reasonably necessary for the safety or preservation of persons, the Dock Estate or a Passenger Ship;
- (g) theft or wilful damage unless proved by the Passenger to have been committed by the Supplier;
- (h) vermin, insects, fungal attack, rot or corrosion;
- (i) heat or cold;
- (j) any act directly or indirectly occasioned by happening through or in consequence of war, threat of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, terrorism or acts of terrorism;
- (k) any act of any person or persons acting on behalf of any organisation with activities directed towards the overthrow by force of any *de jure* or *de facto* government;
- (l) civil disobedience at or in the vicinity of the Dock Estate;
- (m) shortage of berthing space, labour, plant (including luggage carousels) deficiency, fuel or power or secure covered storage accommodation;
- (n) insufficient depth of water at any berth or the approaches thereto or the unsafe condition of any berth;
- (o) late receipt of HM Revenue & Customs entries, disputes in respect of documents, or declarations made for entry or exit

purposes by or on behalf of any person, delay in passing HM Revenue & Customs entries or obtaining clearance of Luggage, or omission of information from or a misstatement in any order to the Supplier relating to the Luggage;

- (p) the total or partial failure of the Community System or any other electronic services or systems offered at any time by or on behalf of the Supplier including the total or partial failure of any communication links with those services or systems;
- (q) voluntary use of a grounding berth;
- (r) human error on the part of the Supplier, its employees, agents or contractors in inputting any information into any electronic service or system operated or managed by the Supplier or its contractors;
- (s) compliance with the instructions of HM Revenue & Excise or any other regulatory or statutory body including damage caused by any security investigations or searches;
- (t) ticket fraud or the suspicion of ticket fraud;
- (u) any other cause or event which the Supplier is unable to avoid and the consequences of which the Supplier is unable to prevent by the exercise of reasonable care.

16.2 The Supplier provides no facilities or services in respect of Passenger's pets or domestic animals, which remain at the sole risk and responsibility of the CPS at all times.

16.3 The Supplier shall be under no liability whatsoever (whether for negligence or otherwise) for any delay or the consequences thereof of for any loss of income, loss of profits or loss of contracts, of for any indirect or consequential loss or damage of any kind, in each case howsoever arising and whether caused by tort (including negligence), breach of statutory duty, contract or otherwise.

16.4 It is a condition precedent to the liability of the Supplier in respect of any alleged loss of or damage to Luggage or Passenger Vehicles that the Supplier is notified in writing within 30 days of the circumstances occurring together with particulars of the nature and the amount of any claim to be made.

16.5 Notwithstanding the provisions of clause 16.4, the Supplier shall in any event be discharged of all liability whatsoever howsoever arising unless proceedings are brought within 12 months from the date of the event or occurrence alleged to have given rise to a cause of action against the Supplier.

## 17. LIABILITY OF THE SUPPLIER FOR LUGGAGE

17.1 The Supplier shall in no circumstances have any liability for any partial or total loss of or damage or delay to any item or items of

Luggage, which are not in its custody at the time such loss, damage or delay occurs.

17.2 Unaccompanied Luggage shall be in the custody of the Supplier:

- (a) from the moment when the Luggage passes beyond the check-in desk at the terminal after a Passenger has checked in until the Luggage passes onto the Passenger Ship's loading ramps or otherwise passes onto the Passenger Ship, in relation to embarking Passengers; and
- (b) from the moment unaccompanied Luggage leaves the Passenger Ship's loading ramp or otherwise leaves the Passenger Ship until such time as the Luggage is removed by the Passenger from the baggage carousels in the terminal, in relation to disembarking Passengers.

17.3 The Supplier shall be exempt from all liability whatsoever for any partial or total loss of or damage or delay to any item or items of Luggage except upon proof by the CPS (otherwise than by evidence only of such partial or total loss of or damage or delay) that the partial or total loss of or damage or delay was caused by the negligent or unlawful act or omission of the Supplier.

17.4 Subject to clause 8.4, the total liability of the Supplier for any loss or damage to Luggage shall in no case be more than:

- (a) in the case of accompanied Luggage, 1,800 Units of Account per Passenger;
- (b) in the case of unaccompanied Luggage, 2,700 Units of Account per Passenger;

unless the nature and value of the Luggage had been declared to the Supplier and the Supplier had agreed a higher limit of liability with the CPS (as evidenced in writing) prior to the Supplier accepting custody of such Luggage.

17.5 In the event a court or tribunal should refuse to enforce the limits set out in this clause, subject to clause 8.4, the liability of the Supplier for any loss or damage to Luggage shall, in any case, be limited to the sum of £1,000,000.

## **18. LIABILITY OF THE SUPPLIER FOR PASSENGER VEHICLES**

18.1 The Supplier shall only be liable in respect of any damage to or loss of a Passenger Vehicle whilst the Passenger Vehicle is on land within the Dock Estate. The Supplier accepts no liability in respect of such loss or damage after such Passenger Vehicle has crossed a Passenger Ship's loading ramp to embark that Passenger Ship or before such Passenger Vehicle has left the Passenger Ship's loading ramp to disembark that Passenger Ship. The Supplier accepts no liability in respect of damage to Passenger Vehicles resulting from the malfunctioning of any apparatus or equipment belonging to a Passenger Ship and used for loading Passenger Vehicles. The Supplier accepts no liability in respect of damage to or loss of Passenger Vehicles

resulting from the instructions issued to the drivers of those Passenger Vehicles by or on behalf of the CPS during the embarkation or disembarkation of those Passenger Vehicles.

18.2 Except where any damage to or loss of a Passenger Vehicle is caused by the negligence or default of the Supplier, the Supplier accepts no liability in respect of such damage or loss. Any deterioration or damage to the bodywork (including canvas and other covering materials) or tyres of Passenger Vehicles will be presumed to have been caused by normal wear and tear and the Supplier shall not be responsible for it except upon proof that it occurred whilst in the custody of and by the negligence or default of the Supplier.

18.3 Subject to clause 8.4, the total liability of the Supplier for any loss or damage to a Passenger Vehicle including all Luggage carried in or on that Passenger Vehicle shall in no case be more than, 10,000 Units of Account unless the nature and value of the Passenger Vehicle (including all Luggage) had been declared to the Supplier and the Supplier had agreed a higher limit of liability with the CPS (as evidenced in writing) prior to the Supplier accepting custody of such Passenger Vehicle.

18.4 In the event a court or tribunal should refuse to enforce the limit set out in this clause, subject to clause 8.4, the liability of the Supplier for any loss or damage to a Passenger Vehicle (including all Luggage carried in or on that Passenger Vehicle) shall, in any case, be limited to the sum of £1,000,000.

## **19. LIABILITY OF THE SUPPLIER FOR PASSENGERS**

The Supplier shall only be liable for damage to property sustained as a result of any failure or collapse in any elevated walkway or other equipment designed to allow Passenger access to a Passenger Ship if such failure or collapse directly results from the Supplier's failure to adequately maintain or operate such equipment. The Supplier shall not be liable for gangways, ramps or similar equipment designed to allow Passenger access to a Passenger Ship if such equipment belongs to the CPS and the CPS shall indemnify and hold harmless the Supplier against any losses, liabilities, costs and expenses suffered or incurred by the Supplier including in respect of personal injury and/or death, its property, employees or agents, caused by or resulting from any failure in such equipment belonging to the CPS and the CPS shall indemnify and hold harmless the Supplier for any liability it may incur to any third party for any loss or damage suffered by such third party caused by or resulting from the same.

## **20. LIABILITY OF THE SUPPLIER FOR TICKETS**

The Supplier shall not be liable for any delays, losses, damages, liabilities, fines, costs or expenses arising from ticket fraud or the suspicion of ticket fraud. The CPS shall remain responsible at all time for checking the validity of tickets although the Supplier reserves the right to carry out its own checks.

In cases where the Supplier issues tickets it does so only in its capacity as agent for the CPS and the CPS shall remain liable for the consequences of any inaccuracies or omissions in relation to the information contained on the tickets.

## **21. INDEMNITY**

The CPS shall be liable for and shall indemnify the Supplier against any and all claims, including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by the Supplier, its employees, servants, agents or sub-contractors which arise out of or in connection with the:

- (a) the failure of the CPS to comply with any of these Terms and Conditions or taking any step which the Supplier shall consider to have been reasonably required to remedy the same or to comply with the requirements of any authority;
- (b) any act, omission or instruction, misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty of the CPS, the Passenger or any other person interested in the Luggage or Passenger Vehicle.

Any sums payable hereunder shall be chargeable to and payable by the CPS in addition to and subject to the same provisions as the Charges.