

GENERAL CONDITIONS COVERING THE
SERVICES UNDERTAKEN AND FACILITIES
PROVIDED BY PD TEESPORT LTD

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1 January 2014

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GENERAL CONDITIONS COVERING THE SERVICES UNDERTAKEN AND FACILITIES PROVIDED BY PD TEESPORT LIMITED

1. EFFECTIVE DATE, NOTICE OF INDEMNITIES AND EXCLUSION AND LIMITATION OF LIABILITY

1.1 Save as otherwise expressly provided, these Conditions apply to all Services and Facilities provided by PD.

1.2 These Conditions shall come into force with effect from 1 January 2014.

1.3 These Conditions contain provisions by way of indemnity and also exclusion and limitation of liability in favour of PD.

2. DEFINITIONS USED IN THESE CONDITIONS

2.1 Act means the Tees and Hartlepoons Port Authority Act 1966 and any statutory modification or substitution of it.

2.2 Charges means charges, rates, tolls and dues of any description due to PD at any time.

2.3 Conditions means these terms and conditions and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between PD and the Customer.

2.4 Customer includes any person, corporation, firm or body of persons, whether incorporated or unincorporated, and any of their servants, agents or independent contractors, who:

2.4.1 visit the Dock Estate; and/or

2.4.2 is the owner of Goods and/or Customer Plant which are on the Dock Estate for any reason; and/or

2.4.3 is the owner, master, crew or passenger on a Vessel or is the agent of a Vessel, which enters the Harbour; and/or

2.4.4 uses or seeks to use the Facilities or Services.

- 2.5 Customer Plant means, without limitation, any plant, machinery, lifting equipment, container, flat or similar ISO unit, vehicle, locomotive, trailer, rail wagon or wagon, belonging to the Customer or in the Customer's custody or control, or supplied by the Customer or on the Customer's behalf for the handling and transportation of Goods.
- 2.6 Dock Estate means all land owned or occupied by PD, including the Facilities.
- 2.7 Facilities / Facility means any pier, quay, wharf, berth, road, railway, shed, building, land, terminal, compound, PD Plant, or other property of any description, which is owned or occupied by PD or is under PD's control.
- 2.8 Force Majeure means Act of God, storm, high winds, tempest, flood, fire, landslides, lightning, earthquakes, high or low water, washouts, river icing, perils of the sea, adverse weather conditions, channel blockage, explosion, nuclear and/or radioactive contamination, impact by aircraft or objects dropped or falling from them, civil disturbances, blockades, insurrections, riots, epidemics, strikes, injunctions, lockouts, labour disturbances or other industrial action or trade dispute, lack of adequate power, war, revolution, riot or civil commotion, acts of terrorism or threatened acts of terrorism, restrictions imposed by any government or other body acting under statutory powers, or, without prejudicing the general nature of what is mentioned earlier in this definition, any other circumstance beyond the reasonable control of PD.
- 2.9 Goods means goods and livestock of any description whatsoever.
- 2.10 Harbour means the Dock Estate and the area, for which PD have statutory jurisdiction, in accordance with the provisions of the Act.
- 2.11 Hazardous Material means, without limitation, any materials associated with the Goods or the Goods themselves which are (i) genetically modified, biological agents, radioactive, contaminated with radiation, explosive, oxidising, flammable, toxic, harmful, corrosive or irritant or have any other properties which might be or become hazardous if Services are provided in respect of that material or (ii) identified as dangerous or hazardous goods under the International Maritime Dangerous Goods Code.

- 2.12 Loss means any losses, damages, costs, expenses, claims, proceedings, demands, fines or liabilities.
- 2.13 PD means PD Teesport Limited and includes its, servants, agents and sub-contractors.
- 2.14 PD Plant means any plant, machinery, equipment, lifting equipment, vehicle, locomotive, trailer or wagon, belonging to PD or in PD's control or provided by PD.
- 2.15 Safety Information means a thorough Written assessment of the properties of the Goods including product safety information and any other information necessary to enable PD to fully meet its obligations under the Dangerous Substances in Harbour Areas Regulations 1987 and the Health and Safety at Work etc Act 1974, under any legislation which applies to health and safety or to the protection of the environment, and also under any regulations made under any of the preceding legislation, including (but not limited to) the Control of Substances Hazardous to Health Regulations 2002.
- 2.16 Services / Service means any operation or service PD performs or provides for the Customer, and any Facility PD provides to the Customer.
- 2.17 Vessel means any vessel, ship, boat or craft of any class or description however navigated propelled or moved and includes, without limitation, any barge, hovercraft, or hydrofoil vessel.
- 2.18 Writing/ Written shall include facsimile transmission and electronic mail if delivery to the intended recipient can be proved by an appropriate transmission note or in the case of electronic mail a read receipt from the intended recipient. If the communication is by post it shall be addressed to the registered office or principal place of business of the recipient or such other address as either party have notified to the other.

3. SCOPE OF THESE CONDITIONS

- 3.1 Unless these Conditions specifically say otherwise, these Conditions apply:
- 3.1.1 to all Services performed or Facilities provided by PD, or on PD's behalf, to or for the Customer whether directly or by subcontractors; and
 - 3.1.2 to any physical access by the Customer to or from the Harbour;
 - 3.1.3 to any physical access by any Vessel or Customer Plant to or from the Harbour; and
 - 3.1.4 to all other relationships with whomsoever, howsoever arising and whether or not included in 3.1.1, 3.1.2 or 3.1.3 above, or whether created with or without PD's agreement or licence.
- 3.2 These Conditions are in addition to and not in substitution of PD's rights and powers conferred by the Act and to PD's bye-laws and dock regulations. These Conditions are also in addition to all legislation concerned with the shipment of Goods through the Harbour and in particular, legislation governing the health safety and welfare of persons in the Harbour.
- 3.3 No other conditions shall apply to the Services performed or Facilities provided by PD to the Customer, unless agreed in Writing by one of PD's directors or duly authorised officers.
- 3.4 Any variation to these Conditions may only be made if agreed in Writing by one of PD's directors or duly authorised officers.

4. ACCEPTANCE OF THESE CONDITIONS

- 4.1 These Conditions shall apply to all legal relationships between PD and the Customer. Acceptance of these Conditions may be express but even if not made expressly the Customer will be deemed to have accepted these Conditions or acceptance will be implied in any of the following circumstances:
- 4.1.1 on the entry by the Customer into the Harbour; or
 - 4.1.2 on the delivery by the Customer of any persons, Vessels, Goods or Customer Plant into the Harbour; or
 - 4.1.3 on the submission, by the Customer or on the Customer's behalf, of any shipping or unit load note or other similar documentation; or

- 4.1.4 on the making of any other Written or oral application to PD by the Customer or on the Customer's behalf, for entry to the Harbour, for any Service, or for the use of any Facility.
- 4.2 If any obligation is owed or any liability arises on the part of more than one Customer pursuant to these Conditions, that obligation or liability shall be joint and several in nature.

5. RESERVED RIGHTS

5.1 PD reserves the right to:-

- 5.1.1 sub-contract all or any part of the performance of the Services or the provision of the Facilities;
- 5.1.2 serve notice in Writing upon the Customer, at any time before the commencement of the performance of any Services or provision of any Facilities, declining to undertake such performance or provision; and
- 5.1.3 suspend the provision of the Services or Facilities if the Customer breaches, or PD have reasonable grounds to believe the Customer may breach, any provision of these Conditions;

provided that PD shall not be liable for any Loss the Customer may suffer as a result of the actions PD takes under Conditions 5.1.2 and 5.1.3.

- 5.2 If PD invoke Conditions 5.1.2 or 5.1.3, the Customer must, at its own expense and risk, remove its Goods or Customer Plant from PD's premises within 30 days of being requested to do so. If the Customer does not remove them within this period, PD shall be entitled to move, sell or otherwise dispose of such Goods and/or Customer Plant upon giving 21 days notice in Writing to the Customer (if known) and all charges and expenses arising in connection with the transportation, storage, sale or disposal of the Goods and/or Customer Plant shall be payable by the Customer or in the event of a sale of the Goods and/or Customer Plant, shall be deducted from the proceeds of the sale, and PD shall have no liability to the Customer save for payment of any proceeds of sale after deduction of the charges and expenses referred to above.

6. DOCUMENTATION

- 6.1 PD shall where practicable give the Customer a Written quotation for any Services or Facilities required, and the Customer shall confirm acceptance of the quotation in Writing.
- 6.2 The parties agree that it is intended that these Conditions shall apply to and shall be deemed incorporated into all contracts which the Customer enters into with PD as a result of PD's quotations.
- 6.3 If it is not practicable for PD to give the Customer a Written quotation, or if the Customer fails to give PD Written acceptance before PD undertake the Services or provide the Facilities, the Customer agrees that it is intended that and that these Conditions will nonetheless apply.

7. TIME OF PERFORMANCE OF THE SERVICES /PROVISION OF THE FACILITIES

- 7.1 Time of performance of the Services or provision of the Facilities is not of the essence in these Conditions.

8. SECURITY

- 8.1 PD operate in accordance with the provisions of the International Ships and Ports Security Code and reserve the right (without limitation) to search any Vessels, Customer Plant, Goods, persons or vehicles entering or leaving the Harbour and to take any steps PD may consider necessary to remove any Vessel, Customer Plant, Goods, vehicle or person PD consider may compromise security, and to take any other steps PD consider necessary in the interests of security generally.
- 8.2 PD reserve the right to insist on persons entering or leaving the Harbour to produce a recognised form of identity before entry to or leaving the Harbour is permitted and reserve the right to deny access to the Harbour at any time and over any period in the interests of security and/or safety.

9. GOODS

9.1 Release of Goods

Unless PD have agreed a different procedure with the Customer in advance, PD may, at its discretion, refrain from acting on orders for outward shipment or

inward delivery of Goods until after PD have received the Customer's Written authority.

9.2 Description of Goods

- 9.2.1 Prior to discharge of a Vessel at the Harbour the Customer shall provide PD with, at its own expense, Written details of the contents of a Vessel which is to be discharged including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under Condition 15.2.9) in sufficient detail to identify the Goods (including (without limitation) the number of pieces, weight, marks and numbers) before they are discharged. Any special handling or storage requirements relating to the Goods shall be advised and agreed with PD prior to the arrival of the Vessel at the Harbour.
- 9.2.2 On completion of discharge of the Vessel a declaration of Goods discharged from the Vessel shall be provided by the Customer or its agent.
- 9.2.3 Prior to loading a Vessel at the Harbour the Customer shall provide PD with, at its own expense, Written details of the Goods to be loaded including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under Condition 15.2.9) in sufficient detail to identify the Goods (including (without limitation) the number of pieces, weight, marks and numbers) before they are loaded including any special handling or storage requirements relating to the Goods.
- 9.2.4 On completion of loading of the Vessel PD will provide copies of its tally of Goods loaded onto the Vessel to the Customer's agent, and the agent will provide copies of the Vessel's manifest to PD.
- 9.2.5 Prior to unloading of any Customer Plant at the Dock Estate the Customer shall provide PD with, at its own expense, Written details of the contents of the Customer Plant which is to be discharged including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under Condition 15.2.9) in sufficient detail to identify the Goods (including (without limitation) the number of pieces, weight, marks and numbers) before they are unloaded. Any special handling or storage requirements relating to the Goods shall be advised and agreed with PD prior to the arrival of the Customer Plant at the Dock Estate.
- 9.2.6 Prior to loading any Customer Plant at the Dock Estate the Customer shall provide PD with, at its own expense, Written details of the Goods to be loaded including a detailed Written description of Goods (including hazards and any Hazardous Material agreed under Condition 15.2.9) in sufficient detail to identify the Goods (including (without limitation) the

number of pieces, weight, marks and numbers) before they are loaded including any special handling or storage requirements relating to the Goods.

9.2.7 The Customer warrants that all such descriptions, values and other particulars supplied to PD under this Condition 9 are accurate. The Customer shall indemnify PD and keep PD fully indemnified in respect of any Loss which arises from inaccuracy of or omission from the descriptions, values and other particulars, however that inaccuracy or omission has come about.

10 REMOVAL OF GOODS AND CUSTOMER PLANT AND DISPOSAL OF ABANDONED OR UNDELIVERABLE GOODS OR CUSTOMER PLANT

10.1 Unless otherwise agreed in Writing with PD, the Customer must ship or remove all Goods and/or Customer Plant from the Dock Estate as soon as reasonably practicable but in any event within 7 days of the final discharge of the Vessel for imports or as soon as reasonably practicable but in any event within 7 days from arrival at the Facilities for exports. If the Customer fails to do this, PD reserves the right, at its sole discretion, (i) to refuse to receive further Goods and/or Customer Plant; (ii) to remove, at the Customer's expense, the Goods and Customer Plant the Customer has failed to remove; and/or (iii) to charge the Customer for their storage.

10.2 In the event that Goods and/or Customer Plant:

10.2.1. remain on the Dock Estate beyond any period permitted pursuant to 10.1; or

10.2.2. are insufficiently addressed or marked so that their owner or their destination cannot be determined;

PD shall be entitled to move, sell or otherwise dispose of such Goods and/or Customer Plant upon giving 21 days notice in Writing to the Customer (if known) and all charges and expenses arising in connection with the transportation, storage, sale or disposal of the Goods and/or Customer Plant shall be payable by the Customer or in the event of a sale of the Goods and/or Customer Plant, shall be deducted from the proceeds of the sale and PD shall have no liability to the Customer save for payment of any proceeds of sale after deduction of the charges and expenses referred to above.

11. PASSAGE OF RISK

Upon acceptance of the Goods or Customer Plant onto any Vessel, rail, rail wagon, wagon or other vehicle by the Customer or on the Customer's behalf, risk in the Goods or Customer Plant shall pass to the Customer. PD shall not be liable for any loss or damage occurring to the Goods or Customer Plant after acceptance by the Customer or on the Customer's behalf.

12. LOADING AND DISCHARGE OF VESSEL AND CUSTOMER PLANT

PD shall have no responsibility for the consequences of or any liability to the Customer arising out of or in connection with:-

- 12.1 PD loading or unloading any Vessel and/or Customer Plant in accordance with the Customer's instructions;
- 12.2 the Customer's failure to provide PD with adequate instructions for the loading or unloading of any Vessel and/or Customer Plant;
- 12.3 improperly allocated stowage; or
- 12.4 any delays in the loading and/or discharge of any Vessel and/or Customer Plant or in the provision of any Facilities.

13. WORK ON VESSELS AND CUSTOMER PLANT

No repairs or other works may be carried out to any Vessel or Customer Plant within the Harbour without PD's prior permission. The Customer shall indemnify PD and hold PD harmless against any Loss which arises as a result of any repairs and/or other works, including (without prejudice to the general nature of this indemnity) any damage to the Harbour.

14. USE BY THE CUSTOMER OF PD'S PLANT OR FACILITIES

- 14.1 The Customer may from time to time request that PD loan the Customer PD Plant. PD may (at its entire discretion and at a Charge to be agreed between the Customer and PD) agree to allow such loan.
- 14.2 PD may supply an operator in connection with the loan of PD Plant referred to in Condition 14.1 above. Alternatively, PD may, at its absolute discretion, allow an operator appointed by the Customer to operate the loaned PD Plant, provided that such operator is trained and competent in its operation and that the Customer warrants that this is the case.

- 14.3 In the circumstances described in 14.1 and 14.2, the PD Plant and its operator (if any) shall be under the Customer's management, supervision and control, and the Customer shall hold PD harmless in respect of any Loss arising and the Customer shall indemnify PD and keep PD fully indemnified in respect of all Loss arising as a result of such loan of the PD Plant.
- 14.4 The Customer may from time to time request permission to use PD's Facilities for its own operations or in circumstances where the Customer is not procuring any other Service from PD. PD may (at its entire discretion and at a Charge to be agreed between the Customer and PD) agree to allow such use and PD may allow the mobilisation and use of the Customer's own or a third party's plant in connection with such use and the berthing of a Vessel in connection with such use. In consideration of PD permitting such use the Customer will supply any information PD reasonably requires in connection with such use and will comply with any conditions PD impose.
- 14.5 In the circumstances described in 14.4, the operation undertaken at the Facilities shall be under the Customer's management, supervision and control, and the Customer shall hold PD harmless in respect of any Loss arising and the Customer shall indemnify PD and keep PD fully indemnified in respect of all Loss arising as a result of such use.

15. WARRANTIES

15.1 General Warranties

The Customer warrants that:

- 15.1.1 it has the necessary authority to accept these Conditions on its own behalf and, as duly authorised agent and/or representative, on behalf of all those people, who have any title to or interest in any Goods, Customer Plant or Vessel;
- 15.1.2 the rights, defences and limits available to it, either by statute or by contractual terms, are extended to PD (as servant, agent or independent contractor, including stevedores); and
- 15.1.3 its servants, agents and independent contractors are trained and competent to carry out any task assigned to them, in relation to their giving PD any instruction, advice or information, whether this is in Writing, orally or by other means. The Customer further warrants that such persons have the authority to give PD such instructions, advice or information.

15.2 Warranties in respect of Goods and Customer Plant

The Customer warrants that any Goods or Customer Plant it delivers to, or otherwise causes to be at the Harbour:

- 15.2.1. are not Hazardous Material, or liable to become so, either in the form in which they are delivered, or in any form which they may subsequently take whilst at the Harbour. This warranty does not apply where the Customer has complied in all respects with Condition 15.2.9;
- 15.2.2. are not and will not, whilst at the Harbour, emit any injurious gas, fumes, or liquid and will not contaminate in any way any other Goods, Customer Plant, any third party goods, third party plant, PD Plant, Vessel or the Harbour or Dock Estate;
- 15.2.3. are not infested in contravention of applicable legislation with insects or animals of any description, nor are verminous, rotten or subject to fungal attack or liable to become so whilst at the Harbour;
- 15.2.4. will not contaminate nor cause danger, injury, pollution or damage to any person, property or other goods or equipment at the Harbour or on neighbouring land nor cause danger, injury, pollution or damage to water ground or air at the Harbour or on neighbouring land;
- 15.2.5. do not require, for their safekeeping, any protection (other than that which the Customer has previously agreed in Writing with PD) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other goods or equipment or from inflammability, and that they will remain safe, if left standing in the open on the Dock Estate or in covered accommodation, where such covered standing has been agreed with PD;
- 15.2.6. to the best of the Customer's knowledge contain no unauthorised controlled drugs, contraband, pornographic or illegal matter;
- 15.2.7. are processed in compliance with any rules and requirements of H M Revenue and Customs or its successor;
- 15.2.8. are properly and sufficiently packed and marked, are accurately documented and labelled for all shipping, cargo handling, despatch, customs and similar purposes, and are in accordance with all regulations and rules prevailing from time to time;

- 15.2.9. in the case of Hazardous Material, that the presence of Hazardous Material at the Harbour has been agreed in Writing in advance by PD and that the Customer has provided PD with all Safety Information at the time PD's agreement was given. The Customer further warrants that the Hazardous Material is properly, clearly and sufficiently marked and labelled with any warning or other information, as may be required, as to the hazardous nature of any contents and as to the precautions to be taken in handling the same. The Customer further warrants that it has provided all necessary information to ensure the health and safety of all persons who may handle or be likely to come into contact with such Goods or Customer Plant in the event of an escape or spill and to ensure the protection of the environment;
- 15.2.10. comply with all relevant local, national and international legislation and regulations relating to their documentation, carriage, handling and movement;
- 15.2.11. are in a fit and proper condition to be handled or otherwise dealt with by PD in the provision of the Services and in the normal course of business and conform with current legislation governing the import and export of Goods;
- 15.2.12. are properly insured by the Customer, and that the Customer's insurance is sufficient to cover all liabilities the Customer may incur as a result of its agreement to these Conditions;
- 15.2.13. to the best of the Customer's knowledge do not contain any persons seeking unlawfully to enter the United Kingdom, and the Customer further warrants that it has thoroughly searched the Goods and Customer Plant for such persons.

15.3 Additional Warranty in respect of Goods

The Customer warrants that any declaration of the weight of any Goods made pursuant to Conditions 9.2.1, 9.2.3, 9.2.5 and 9.2.6 is accurate in all respects.

15.4 Warranties in respect of Vessels

The Customer warrants that any Vessel visiting the Harbour and/or making use of the Facilities:

- 15.4.1 is seaworthy in all respects;

15.4.2 is suitable in all respects to berth safely at the Facilities allocated to it;

15.4.3 is not the subject of any order, litigation or other impediment, which may result in the arrest or other form of detainment of the Vessel whilst at the Facilities;

15.4.4 is properly insured and the insurance is sufficient to cover all liabilities the Customer may incur as a result of its agreement to these Conditions, including (but not limited to) the Customer's liability for any obstruction a Vessel may cause in the Harbour and any damage a Vessel may cause to the Dock Estate; and

15.4.5 does not contain any persons seeking unlawfully to enter the United Kingdom, and the Customer further warrants that it has thoroughly searched the Vessel for such persons.

16. INDEMNITY

16.1 The Customer shall indemnify PD and keep PD fully indemnified against all actions, claims, proceedings, costs and damages (including, but not limited to, any reasonable damages or compensation PD pay to compromise or settle any claim) and all legal costs or other expenses arising out of:

16.1.1 the Customer breaching the warranties it has given in these Conditions; or

16.1.2 any claim by any person, other than the Customer or PD, which is based on facts which, if shown to be true, would amount to the Customer breaching its warranties.

17. LIABILITY

17.1 Subject to the remaining provisions of this Condition 17 and to the exclusions and limitations of liability set out in these Conditions, PD shall be liable for any foreseeable Loss arising from loss of or damage to Goods or Customer Plant or damage to Vessels only to the extent caused by PD's negligence.

17.2 Unless expressly provided in these Conditions, all warranties, conditions or other terms implied by statute, common law, custom of the trade or otherwise are excluded to the fullest extent permitted by law.

17.3 Nothing in these Conditions shall exclude or limit PD's liability for death or personal injury resulting from PD's proven negligence, nor for fraudulent misrepresentation.

- 17.4 It is agreed that the benefit of the exclusions and limitations of liability contained in these Conditions is also conferred on PD's servants, agents and independent contractors.
- 17.5 PD shall have no liability to the Customer under this Condition 17 for any Loss caused by or comprising those items listed in Condition 18 below.
- 17.6 PD's total liability to the Customer under these Conditions shall be limited to the sums set out in Condition 19 for any Loss arising from any one event or series of connected events, and shall be subject to the Customer complying with the time frames set out in Conditions 20 and 21.

18. EXCLUSIONS OF LIABILITY

- 18.1 PD shall have no liability whatsoever for any Loss howsoever arising sustained in the provision or non provision of the Services and/or the Facilities which is of an indirect or consequential nature, including (but not limited to):

18.1.1 loss of profits, loss of margin, loss of use, loss of contract, loss of goodwill, loss of market, loss of business, loss of turnover; and

18.1.2 any indirect or consequential loss of any nature whatsoever, including, without limitation, any loss arising from delays caused to a Vessel or to Customer Plant or delays to any of the Customer's operations or business

whether or not caused by or resulting from the negligence of PD or a breach of PD's statutory duties or a breach of PD's obligations howsoever caused.

- 18.2 PD shall have no liability whatsoever for any Loss sustained in the provision of the Services and/or the Facilities which arises from:

18.2.1 the Customer breaching any of these Conditions;

18.2.2 operations performed by persons who are neither in PD's employment, nor contracted directly or indirectly with PD for the provision of the Services or the Facilities and any acts or omissions performed by such persons;

18.2.3 operations involving the use of any plant or equipment PD do not own or have not provided, where Loss arises as a result of a defect in, or the malfunction or misuse of such plant or equipment;

18.2.4 any lack of information from the Customer regarding the Goods, Vessels or Customer Plant or any improper or incorrect information the Customer has supplied;

- 18.2.5 PD complying or attempting to comply with the Customer's instructions and/or PD operating under the Customer's supervision or control;
 - 18.2.6 improper, insufficient, indistinct or erroneous marking of Goods or Customer Plant by the Customer;
 - 18.2.7 the insecure, frail or otherwise inadequate packaging of Goods;
 - 18.2.8 the improper or inadequate mooring of Vessels or the movement of Vessels during the cargo handling operation;
 - 18.2.9 the Customer's failure to remove Goods or Customer Plant or to have them removed in accordance with the provisions of Conditions 5.2 and 10;
 - 18.2.10 deterioration of Goods held in open storage or in transit sheds otherwise than under separate arrangements, under which PD have become the custodian of the Goods as warehouse keeper;
 - 18.2.11 the handling of Hazardous Material where Loss arises as a result of the hazardous properties of the Goods;
 - 18.2.12 vermin, insects, fungal attack, rot or corrosion;
 - 18.2.13 inherent vice of the Goods; or
 - 18.2.14 Force Majeure.
- 18.3 PD shall not owe or incur any liability whatsoever to the Customer arising out of or in connection with the provision of Services and/or Facilities (howsoever arising whether in contract, tort (including negligence) or otherwise) except in respect of breach of any obligation or warranty contained in these Conditions and subject to the limitations expressly provided for in these Conditions.
- 18.4 PD shall have no responsibility for the consequences of or any liability to the Customer arising out of or in connection with PD acting in accordance with its rights under Condition 8 of these Conditions.

19. LIMITATION OF LIABILITY

PD's total liability to the Customer under these Conditions for any Loss arising from any one event or series of connected events shall be limited to:

19.1. For damage to a Vessel, the lower of:

19.1.1 the value of that part or parts of the Vessel to which the claim relates at the time of the event giving rise to the Loss; or

19.1.2 the cost of repairs as agreed with the surveyors appointed by the Customer and PD; or

19.1.3 the sum of £1,000,000 (one million pounds sterling) for any one event or series of connected events

less any salvage in respect of the relevant Vessel.

19.2 For damage to or loss of Customer Plant, the lower of:

19.2.1 the cost of repairs; or

19.2.2 the value of the Customer Plant to which the claim relates at the time of the event giving rise to the Loss; or

19.2.3 the sum of £250,000 (two hundred and fifty thousand pounds sterling) for any one event or series of connected events

less any salvage in respect of the relevant Customer Plant.

19.3 For loss of, or misdelivery of or damage to Goods, the lower of:

19.3.1 the value of the Goods to which the Loss relates at the time of the event giving rise to the Loss; or

19.3.2 the cost of repairs; or

19.3.3 the sum of £1300 (one thousand three hundred pounds sterling) per tonne on the gross weight of the Goods actually lost, misdelivered or damaged

less any salvage in respect of the relevant Goods.

19.4 For all other Loss £250,000 (two hundred and fifty thousand pounds sterling) for any one event or series of connected events.

20. NOTIFICATION OF A CLAIM

20.1 PD shall not be liable to the Customer for any Loss unless:

20.1.1 the Customer has notified PD in Writing about the Loss within 7 days of the Customer discovering it or when the Customer ought reasonably to have discovered it; and

20.1.2 PD have been given reasonable opportunity to investigate the circumstances of the Loss including, without limitation, inspection of the alleged damage.

21 TIME LIMIT FOR MAKING CLAIMS

PD shall be discharged from all liability it may have to the Customer under these Conditions, if the Customer has not given PD Written notice of a claim within 28 (twenty eight) days and issued court proceedings within 12 (twelve) months, both time-scales running from the date of the event giving rise to the relevant claim or the date the Customer ought reasonably to have discovered the Loss. If the Customer fails to meet these time-scales, the Customer agrees that its claim shall be deemed to be waived, extinguished and absolutely barred.

22 CHARGES

22.1 The Customer shall pay the Charges in full, together with any applicable Value Added Tax, and without any set-off or other deduction, as follows:

22.1.1 for Vessels, upon receipt of the relevant invoice

22.1.2 for all other Charges, within 30 days of the date of the relevant invoice.

22.2 All Charges are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.

22.3 Time of payment of the Charges is of the essence of these Conditions.

22.4 PD reserves the right to increase the Charges by any additional sums which, in its sole discretion, are required as a result of either:

22.4.1 a change in the Customer's requirements;

22.4.2 the Customer's instructions or lack of instructions;

- 22.4.3 any other cause attributable to the Customer; or
- 22.4.4 any changes in legislation that increase the cost to PD of providing the Services.
- 22.5 PD reserves the right to charge interest on any overdue amounts from the due date for payment until payment is made in full at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 as at the due date.
23. GENERAL LIEN WITH POWER OF SALE
- 23.1 PD shall have both a general and a particular lien on all Goods, Customer Plant and related documents in its possession in respect of all sums the Customer owes to PD at any given time. If PD give the Customer 21 days notice in Writing, PD may sell or dispose of all or part of such Goods, Customer Plant or documents, as the Customer's agent and at the Customer's risk and expense, by public auction or private treaty (at PD's sole discretion). PD will at its discretion apply the proceeds towards the cost and expense of the sale and the exercise of its lien, and towards the payment of the sums the Customer owes PD.
- 23.2 If PD exercises any lien (whether under these Conditions or otherwise) against any perishable Goods and, in PD's sole discretion, it is impracticable to give the notice required by Condition 23.1 above, because the condition and/or value of the Goods will or may deteriorate by reason of delay, PD may (but is not obliged to) sell the Goods without giving that notice.
- 23.3 PD shall pay the Customer the balance (if any), which remains following the sale and exercise of such lien and the application of any proceeds towards payment of any sums the Customer owes to PD.
24. TERMINATION
- 24.1 PD may, without prejudice to any other right or remedy available to it, either terminate the whole or part of any or every contract between PD and the Customer, which exists under these Conditions, or suspend its performance of the Services or provision of the Facilities under the relevant contract, if any one of the following events occurs:
- 24.1.1 any material change shall occur in the Customer's management, ownership or control;
- 24.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a company)

becomes subject to an administration order or goes into liquidation (other than for the purposes of amalgamation or reconstruction), or if an encumbrancer takes possession, or a receiver is appointed, of any of the Customer's property or assets;

24.1.3 the Customer ceases, or threaten to cease, to carry on business; or

24.1.4 PD reasonably believes that any of the events mentioned in this Condition 24.1 is about to occur and PD notifies the Customer accordingly;

24.2 The rights and obligations of both parties shall cease to have effect immediately upon termination of the relevant contract, except that termination shall not affect:

24.2.1 Conditions 16 to 21 inclusive;

24.2.2 the accrued rights and obligations of both parties as at the date of termination; or

24.2.3 the continued existence and validity of rights and obligations under any provisions of these Conditions, which are necessary for the interpretation or enforcement of these Conditions.

25. DATA PROTECTION

25.1 The Customer agrees that PD may use and disclose all information the Customer supplies to PD about any individual, for the purpose of PD exercising its rights and performing its obligations under these Conditions.

25.2 Where the Customer provides PD with information about any individual, the Customer warrants and undertakes that the individuals concerned have explicitly agreed to the use and disclosure of any personal data about them, for the purposes specified in Condition 25.1

25.3 The Customer warrants and represents that it has complied in all respects with the provisions of the Data Protection Act 1998 and all regulations made under that Act and that it has established procedures to ensure that it continues to comply with all such legislation.

26 GENERAL

26.1 These Conditions contain the whole agreement between the Customer and PD in respect of their subject matter, and supersede any prior Written or oral agreement between the parties relating to their subject matter. The parties confirm that they have not entered into this agreement on the basis of any representations that are

- not expressly incorporated into these Conditions. However, nothing in these Conditions purports to exclude liability for any fraudulent statement or act.
- 26.2 Except as specifically stated in Condition 17.4, a person who is not a party to these Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions, but this does not affect any right or remedy of that person which exists or is available apart from that Act.
- 26.3 Words in the singular shall include the plural and vice versa, and reference to any gender shall include a reference to all genders.
- 26.4 Headings are used in these Conditions for convenience only and they shall not be incorporated into these Conditions and shall not be deemed to be any indication of the meaning of the individual Conditions to which they relate.
- 26.5 Reference to any statute or statutory provision shall include any amendment, extension, consolidation or replacement of that statute or statutory provision.
- 26.6 If any one or more of the provisions contained in these Conditions is found to be illegal, invalid or unenforceable under any applicable law, such provision shall, insofar as it is severable from the remaining provisions, be deemed omitted from these Conditions and shall in no way affect the legality, validity or enforceability of the remaining Conditions. If any provision is so found to be invalid, illegal or unenforceable but would be valid, legal or enforceable if some part of the provision were deleted, the provision in question shall apply with such modifications as may be necessary to make it valid, legal or enforceable.
- 26.7 No failure or delay on PD's part to exercise any right, power or remedy under these Conditions shall operate as a waiver of that right, power or remedy, nor shall any partial exercise preclude our further exercise of the same, or of some other right, power or remedy.
- 26.8 The remedies provided in these Conditions are cumulative and are in addition to, and not exclusive of, any remedies provided by law.
- 26.9 The parties agree that these Conditions are fair and reasonable, having regard to the commercial nature of the transaction to which they apply.
- 26.10 These Conditions shall be construed in accordance with the laws of England and both parties submit to the exclusive jurisdiction of the English courts to settle any disputes which cannot be settled amicably between the parties.