

ABP STANDARD TERMS AND CONDITIONS OF TRADE

IMMINGHAM CONTAINER TERMINAL

Terminal Operations and Stevedoring Services

IMPORTANT ADVICE

THESE CONDITIONS CONTAIN PROVISIONS WHICH EXCLUDE OR LIMIT THE LIABILITY OF ABP AND REQUIRE THE CUSTOMER TO INDEMNIFY ABP. ABP UNDERTAKES NO OBLIGATION TO EFFECT INSURANCE (AND MAKES NO CHARGE FOR INSURANCE). CUSTOMERS ARE THEREFORE ADVISED TO EFFECT INSURANCE THEMSELVES.

ABP IS NOT A COMMON CARRIER AND ACCEPTS INSTRUCTIONS TO DEAL WITH OR HANDLE GOODS ONLY ON THESE CONDITIONS.

WHERE INCONSISTENT WITH CONDITIONS PREVIOUSLY APPLYING OR UNDERSTOOD TO APPLY THESE CONDITIONS PREVAIL.

1. Definitions

1.1 In these Conditions, unless otherwise provided, or unless the context otherwise requires, the following expressions have the following meanings:

“**ABP**” means Associated British Ports whose principal office is at Aldwych House, 71-91 Aldwych, London WC2B 4HN;

“**Charges**” means all charges expenses or other sums which are payable by the Customer to ABP;

“**Competent Authority**” means any supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over ABP and/or the Customer or having responsibility for the regulation or governance of any aspect of the performance of these Conditions or the Port;

“**Conditions**” means these ABP standard terms and conditions of trade in relation to the Terminal as updated from time to time by ABP;

“**Container**” means any box, flat or platform container or other thing which conveys, carries, contains, protects or supports cargo or is designed or made to do so (including any items used for stuffing, packing, loading, transshipping or securing of Goods on or within articles of transport) and any mobile plant, timber or steel packages in or which Goods are packed;

“**Customer**” means any Person at whose request ABP provides Services to in accordance with and incorporating these Conditions;

“**Customer Transport**” means any road or rail transport supplied by or on behalf of the Customer to transport Goods to or from the Terminal;

“**Dangerous Substances**” means a substance or article described in regulation 3 of the Dangerous Substances in Harbour Areas Regulations 1987;

“**Environment**” includes the following (whether alone or in combination): (a) ecological systems and living organisms (including humans); (b) air (including air within buildings or other structures and whether below or above ground); (c) land and soil (including buildings and any other structures in, on or under land and soil, anything below the surface of the land and land covered with water); and (d) water (including water under or within land or within pipe or sewage systems);

“**Force Majeure Event**” means any circumstance or condition beyond ABP’s reasonable control including any of the circumstances or conditions specified in Condition 21.1;

“**Goods**” means cargo of any description whatsoever together with any Plant to be handled by ABP for the Customer at the Terminal;

“Hazardous Materials” means any substance in whatever form whether alone or in combination with any other substance known or reasonably believed to be harmful to human health or the Environment whether or not for that reason it is subject to statutory controls on production, use, storage and disposal;

“Insolvency Event” means any of the following events:

- (a) an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or
- (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (c) a receiver is appointed of any of the Customer’s assets or undertaking, or
- (d) circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer or if any other person takes possession of or sells the Customer’s assets; or
- (e) the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the Customer ceases, or threatens to cease, to trade or suspends all or substantially all of its operations or suspends payments of its debts or becomes unable to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (g) the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt;

“Loss” means any direct or indirect loss (financial or otherwise), damage, liability, demand, claim, recovery, judgment, execution, fine, penalty, charge and any other cost and expense of any nature or kind whatsoever, including any costs of recovery on a full indemnity basis;

“Necessary Consent” means any agreement, permission permit, licence, consent, exemption or other approval required by the Customer under any Applicable Laws in order to import or export the Goods through the Terminal and Port or for any of the Services to be lawfully carried out in relation to the Goods;

“Person” includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representative(s);

“Pin Number” means the container security number usually issued by the shipping line into the Port Community System in respect of a particular Container;

“Plant” means any vehicle, trailer (whether or not carrying or incorporating any tank or container), machine or Container;

“Port” means ABP’s port of Immingham including the Terminal and a reference to the Port shall be deemed to include a reference to any part of it;

“Port Community System” means the Destin8 data exchange computer system (or any electronic data system which replaces it) used by ABP, the Customer, shipping lines, agents, freight forwarding companies, cargo brokers and others for customs clearance and inventory control of imports and exports;

“Representative” means in relation to a party their employees, agents, independent contractors, sub-contractors or sub-agents;

“Schedule of Charges” means the rates issued by ABP to the Customer from time to time in relation to the Services at the Terminal;

“Services” means any and all services provided by ABP for the Customer in relation to the Terminal including berthing, agency, shifting, loading, discharging, transportation, transshipment, devanning, reloading to trailer and storage services;

“Terminal” means ABP’s terminal at the Port known as the Immingham Container Terminal (formerly the Exxtor Terminal); and

“Vessel” includes any ship, boat, raft or craft of every class or description however navigated or propelled which is carrying or to be loaded with Goods and which is nominated by or on behalf of the Customer to be handled at the Terminal.

- 1.2 In these Conditions unless otherwise provided or unless the context otherwise requires:
- (a) the singular shall include the plural and words in the plural shall include the singular;
 - (b) the words "include", "including" and "in particular" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;
 - (c) the headings are to be ignored in construing these Conditions.

2. Application of Conditions

- 2.1 These Conditions shall apply to all legal relationships between ABP and any Customer whether in contract, bailment or tort.
- 2.2 These Conditions cannot be varied other than in writing signed by an authorised officer of ABP.
- 2.3 The acceptance by the Customer of these Conditions, if not express, will be implied from the entry by the Customer into any legal relationship with ABP or from the request of any Services to be provided by ABP or from the delivery of Goods into the custody of ABP or from the entry of any Vessel into the harbour jurisdiction of ABP or from the submission of any documentation in relation to Goods via the Port Community System or otherwise for any Services or from the use of any facility at the Terminal or Port by or on behalf of the Customer.

3. Warranty of Authority by Customer

- 3.1 The Customer warrants to ABP that the Customer is either the owner, or the authorised agent of the owner, of the Goods and further warrants that the Customer accepts these Conditions not only for itself but also as duly authorised agent for and on behalf of every other Person interested in the Goods. Where the Customer is acting as the agent for the owner of the Goods the owner of the Goods and the Customer shall be jointly and severally liable for all monies payable to ABP under these Conditions or for any breach of these Conditions.
- 3.2 The Customer shall indemnify ABP against any Loss howsoever suffered or incurred by ABP arising out of or in connection with any lack of such authority or title on the part of the Customer.

4. Request for Services & Necessary Consents

- 4.1 ABP will have no obligation to provide Services unless it has received a written request from the Customer which is accepted by ABP, either at the time the Services are required or in accordance with any contractual arrangement to provide the Services over a period of time. All oral requests for the provision of Services and any oral instructions relating to the Services must be immediately confirmed in writing and accepted by ABP.
- 4.2 In the event that oral requests or instructions for the provision of Services and any oral instructions relating to Services are not immediately confirmed in writing and accepted by ABP, ABP will not be responsible for any failure to comply or for errors in complying, with such oral requests or instructions.
- 4.3 Instructions for loading and discharging Goods to or from a Vessel at the Terminal shall be acted upon only after receipt of written authority from the Vessel's owners or agents, and proof of compliance with all customs and official formalities.
- 4.4 The Customer shall be responsible for ensuring that all Necessary Consents are obtained in relation to the Goods and are obtained in a timely manner so as not to delay the importation and exportation of Goods through the Terminal.

5. Particulars of Goods & Special Precautions

- 5.1 Prior to the Goods being delivered to the Terminal and in any event before any Services are provided by ABP in relation to the Goods, the Customer shall ensure that ABP is provided with as soon as reasonably possible and in accordance with Condition 10, the following information:
- (a) full particulars of the Goods (including weight, volume and a sufficient description to identify the Goods and such other information as is sufficient to identify them and handle them safely and in full compliance with Applicable Laws);
 - (b) any hazards in connection with the Goods; and

- (c) any written special precautions or instructions regarding the nature, weight or condition of the Goods and how they should be handled, stored, loaded or unloaded which are necessary or desirable for ABP to perform the Services and/or comply with its legal duties (including in relation to health and safety and the environment) in doing so.
- 5.2 ABP shall be permitted by the Customer to give any details provided to ABP pursuant to this Condition 5 or otherwise in relation to the Goods to whomsoever ABP deems necessary.
- 5.3 The Customer shall be bound by and deemed to warrant the accuracy of all descriptions, values and other particulars and information provided to ABP in relation to the Goods.
- 5.4 The Customer indemnifies ABP against any Loss suffered or incurred by ABP arising out of or in connection with a failure to provide any of the above particulars or the inaccuracy in or omission from the above particulars and information.

6. Condition of Goods

6.1 The Customer warrants that the Goods:

- (a) will not contaminate or cause danger, injury, pollution or damage to the Environment or any person or property whatsoever;
- (b) are not infested, verminous, rotten or subject to fungal attack or are liable to become so;
- (c) are not overheated or liable to become so;
- (d) require for their safekeeping no special protection (other than as may be agreed in writing between ABP and Customer) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their inflammability;
- (e) contain no controlled drugs (unless the Customer is licensed or otherwise lawfully authorised in respect of such controlled drugs), contraband, pornographic or other illegal matter;
- (f) are properly and sufficiently packed to ensure the safety of the Goods and to allow mechanical handling without damage or danger;
- (g) are properly and sufficiently marked, documented and labelled for all shipping, cargo handling, dispatch, customs and like purposes;
- (h) are properly marked with warnings as to the hazardous nature of any contents and the precautions to be taken in handling the same and with such warnings as may be necessary for ensuring the safety and health of all persons likely to handle or come into contact with the Goods or their contents in the event of the escape of anything injurious from the Goods;
- (i) are fully insured including during the provision of the Services and that such insurance covers theft of or loss or damage to the Goods arising during their presence at the Port or as a result of the provision of the Services;
- (j) except as properly disclosed to and accepted by ABP do not contain Dangerous Substances or "environmental waste" within the meaning of the Environmental Protection Act 1990;
- (k) are fit for their intended purpose and are in a fit and proper condition to be handled or otherwise dealt with by ABP, its equipment and Representatives.

6.2 The Customer indemnifies ABP for any Loss incurred or suffered by it arising out of or in connection with:

- (a) the Customer's breach of any of the warranties set out in Condition 6.1; or
- (b) taking any step which ABP considers to have been reasonably required to:
 - (i) remedy the breach of any of the warranties set out in Condition 6.1; or
 - (ii) comply with the lawful requirements of HM Revenue & Customs, the Police, the Health and Safety Executive, the Public Health Authority or any other Competent Authority in respect to the Goods.

6.3 Without prejudice to any of ABP's other rights or remedies (including Condition 6.2), if ABP reasonably suspects that a breach of any warranty under this Condition 6 has been, or might be, committed ABP has the right to refuse to accept any Goods and if Goods have already been accepted ABP reserves the right to require their prompt removal by the Customer. In such event the Customer shall not be entitled to any compensation from ABP other than a refund of Charges received by ABP in relation to the Goods, less the value of any damage caused by such Goods and any handling or other operating costs or expenses incurred by ABP.

7. Prompt Collection of Goods

7.1 Unless otherwise agreed in writing, the Customer shall ensure that:

- (a) the Vessel due to receive any Goods delivered to ABP for loading shall accept the Goods within four (4) days of the date of receipt by ABP of such Goods;
- (b) the Customer Transport due to collect any Goods discharged at the Terminal shall remove the Goods from the Port within four (4) days of completion of discharge of the Goods.

7.2 Any Goods remaining beyond the four (4) day time period specified in Condition 7.1 shall incur rent charges in accordance with the Schedule of Charges and except as otherwise agreed by ABP and without prejudice to ABP's other rights and remedies, may be dealt with in accordance with Condition 19.

8. Provision of Services

8.1 ABP shall perform the Services with reasonable care and skill and where ABP is acting as bailee of the Goods (unless the bailment is involuntary) ABP shall take such care of the Goods as a reasonably competent custodian would take of equivalent Goods in similar circumstances.

8.2 Subject to any specific written instructions given by the Customer in writing and accepted by ABP in writing, ABP has complete freedom in respect of the means and procedure to be employed in the provision of the Services and handling of the Goods.

8.3 If in ABP's opinion the interests of the Customer or the interests of safety, security, compliance with Applicable Law or the preservation of life and property so require, ABP may deviate from any instructions given by the Customer (whether or not accepted by ABP) in any respect and any expenses reasonably incurred in relation to such deviation shall be for the Customer's account.

8.4 ABP accepts no responsibility for the maintenance or repair of any part of the Goods nor for the provision of power, fuel or other supplies in relation to the Goods. If maintenance, repair or provision of power, fuel or other supplies is necessary to enable ABP to provide the Services ABP shall be entitled to suspend performance of the Services (in which case it shall be entitled to invoice for the Services as if they had been completed) or in its discretion pay for any maintenance, repair, provision of power, fuel or other supplies necessary in which case the Customer shall reimburse ABP on demand for all of its costs in taking such action.

8.5 The Customer agrees and accepts that the storage of any Goods at the Port (either exclusively or jointly with ABP or any other third party), will be at its sole risk and responsibility, subject to any liability of ABP pursuant to Condition 20.

8.6 Unless otherwise agreed in writing, time is not of the essence in the performance of the Services by ABP but ABP undertakes to use reasonable endeavours to complete the Services within a reasonable time. Any time for completion of the Services which may be given is an estimate only and ABP shall not be liable for the consequences of any failure or delay to ship the Goods or make them available for collection unless such loss of failure is as a result of the deliberate act of negligence of ABP (in which case the limitations and exclusions in Condition 20 shall apply).

8.7 ABP shall be entitled (but not obligated) to open Containers or packages to inspect and ascertain the condition of the Goods within Containers before accepting the Goods for loading, discharging or storage or at any other time during the course of the Services.

8.8 ABP has the right to subcontract any or all of the Services at any time.

8.9 Where ABP provides ships agency services for or on behalf of the Customer, the Customer shall indemnify ABP against any Loss suffered or incurred by ABP which ABP may incur as a result of acting within the scope of its authority as agent for or on behalf of the Customer.

9. Vessels and Customer Transport

9.1 ABP shall not be bound to allow Vessels to berth at the Terminal or any other part of the Port except by prior arrangement with the Customer.

9.2 The Customer shall notify ABP at least seven (7) days in advance of the time at which the Vessel is expected to arrive at the Terminal and update ABP 24 hours prior to the expected arrival time of the Vessel at the Terminal. ABP will advise the Customer whether a berth is available at the Terminal.

9.3 Vessels moored and Customer Transport arriving at the Terminal shall be dealt with in an order determined by ABP at its sole discretion.

9.4 The Customer shall ensure that the driver of any Customer Transport arriving at the Terminal to collect Goods, is in possession of the correct PIN Number and unit number of the Container(s) to be collected. The Customer shall be responsible for ensuring the safe keeping of the Pin Number which is created in respect of the relevant Containers and ABP shall have no liability in respect of any incorrect release of a Container where the party to whom the Container was released to was in possession of the Pin Number for that Container.

9.5 The Customer shall ensure that the Vessels and Customer Transport arrive and are handled and depart in conformity with the requirements and regulations of ABP, its Terminal Operations Manager, Dock and Harbour Master and other officials as well as the lawful requirements of HM Revenue & Customs, the Police, the Health and Safety Executive, the Public Health Authority and any other Competent Authority

9.6 If any Vessel which is not loading or discharging Goods or has completed loading or discharging of Goods at the Terminal wishes to remain in the Port it will be permitted to do so only with the Terminal Operations Manager or Dock or Harbour Master's permission and will be required to move to another berth if so directed and will be required to pay rent and any other applicable port charges (including pilotage, berthing and mooring charges).

9.7 The Customer will ensure that all of its activities at the Terminal and any other part of the Port are undertaken in compliance with the International Ships and Port Facility Security Code (the "ISPS Code"). The Customer will assist ABP with security requirements in connection with the Customer's activities at the Port in accordance with the ISPS Code and any requirements of the United Kingdom Department for Transport.

10. Notification of particulars / information to ABP

10.1 Where the Customer is required to provide information to ABP under these Conditions in relation to Goods and Vessels, where possible such information including manifests, delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, goods handling instructions and orders for Services must be submitted to the Port Community System (if available) at least 12 hours (unless otherwise specified) before any Services are required to be performed.

10.2 Where the Customer is required to provide information to ABP under these Conditions in relation to Goods and Vessels and it is not possible or practical to transmit information to ABP via the Port Community System for whatever reason (including where the Customer does not use the Port Community System), the Customer shall ensure that such information is submitted to ABP in writing at least 12 hours (unless otherwise specified) before any Services are required to be performed by:

(a) fax to: 01469 573 766; or

(b) email to: planners@abports.co.uk and maingate@abports.co.uk

or to such other fax number or email address as ABP may advise the Customer from time to time. If ABP does not promptly acknowledge receipt of such fax or email, the Customer shall be responsible for following up with ABP by telephoning 01469-551316 (or such other telephone number as ABP shall advise from time to time) to ensure the receipt by ABP of such fax or email.

10.2 ABP shall not permit the removal of imported Goods unless such Goods are correctly released and cleared with no statutory holds applied via the Port Community System or in the event that such Goods are not

included within the scope of the Port Community System subject to acceptance of such other documentation as may be reasonably required by ABP from time to time.

10.3 ABP shall not be liable for any failure, disruption or other malfunction of the Port Community System.

11. Hours of Work

11.1 Except as otherwise may be agreed in writing with ABP the working hours of the Terminal and for the performance of the Services are:

- (a) in respect of Services provided in relation to Vessels - Monday to Sunday, 24 hours excluding bank or public holidays in England and Wales; and
- (b) in respect of non Vessel Services (i.e. yard work) - Monday to Sunday, 0600hrs to 2200hrs excluding bank or public holidays in England and Wales .

12. Payment of Charges

12.1 The Customer shall pay to ABP such Charges for the Services as are specified in the Schedule of Charges. ABP may from time to time revise the rates specified in the Schedule of Charges by issuing any such revision to the Customer. Unless stated otherwise, all Charges are stated exclusive of VAT.

12.2 Any quotations by ABP are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision at any time.

12.3 ABP's Charges are payable on demand unless special credit facilities have been agreed pursuant to Condition 12.4.

12.4 ABP, in its discretion, may agree to allow the Customer a credit account subject to any special conditions which may from time to time be applicable. Invoices charged to approved credit accounts shall be paid without deduction within 28 days of the invoice date (or such other period as ABP may agree). Any credit arrangement agreed with a Customer shall at all times be subject to Condition 12.5.

12.5 Notwithstanding any credit arrangement in place between ABP and the Customer, if ABP reasonably considers that any Charges levied or to be levied may not be paid by the relevant due date, ABP shall have the right, upon giving the Customer notice, to immediately withdraw any credit arrangement agreed and to require prepayment of the whole or part of its Charges. In addition, ABP reserves all its statutory rights in relation to the recovery of amounts owing to it, including rights to distrain and arrest Vessels for non-payment of amounts owing to ABP.

12.6 Subject to Condition 12.4, Vessels will not normally be permitted to leave the docks until all dues and other Charges have been paid.

12.7 ABP reserves the right to charge interest on outstanding Charges in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).

12.8 The Customer shall be liable for any charges of any nature (including duties and taxes) levied by any Competent Authority in connection with the Goods and for payment of any fine, expense or other Loss incurred or suffered by ABP in connection with any such charges.

12.9 No undertaking by ABP to collect from a consignee or any other Person any sum payable to the Customer and no demand by ABP on such Person, shall constitute a waiver or release by ABP of any rights against the Customer.

12.10 ABP may refuse to load, discharge or release Goods until all Charges incurred in relation to such Goods have been paid but pending such delivery or release any Charges accruing on a daily basis or other periodic basis shall continue to accrue.

12.11 All payments due and owing to ABP will be made without set-off, withholding or deduction of any kind.

12.12 ABP may verify the weight or volume of the Goods by undertaking its own measurements and in the absence of manifest error such measurements shall be deemed to be conclusive.

13. Destruction or Disposal of Harmful Goods

- 13.1 If any Goods are, or become noxious, hazardous, inflammable, explosive or in any way dangerous or likely to become dangerous or otherwise cause damage (including Goods which are infectious, diseased or verminous or likely to harbour or encourage infection or disease or vermin or other pests) whether alone or in combination with other goods and whether or not by reason of the act or omission of any person, ABP or the party in whose custody the Good then are shall be at liberty to destroy or otherwise deal with the Goods as in its discretion may seem desirable for the purpose of rendering the Goods harmless.
- 13.2 Where Condition 13.1 applies the Customer shall indemnify ABP against any Loss howsoever suffered or incurred by ABP in connection with the fact or matter which gives rise to the application of Condition 13.1.

14. Dangerous Goods

- 14.1 Goods of an inflammable, explosive, dangerous or offensive nature shall not be delivered into the custody of ABP or its Representatives or otherwise brought into or dealt with at the Terminal unless the Customer has procured that detailed information regarding such Goods has provided to ABP in accordance with Condition 10 and ABP has advised the Customer that it will accept such Goods. The acceptance of any such Goods by ABP shall be subject to such terms as ABP may stipulate.

15. Explosives

- 15.1 Without prejudice to Condition 14 (Dangerous Goods), where ABP undertakes to handle explosives (defined as substances and articles listed under Class 1 of the International Maritime Dangerous Goods Code as published by the International Maritime Organisation) or consents to the handling of explosives on its premises by others, the Customer shall bear and pay for any damage or injury which may be caused to any property belonging to ABP or its Representative and for any expense to which ABP may be put by reason of or in consequence of a fire or explosion involving the explosives.
- 15.2 The Customer shall indemnify ABP from and against any Loss incurred or suffered by ABP in respect of any loss of life, injury or damage which may be caused to third parties by reason of or in consequence of a fire or explosion involving the explosives. The Customer shall be required to provide a letter of confirmation from their insurance company that such indemnity is underwritten by a policy of insurance, quoting the policy number and the period of insurance. This indemnity shall apply whether or not any accident or occurrence is caused by the negligence or default of ABP or any of its Representatives.
- 15.3 The Customer's liability pursuant to Conditions 15.1 and 15.2 shall not exceed £10,000,000 (ten million pounds sterling) in respect of any one accident or series of accidents arising out of one occurrence.

16. General Lien with Power of Sale

- 16.1 ABP may exercise, upon all Goods in its possession a lien, not only for any Charges due in relation to such Goods, but also for all monies owing by the Customer to ABP on any account, and in the event of any such charges, expenses and monies not being paid within 7 days of the notice of the exercise of any such lien, ABP may sell the Goods and apply the proceeds towards the satisfaction of all such Charges, expenses and monies on whatsoever account owing and also all charges and expenses arising during the exercise of any such lien.
- 16.2 If the Customer has sold or shall sell the Goods the subject of the lien ABP may, at its option, accept the proceeds of such sale or some interest or charge in or over such proceeds in substitution of their lien as a condition for releasing the Goods.

17. Suspension of Services / Termination

- 17.1 Without prejudice to any of its other rights or remedies ABP reserves the right to cancel, terminate or suspend the performance of all or any part of the Services in the event that:
- (a) the Customer fails to pay any amount owing to ABP when due;
 - (b) the Customer is in material, continued or persistent breach of any of its obligations under these Conditions and the breach is irredeemable or the breach can be remedied but the Customer fails to remedy the same within 7 days of written notice from ABP requiring it to be remedied; if ABP reasonably considers it unsafe or unsuitable in the circumstances to provide the Services;
 - (c) the Customer suffers an Insolvency Event,

and in such circumstances ABP shall not be liable for any Losses suffered or incurred by the Customer arising directly or indirectly from ABP's failure or delay to perform any of its obligations.

17.2 Any termination of Services shall be without prejudice to the rights and remedies of ABP or the Customer which may have accrued up to the date of termination.

17.3 On termination of the Services, all sums due to ABP by the Customer (including Charges for Services provided but not yet invoiced or paid for) shall become immediately due and payable.

18. Delivery, Disposal, Involuntary Storage and Removal of Goods

18.1 Without prejudice to any other rights of remedies of ABP, if:

- (a) in the opinion of ABP the condition of the Goods are not suitable for loading, discharging or storage or are quarantined or do not comply with Applicable Laws or are likely to cause damage to other goods or property; or
- (b) the Goods are insufficiently or incorrectly addressed or marked so that ABP cannot determine on what Vessel or Customer Transport they should be loaded or to whom they should be made available for collection; or
- (c) ABP has given notice to the Customer to remove Goods from the Port in accordance with Condition 19 and the Customer has not arranged for such Goods to be removed within the required timeframe;

then without prejudice to any other right or remedy available to ABP, ABP may:

- (i) give notice to the Customer if the Customer is known (and if the Customer is not known shall publish a notice in its Port office of the relevant circumstance referred to above); and
- (ii) from that point ABP shall be treated as an involuntary bailee of the Goods and shall not bear any risk nor have any liability for loss or damage to such Goods at any time and may in its absolute discretion:
 - (A) suspend any Services it is providing in relation to the Goods;
 - (B) store the Goods until actual removal of the Goods from the Terminal and charge the Customer for storage at its normal rates together with all costs associated with such storage;
 - (C) require the Customer by notice to remove such Goods as soon as possible and within the time period specified in the notice which shall not in any event be more than 72 hours (provided that if the Goods are perishable this requirement to give notice shall not apply);
- (iii) where the Customer fails to remove the Goods within the required time as specified in the notice referred to above; or where the Goods are perishable; or where the removal of the Goods is not practical in the circumstances, ABP may arrange for the removal, destruction, disposal or sale of the Goods and ABP and shall not be liable, answerable or accountable to the Customer or any Person interested in such items for so doing or for the proceeds of any such disposal.

18.2 All Losses incurred or suffered by ABP arising out of or in connection with the storage, sale, destruction or disposal of the Goods pursuant to this Condition 18 shall be payable by the Customer to ABP on demand.

19. Removal of Goods From Port

19.1 Without prejudice to any other rights and remedies of ABP and subject to any agreement in relation to storage between ABP and the Customer, where any Goods remain at the Port outside of the time periods referred to in Condition 7.1 or where the Goods remain at the Port outside of any additional period during which ABP has agreed to store such Goods, ABP may, in its discretion, require the Customer to remove any such Goods from the Port within ten (10) days of written notice from ABP requiring it to do so and the Customer shall ensure that such Goods are removed from the Port within the required timeframe. In the event that such Goods are not removed from the Port within the required timeframe, ABP may deal with the Goods in accordance with Condition 18. For the avoidance of doubt, rental charges shall continue to accrue for the Customer's account in relation to the Goods while they remain at the Port.

20. ABP's Liability

20.1 The Customer acknowledges and accepts that ABP shall have no liability for any damage caused to Customer Transport or other property when loading or discharging Containers to or from Customer Transport by rubber tyred gantry crane where such damage is caused by the Container coming into contact with the Customer Transport during the operation. The Customer shall indemnify ABP against any Loss incurred or suffered by ABP whatsoever in relation to any such damage.

- 20.2 ABP shall not be liable to pay or refund demurrage or any other compensation for the loss of use of Vessels or Customer Transport or for their not being ready in time, nor to make good any other loss or damage suffered as a result of delay or interruption in the handling of Vessels or Customer Transport or in receiving Goods into or delivering them out of the Terminal.
- 20.3 Except as otherwise stated in these Conditions, ABP shall be liable for physical loss or misdelivery of or damage to the Goods (or any part of the Goods) if, but only if, it be proved by the Customer (otherwise than by evidence of such loss, misdelivery or damage of or to the Goods) when in ABP's possession or power or that of its directly employed servants to have been caused by the negligence of ABP or its directly employed servants.
- 20.4 ABP will not be liable to the Customer for (a) any loss of profit (direct or indirect); (b) loss of business, contracts, anticipated savings or depletion of goodwill; (c) any indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation or indirect economic loss (howsoever caused) whether in contract, tort or breach of statutory duty or otherwise which arises out of or in connection with the Services of these Conditions; or (d) for any liability incurred by the Customer to any other person for any economic loss, claim for damages or awards howsoever arising from the Services or these Conditions or otherwise.
- 20.5 Risk in the Goods (including theft, loss or damage to the Goods) shall at all times remain with the Customer and ABP shall not be under any obligation to insure the Goods or any part of the Goods and shall have no liability in respect of the Goods other than as set out in Condition 20.3.
- 20.6 ABP's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of these Conditions will be limited to in relation to any one incident or series or related incidences:
- (a) in the case of loss, misdelivery or damage to Goods which ever is the lesser of:
 - (i) the cost of such part of the Goods as is lost, misdelivered or damaged;
 - (ii) the reasonable cost of repair of the relevant item of Goods damaged where applicable;
 - (iii) the market value such part of the Goods as is lost, misdelivered or damaged
 - (iv) £1,300 per tonne of the gross weight of such part of the Goods as is lost, misdelivered or damaged; and
 - (v) £1,000,000 (one million pounds sterling);
 - (b) in any other case to £1,000,000 (one million pounds sterling).
- 20.7 Under no circumstances shall ABP have any liability in respect of any delay, damage or other Loss arising out of any of the following:
- (a) the wrongful act, omission and or neglect or any breach of these Conditions by the Customer or any of its Representatives;
 - (b) its compliance with any instructions given by or on behalf of the Customer or any other Person entitled to give them;
 - (c) the lack or insufficiency of marks, labelling or numbers on the Goods, incorrect delivery details or any failure by a consignee to accept delivery of Goods or for any Losses where ABP has obtained proof of delivery acknowledging safe receipt of the Goods;
 - (d) any information or advice given by ABP being inaccurate or incomplete where this incompleteness or inaccuracy cannot reasonably have been known to ABP at the time of the provision of the advice or information;
 - (e) any failure or inability of any Vessel, ship-owner or other Persons (other than ABP) to comply with its obligations under Applicable Laws regarding ship security.

20.8 Nothing in these Conditions excludes or limits the liability of ABP for death or personal injury caused by its negligence, or for fraudulent misrepresentation.

21. Force Majeure

21.1 ABP shall not be liable for any breach of obligation to the extent that performance of that obligation is delayed, hindered or prevented by an Event of Force Majeure including:

- (a) act of God, storm, tempest, flood or other extreme weather, natural disaster;
- (b) fire (including steps taken for the extinguishment of fire), explosion smoke, ionising radiation, radioactive contamination, terrorist activity;
- (c) impact by aircraft or objects dropped or falling from them, impact by ship or vessel, blockage of any shipping channel;
- (d) strikes, combinations, lockouts, go-slows or other industrial action by any person or anything done in the furtherance of a trade dispute;
- (e) scarcity of labour, plant, machinery, fuel or power;
- (f) war, revolution, riot or civil commotion, public demonstration,
- (g) restrictions imposed directly or indirectly by any Competent Authority;
- (h) theft or wilful damage unless proved by the Customer to have been committed by the servants of ABP;
- (i) inherent vice of the Goods;
- (j) vermin, insects, fungal attack, rot or corrosion;
- (k) heat or cold including heat within the Goods themselves and unintended exposure to natural or artificial light;
- (l) improper or insufficient packing, marking, documentation or labelling;
- (m) any act of ABP its servants or agents which, though deliberate, are reasonably necessary for the safety or preservation of persons, the premises and/or any Goods; or
- (o) late receipt of HM Revenue & Customs entries or delivery or landing orders disputes in respect of documents or declarations made for entry purposes by or on behalf of any person, delay in passing Customs entries or obtaining clearance of any goods or omission of information from or a mis-statement in any order to ABP relating to the Goods.

22. Time Bar for Claims and Notice of Loss

22.1 It is a condition precedent to the liability of ABP, whether under Condition 20 above or howsoever otherwise arising, that ABP be notified in writing, in the case of apparent loss, misdelivery or damage to Goods as soon as possible and in any event within 7 days of the date upon which the Customer became or should have become aware of the alleged loss or damage or misdelivery and in the case of any other loss whatsoever, within 28 days of the date upon which the Goods were first received into the custody or control of ABP or its Representatives, with particulars of the nature and amount of any claim to be made. Without prejudice to the forgoing, ABP shall be discharged of all liability whatsoever howsoever and to whomsoever arising unless suit be brought and written notice thereof given to ABP within 9 months from the date of the event or occurrence alleged to give rise to a cause of action against ABP.

22.2 ABP shall have no liability for any physical loss or damage unless it has had the opportunity to verify the same where reasonably physical.

23. Liability Limits available to Third Parties

23.1 By delivering the Goods to ABP, the Customer shall be deemed to confer severally upon the Representatives of ABP, the benefit of all warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defences, amenities and rights under these Conditions provided for the benefit of ABP, upon any such Person as providing any Services whether or not of a stevedoring nature in relation to the Goods.

23.2 This Condition also constitutes a separate contract made by ABP on its own behalf and as agent for all Persons who are its Representatives from time to time whether or not as stevedore providing Services in relation to the Goods.

24. Customer Indemnity

24.1 The Customer warrants and undertakes to ABP that the exclusions and limits of liability conferred by these Conditions for the benefit of ABP are and shall be binding on all Persons who have an interest in the Goods and the Customer agrees to hold harmless and indemnify ABP against all Losses incurred or suffered by ABP in connection with or arising out of any claims and demands made or alleged (other than the Customer) in respect of the liability of ABP under these Conditions.

25. Bribery and Corruption

25.1 The Customer shall not, and shall procure that its directors and Representatives shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010.

25.2 The Customer shall have in place adequate procedures designed to prevent any person working for or engaged by the Customer or any third party in any way connected to these Conditions and the Services provided under these Conditions, from engaging in any activity, practice or conduct which would infringe any anti-bribery and/or anti-corruption laws, regulations and codes including ABP's anti-corruption and anti-bribery policy which is available on ABP's website <http://www.abports.co.uk>.

25.3 Without prejudice to the generality of the obligations set out in this Condition 24, the Customer must promptly report to ABP any request or demand for any undue financial or other advantage of any kind which it receives in connection with the performance of any obligations under any agreement with ABP.

26 General

26.1 The rights and powers of ABP under these Conditions are in addition to and not in substitution of the rights and powers of ABP conferred by its current Bye-Laws.

26.2 If any provision in these Conditions or any document referred to in it or to be entered into pursuant to or in connection with it will be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of these Conditions but the legality, validity and enforceability of the remainder of these Conditions or the provision will not be affected.

26.3 Any legal relationship between ABP and the Customer shall be governed by and interpreted in accordance with English law and the customer submits to the jurisdiction of the High Court of Justice in England but ABP may enforce any contract between ABP and the customer in any court of competent jurisdiction.

26.4 Any notice required to be given under these Conditions shall unless otherwise specified be sufficiently given if sent by registered or recorded delivery post or left at the principal or registered office for the time being of the party to be served. Any such notice shall be deemed to be served at the time the same is handed to or left at the address of the party to be served and if served by post on the third day (not being a Sunday or public holiday) following the day of posting.

20 December 2012