

PORT WELLER MARINE TERMINAL INC.
TERMS AND CONDITIONS

1) APPLICATION

The present General Terms and Conditions ("Terms & Conditions") apply to all Services and Goods supplied, provided or arranged by us, Port Weller Marine Terminal Inc. ("Port Weller"), to all Customers requesting or receiving Services. They apply in connection with all Services and with all ancillary services or Goods supplied or handled in connection with such Services whether on board ships or on berth, whether at terminals, anchorages, wharves, jetties, rails or roads or at any other premises or locations.

These Terms & Conditions are incorporated by reference into all quotations, estimates and contracts in which Port Weller is involved, whether directly or indirectly, through agency or subcontracting. In case of contradiction between a contract (between us and the Customers) and these Terms & Conditions, the former shall prevail.

Unless expressly rejected in writing prior to the commencement of our Services, by requesting or accepting Services from Port Weller, all Customers are deemed to have read and understood these Terms & Conditions, and to have agreed to be bound thereby, **including the exemptions and limits of liability contained herein**, and they warrant that they have the required authority to bind the owners of the vessel and Goods, and whomever else has an interest in the vessel or Goods, to the present General Terms & Conditions. All Services performed by Port Weller are subject to these Terms & Conditions and, unless provided in a written and signed agreement between Port Weller and the Customer, any additional or different terms proposed by Customer are hereby expressly rejected.

2) DEFINITIONS

In these Terms & Conditions:

"Services" includes: stevedoring, terminal handling, warehousing, wharfinger services, terminal storage, wharf storage, closed or covered storage, open or ground storage, bonded storage, line handling, stowage, 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, whether on board ships or on berth, whether at terminals, anchorages, wharves, jetties, rails or roads or at any other premises or locations..

"Customer" means any person or entity requesting Services, including shippers, receivers, consignors, consignees of Goods, agents, freight forwarders, holders of bills of lading or waybills, carriers, owners, charterers, terminal and ship operators 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 subject of Services.

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

3) SERVICES

All our Services are performed on the basis of the information, documentation and representations supplied by the Customer or on its behalf. Should work conditions differ from such information, documentation or representations, we shall levy an additional charge for the extra work done and we maintain the right to refuse to perform the Services in absence of proper required information, documentation and representations. 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.

4) LABOUR

- a) We shall supply labour to perform the Services requested with due diligence, subject to competent and sufficient labour, equipment and supervision 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, delay, or lack of performance resulting from the unavailability of labour due to strike, lock-out, labour shortage, slowdown or stoppage or any other labour disputes or disruption or arising out of force majeure or for any cause beyond our reasonable control.

5) CARGO LASHING AND SECURING

All lashing and securing performed by us shall be under the direction, control, and supervision of the master of the vessel, or other representative acting for the Customer, who shall inspect the equipment prior to the provision of our Services and have the sole responsibility for the sufficiency of such lashing and securing.

6) CARGO HANDLING EQUIPMENT

We will provide, if available and when needed, usual and normal stevedoring gear and equipment for the performance of our Services. Unless otherwise specified in writing, this equipment shall not include, and additional charges will apply for the following:

- a) rental of any third party gear and equipment such as trucks, cranes, forklifts, vehicles and specialized equipment, machinery, spreader, bucket or other equipment required for handling the Goods;

- b) supply of dunnage, blocks, stands, cradles or other material required for loading, landing, securing or handling the Goods; and
- c) additional gear including, but not limited to: tackle, slings, shackles, consumable gear, lighting or specialized handling equipment.

Whether any equipment is supplied by us, the Customer, or a third party, we reserve the right to refuse using any lifting appliances or 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 handling gear in good working order shall be borne by the Customer.

7) SORTING OF GOODS

We may offer sorting and / or packaging services upon request of the Customer subject to special agreement on terms, conditions and applicable rates, provided the Goods are adequately marked and where a detailed and complete packing list is provided.

8) SPECIFIC HANDLING REQUIREMENTS

In the event that the Goods to be handled require specific handling requirements, the Customer must, at least seven (7) days prior to the commencement of Services, notify us in writing with details of such specific requirements, failing which, Customer shall bear full responsibility for any damages directly and indirectly caused by the handling of the Goods, and we shall have no responsibility whatsoever in the event of loss or damage to the Goods, however caused, regardless of whether damage is caused by our negligence or fault, or that of our employees or sub-contractors. Should the Customer inform us of any specific handling requirements after the reception of our quotation, we shall be entitled to revise our quotation, rates and conditions accordingly to reflect the new scope and risks of the Services.

9) 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.

10) INFORMATION AND CONDITION OF GOODS

The Customer warrants that the Goods have been properly and sufficiently documented, prepared, stuffed, packed, strapped, secured, labelled and marked in accordance with industry standards for any Services that we may be required to perform in relation thereto. The Customer further warrants that it will provide us in advance in a timely manner with all complete and accurate requisite information, including relating to the nature of the Goods such as description, bar coding, marks, number, dimensions, weight, measurements, center of gravity, volume, density, quantity, conditions, markings, settings to be maintained, and any and all other characteristics, peculiarities, sources of danger or hazards with may affect the performance of the Services.

11) INSURANCE

The Customer agrees that it will at all times, at its sole cost and expense, continuously hold and maintain or cause to be held and maintained:

- a) hull and Machinery insurance over the carrying vessel and similar insurances over other conveyances used with limits equal or higher and deductibles equal or lower than those normally carried by a reasonably prudent ship owner and operator or owner and operator of similar other conveyances;
- b) protection and Indemnity (P&I) or marine liability insurance with coverage equivalent to the cover provided by members of the International Group Protection and Indemnity Association;

- c) motor vehicles or other Conveyance standard liability insurance prudent owners and operators customarily maintain;
- d) "all risks" insurance coverage in respect of the Goods for which Services are provided. The Customer further agrees that, notwithstanding any other term herein, it will at its sole cost and expense, continuously maintain insurance in respect of the Goods for its full value inclusive of freight, against all risks including loss or damage by stevedores and which insurance shall be for the joint benefit of Port Weller and the Customer as named assureds.

The Customer shall ensure that the aforesaid insurances contain a waiver of subrogation in favor of Port Weller.

12) CUSTOMER LIABILITY

Customer shall be liable to Port Weller and agrees to indemnify Port Weller for any loss or damages, including consequential loss or damages, caused to Port Weller's installations and or equipment by Customer or by the owners of vessel or Goods, and whomever else has an interest in the vessel or Goods.

13) PORT WELLER LIABILITY

Our liability shall be governed by the following:

- a) Subject to the provisions of the present Terms & 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. consequential loss or damage to Goods or to any means of conveyance including vessels, vehicles, trucks or railcars arising from any cause whatsoever including our negligence or fault or that of our servants or agents;
 - iii. delay in supplying Services or consequential loss, including, without limiting the generality of the foregoing, railcars, trucks, containers or vessel demurrage, detention, stand-by or waiting time arising from any cause whatsoever including from our negligence or fault or that of our servants or agents;
 - iv. 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;

- v. loss of or damage to Goods, containers 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;
 - vi. 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, density or quantity, or arising from insufficiency of preparation including packing or strapping;
 - vii. 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 whatsoever, including the loss, misdelivery or damage to Goods, 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 SDR per event.**
- d) The Customer, who shall be considered as our agent and trustee for the sole benefit of contracting for such purpose, shall ensure that all rights, defences, time limitations, immunities, exonerations and/or limitations of liability contained in all waybills, 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, waybills or contracts of carriage of Goods or passengers do not contain such Himalaya clause, the Customer shall defend, indemnify and hold us harmless 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. No inspection, approval, or failure to inspect or approve by us or the Customer shall alter or affect the application of the current clause.

14) SAFETY, COMPLIANCE, AND ENVIRONMENTAL RESPONSIBILITIES

The Customer shall ensure that the Goods are safe for handling and that the Goods comply with any applicable legislation, including environmental legislation, failing which we retain the right to refuse to handle such Goods.

The Customer shall defend, hold us harmless and indemnify us against any liability, loss, damage, fine, penalty, expense, costs (including legal costs), legal fees and disbursements, or claim of any kind whatsoever incurred in connection with, in consequence of, or directly or indirectly 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 gross negligence or intentional fault.

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.

The Customer hereby understands, agrees to, and authorizes us to allow authorities to inspect the Goods in compliance with the local legislation. The Customer shall in no event and for no reason whatsoever hold us liable for any direct or indirect, or consequential, delays, damages, loss, or costs associated with such inspections. Customer shall indemnify us for any costs associated with the consequences of such inspections, including economic sanctions.

15) 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.

16) 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.

17) TIME BAR

All claims with respect to loss, damage, misdelivery, delay and any other claim whatsoever with respect to the Goods shall be filed with the competent tribunal 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.

18) 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 annually.

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

19) 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 and equipment 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. 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 and equipment in our possession for all sums due to us by the Customer, including interest, for any reason, whether or not such sums concern any Goods in our possession at the time the lien is invoked.

Following written notice to the Customer, we shall have the right to exercise or enforce this lien and to sell the Goods and equipment, in whole or in part, with the net proceeds to be applied on account against the sums due, in capital or interest. Customer shall in no event hold us liable for any direct or indirect consequence from the sale of the Goods and equipment.

20) FORCE MAJEURE

- a) We shall not be deemed to be responsible for damages or loss, or in breach of our obligations, for any delay, failure, omission, or changes in the performance of our Services due to any act of God or of a public enemy; war; riots; labour dispute, strike, lockout, or other restraint or stoppage of labour; accident; loss of power supply, fire, bad weather, quarantine restrictions; act or omission of third party beyond our control; inherent vice of Goods or packaging; insufficiency of packaging; 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").
- 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.

21) APPLICABLE LAW AND JURISDICTION

All claims and disputes arising out of or in connection with our Services, whether in contract, in tort or in bailment, shall be submitted by the Customer to the exclusive jurisdiction of the Federal Court of Canada. Notwithstanding the foregoing, Port Weller shall be at liberty to bring suit against Customers before any competent Court of the jurisdictions where the Customer or its assets can be found.

Canadian maritime law applies to these Terms & Conditions and in connection with any claim or counterclaim arising from or in connection with the performance of Services. 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.

22) INTERPRETATION

The Customer recognizes having received and read these Terms & Conditions in French and has expressly requested to be bound by the English version of these Terms & Conditions. Should there be a contradiction between the French and the English version of these Terms & conditions, or any interpretation difficulty of the French version, the English version shall prevail at all times.

Le Client reconnaît avoir reçu et lu les présentes Conditions Générales en français et avoir expressément demandé être lié par la version anglaise des présentes Conditions

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

September 16, 2024