

## **PORT COLBORNE MARINE TERMINAL TERMS AND CONDITIONS**

### 1) DEFINITIONS

In these terms and conditions:

"Services" includes: warehousing, wharfinger services, terminal storage, wharf storage, closed or covered storage, open or ground storage, bonded storage, line handling, handling of Goods, bracing, dunnaging, securing, stowing, lashing, preparing, packing, stuffing, documenting, checking, tallying, marking, labelling, loading or discharging any means of conveyance, including vessels, vehicles, trucks, railcars, providing gangways special platforms and containers for the purpose of embarking or disembarking passengers and other users from vessels and any other stevedoring or terminal services.

"Customer" means any person requesting Services, including owners, shippers, receivers, consignors, consignees of Goods, holders of bills of lading or waybills, carriers, owners, charterers and operators of vessels as well as any person having an interest in the Goods or in a contract of sale or carriage concerning the Goods.

"Goods" includes wares, merchandise, bulk cargo and articles of any kind whatsoever.

"Special Drawing Rights" (SOR) means the unit of account as defined by the International Monetary Fund.

### 2) SERVICES

All our Services are performed on the basis of the information supplied by the Customer. Should work conditions differ from such representations, we shall levy an additional charge for the extra work done. Similarly, when the Goods are stowed in an unusual manner or location or if their condition is other than in customary good order, thereby delaying or extending our Services, additional charges will be levied.

### 3) LABOUR

- a) We shall supply labour to perform the Services requested subject to labour being available to us pursuant to collective agreements in effect in the port or ports where the Services are to be rendered.
- b) We shall not be responsible for any loss, damage or delay resulting from the unavailability of labour due to strike, lock-out, labour shortage, slowdown or stoppage or any other labour disputes.

### 4) LASHING AND SECURING

All lashing and securing performed by us shall be under the direction, control and supervision of the master of the vessel who shall have the responsibility for the sufficiency of such lashing and securing.

## 5) LIFTING APPLIANCE AND CARGO HANDLING GEAR

We reserve the right to refuse using any lifting appliances or cargo handling gear that are not in good working order or for which a valid certificate issued by a Classification Society that is a member of the International Association of Classification Societies Ltd. is not available. All costs incurred and delays encountered as a result of the failure to have such valid certificate or to provide lifting appliances or cargo handling gear in good working order shall be borne by the Customer.

## 6) SORTING OF GOODS

We shall only sort Goods within bills of lading following special agreement and, provided the Goods are adequately marked, only when a detailed and complete packing list is provided.

## 7) LOADING OF RAILCARS

- a) The Customer acknowledges and agrees that it is responsible for the loading of the railcars in compliance with the requirements, obligations and recommended procedures of the Association of American Railroads (the "AAR Procedures") with respect to packaging, bracing, blocking, loading, unloading, lashing or other movement (collectively, "loading") of the Goods into containers, railcars, trailers and other equipment, and with all applicable requirements, obligations and procedures set forth or referenced in railway tariffs and rules.
- b) The following terms and conditions shall apply each time the Customer requests us or our agents or subcontractors to load Goods onto railcars provided by the Customer:
  - i. The Customer shall provide us with copy of requirements, obligations and recommended procedures of the Association of American Railroads (the "AAR Procedures") pertaining to the Goods to be loaded on railcars.
  - ii. The Customer shall provide all information concerning the Goods to be loaded including, without limiting the generality of the foregoing, information pertaining to the Goods' center of gravity as well as all instructions governing the loading of the Goods.
  - iii. The Customer shall indemnify and hold us, our agents, contractors or employees, harmless from and against all losses, costs, damages and expenses whatsoever which we, our agents, contractors or employees may suffer, sustain, pay or incur.
  - iv. The Customer shall be responsible for and indemnify, protect and hold us, our agents, contractors and employees, harmless from and against all claims, losses, damages, injuries, demands, costs, penalties, actions, suits and other proceedings, and expenses in connections therewith, including attorneys' fees and expenses, by whosoever brought or presented including without limiting, the railway or railways responsible for the carriage of the Goods.

## 8) INFORMATION AND CONDITION OF GOODS

The Customer warrants that the Goods have been properly and sufficiently documented, prepared, stuffed, packed, strapped, labelled and marked for any Services that we may be required to perform in relation thereto. The Customer further warrants that all requisite information relating to the nature of the Goods including description, bar coding, marks, number, weight, center of gravity, volume and quantity will be accurate, complete and supplied in a timely manner.

## 9) LIABILITY

Our liability shall be governed by the following:

- a) Subject to the provisions of the present Terms and Conditions, we shall not be liable for:
  - i. loss or damage resulting from Services, including loss of or damage to Goods or to any means of conveyance including vessels, vehicles, trucks or railcars unless caused by our negligence or fault or that of our servants or agents;
  - ii. delay in supplying Services or consequential loss, including, without limiting the generality of the foregoing, railcars, trucks, containers or vessel demurrage, detention or waiting time arising from any cause whatsoever including from our negligence or fault or that of our servants or agents;
  - iii. loss of or damage to Goods which cannot be avoided through customary or normal handling as a result of their physical properties or characteristics, or of the manner in which they have been stowed or in which we are instructed to stow;
  - iv. loss of or damage to Goods or to any means of conveyance including vessels, vehicles, trucks or railcars resulting from the condition or state of repair or from defects in the design or construction of berths, docks, quays, terminals, warehouses, railroads or roadways, or from lack of maintenance thereof;
  - v. loss or misdelivery of or damage to Goods resulting from inaccurate or incomplete information relating to the nature of the Goods, including description, bar coding, marks, number, weight, volume or quantity, or arising from insufficiency of preparation including packing or strapping.
  - vi. Loss, personal injury or death to passengers or other users resulting from Services and more particularly caused by the condition of gangways, special platforms and containers provided by us for the embarkation or disembarkation of passengers or other users from vessels, whether or not caused or contributed by our negligence or fault or that of our servants or agents.

- b) We determine berthing priority on a case-by-case basis, notably taking into consideration applicable contracts, weather conditions and refusal of the Customer to accept to pay for overtime. Unless otherwise expressly stated in our contract, we are not responsible for any vessel demurrage.
- c) Notwithstanding anything to the contrary herein, we shall in no event be liable in contract, delict or tort for any loss, personal injury or death, or loss, misdelivery of or damage to Goods, or for special or consequential damages whether foreseeable or not or whether caused by our fault or neglect or otherwise, or that of our servants, employees, sub-contractors or agents beyond a sum equivalent to one (1) Special Drawing Right per kilogram of the Goods lost or damaged; or the amount that we have charged for Services rendered in connection with the Goods lost or damaged, whichever is less, but in no case, including the loss, personal injury or death of passengers, shall our liability or that of our servants, employees, subcontractors or agents exceed a sum equivalent to 10,000 SOR per event.
- d) The Customer, as our agent, shall ensure that all rights, immunities, exonerations and/or limitations of liability contained in all bills of lading or contracts of carriage covering the Goods or contracts of carriage of passengers, for which our Services are rendered, extend to our benefit and that of our servants and agents. The Customer acknowledges and agrees that we shall in no event have any liability in excess of that of the carrier for loss of or damage to Goods, or for loss, personal injury or death to passengers or other users. In the event that the Customer's bills of lading or contracts of carriage of Goods or passengers do not contain such Himalaya clause, the Customer shall indemnify us against any liability that we would not have incurred had they contained such clause.
- e) The Customer agrees in retaining our Services to hold us harmless for and defend us against any liability exceeding the exemptions or limits contained herein.

#### 10) ENVIRONMENTAL RESPONSIBILITIES

The Customer shall hold us harmless and indemnify us against any liability, damage, claims, fines and expenses, including court costs, legal fees and disbursements incurred in connection with or relating to water, land, air or noise pollution or to spillage, leakage, discharge, emission or contamination caused by or resulting from Services provided hereunder unless caused by our negligence.

We reserve the right to amend our tariffs for our Services in the event that, at any time and from time to time, any environmental regulations are changed or new regulations become effective, whether by law, decree or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefore. These new tariffs shall become applicable upon issuing a written notice to that effect to the Customer.

#### 11) RECEIPTS

All receipts including dock or storage or warehouse receipts shall be deemed to be non-negotiable unless otherwise expressly marked and are issued to ascertain the quantity of Goods and do not represent evidence as to their condition. Delivery of Goods will be

performed upon receiving instructions in writing from the party in whose name such receipt is issued. We shall not be obliged to verify the genuineness or authority of the signatory of those instructions.

#### 12) NOTICE AND CLAIMS

Unless notice of loss or damage to Goods, specifying the nature of such loss or damage, is given in writing by the Customer to us before or at the time the Goods are remitted upon the Customer's instructions, or if the loss or damage is not apparent, within seven days thereafter, such remittance shall be *prima facie* evidence of the delivery by us in good order of the Goods.

#### 13) TIME BAR

All claims with respect to loss, damage, misdelivery, delay and any other claim whatsoever with respect to the Goods shall be filed within nine months of the date of delivery to the Customer or upon his instructions, or, if the Goods are lost, the date when the Goods should have been delivered, or within nine months of the event causing the loss, personal injury or death of passengers, as the case may be.

#### 14) ACCOUNTS

Unless otherwise specified:

- a) Our accounts are due 15 days following the date of our invoices, without any set off, compensation or counterclaim.
- b) Outstanding accounts bear interest at the rate of 15% per annum or 1.25% per month, compounded quarterly.

Notwithstanding the foregoing, we reserve the right to request payment of our accounts prior to the releasing of Goods or performing Services.

#### 15) LIEN

The Customer recognizes that our Services have the effect of increasing the value of the Goods benefiting from such Services and that we have a legal lien on all Goods in our possession for all sums due concerning such Goods, and where the possession of only a portion of the Goods benefiting from our Services has been retained, for all sums due concerning the entire quantity of such Goods which is or has been in our possession from time to time. Without restraining the generality of the foregoing, the Customer hereby grants to us a further continuous general lien over any and all of the Customer's Goods in our possession for all sums due to us by the Customer, whether or not such sums concern any Goods in our possession at the time the lien is invoked.

#### 16) FORCE MAJEURE

- a) If, due to any act of God or of a public enemy, war, labour dispute, strike, lockout, accident, loss of power supply, breakdown of machinery including of any loading, unloading, handling or transportation equipment, government embargo or interventions or other similar or dissimilar circumstances or force majeure events (collectively "Force Majeure Event") we fail or omit to perform Services, such failure or omission shall not be deemed a breach of our obligations.

- b) Where the performance of Services is affected by a Force Majeure Event, our Services shall be suspended insofar as performance is rendered impracticable, and we shall not be required to resume such Services until the Force Majeure Event has terminated. Notwithstanding the foregoing, where, prior to the termination of the Force Majeure Event, the Services affected thereby can be partly fulfilled, we and the Customer may agree that we continue partial performance but failing such agreement we shall have no obligation to continue performance or to prorate performance. We shall promptly notify the Customer upon becoming aware of the occurrence of an event excepted by this clause.

17) APPLICABLE LAW AND JURISDICTION

All claims and disputes arising out of or in connection with our Services, whether in contract or in tort, shall be submitted to a court having jurisdiction over the subject matter in Quebec City and in accordance with Canadian maritime law as applied in the Province of Quebec. Notwithstanding the foregoing, claims or disputes that do not exceed CDN\$50,000.00, shall be referred to final arbitration in Quebec City, pursuant to the then current small claims procedure of the Rules of the Association of Maritime Arbitrators of Canada.

18) INTERPRETATION

Should there be a contradiction between the French and the English version of these standard terms and conditions, or any interpretation difficulty of the French version, the English version shall prevail at all times.

Advenant une contradiction entre la version française et anglaise de ces termes et conditions standards ou encore une difficulté d'interprétation quelconque de la version française, la version anglaise prévaudra en tout temps.