

## Williams Shipping Marine Limited

### Terms and Conditions of Berthing, Stevedoring & Storage

#### 1. Interpretation

1.1 "**ABP**" means Associated British Ports or their successors in title.

"**Contract**" means the contract between the Company and the Customer for the provision of the Services, the terms of which are set out in the Contract Documentation and the Conditions.

"**Company**" means Williams Shipping Marine Limited and any member of the Williams Shipping Group to which the Contract may be assigned.

"**Services**" means the provision of one or more of the Berthing Services, the Stevedoring Services or the Storage Services (as defined below), as agreed in the Contract Documentation.

"**Berthing Services**" means the services specified in and performed in accordance with and subject to the provisions of clauses 5, 6 and 7 of these terms and conditions.

"**Stevedoring Services**" means the services specified in and performed in accordance with and subject to the provisions of clauses 8, 9 and 10 of these terms and conditions.

"**Storage Services**" means the services specified in and performed in accordance with and subject to the provisions of clauses 11, 12 and 13 of these terms and conditions.

"**Dock**" means all the land and water adjacent thereto including slipways, pontoons, finger pontoons, jetties, quays, and piers in the Port of Southampton occupied from time to time by the Company.

"**Vessel**" means the vessel owned or operated by the Customer to which the Services relate, as specified in the Contract Documentation.

"**Berth**" means that part of the Dock designated from time to time by the Company for the berthing of the Vessel.

"**Customer**" means the person, firm or company for whom the company is carrying out the Services under the Contract.

"**Conditions**" means these terms and conditions and the Special Conditions.

"**Special Conditions**" means the particular conditions (if any) relating to the Services, as specified in the Contract Documentation.

**"Contract Documentation"** means the Company's written acceptance of the Customer's order for the Services and the Company's price lists current at the date of that acceptance.

**"Port"** means the Port of Southampton.

**"Price"** means the price published by the Company from time to time for the provision of the Services.

**"Term"** means the period of time for which the Company agrees to provide the Services, as specified in the Contract Documentation.

**"Goods"** means goods whether a single article or in bulk or contained in one parcel, package or container as the case may be or any number of separate articles, parcels, packages or containers to which the Storage Services relate, as specified in the Contract Documentation.

**"Dangerous Goods"** means explosives, radioactive material, and dangerous weapon, drug, poison, damaging article or substance or any article or substance likely to encourage vermin or other pests or likely to cause infection or any other article or substance that, in the sole opinion of the Company, present a similar hazard.

1.2 In the event of any conflict between these terms and conditions and the Special Conditions the Special Conditions shall apply.

1.3 All quotations are given, all orders are acknowledged and accepted, all the Services are performed and all invoices are issued on and subject to the Conditions and no addition to or variation of the Conditions shall be effective unless it is in writing and signed on behalf of the Company at the Company's office. Accordingly (and without limitation of the foregoing):

1.3.1 if any preliminary communications, statements, representations, undertakings or understandings of any kind are not incorporated in the Conditions in writing as above, then they shall be of no effect;

1.3.2 if any order is purported to be placed, or any quotation is purported to be accepted on terms other than those set out in the Conditions, the Company may (at its option) treat the same as an order placed or an acceptance made on the terms of the Conditions.

1.4 Headings are for convenience only and shall not affect the interpretation of the Conditions.

## 2. **Performance**

2.1 In consideration for the Customer paying the Price, the Company shall perform the Services for the Term in accordance with the Conditions. For the purposes of the Conditions, performance by any servant or agent (including but not limited to any member of the Williams Shipping Group) nominated by the Company shall be deemed to be performance by the Company.

### 3. **Price and Payment**

- 3.1 The Price and all other sums payable under the Contract are exclusive of Value Added Tax and all other tax and duties which may be payable in respect thereof. Value Added Tax and all other taxes and duties at the appropriate rate shall be paid by the Customer in addition.
- 3.2 The Customer shall pay the Price and all other sums becoming payable to the Company under the Contract together with any Value Added Tax and any other tax or duty payable in respect thereof within fourteen days of the date of the Company's invoice therefore unless alternative payment terms are agreed in writing prior to the commencement of the Services. Payment shall be made at the Company's registered office in England in pounds sterling.
- 3.3 If the Customer shall fail to pay in accordance with 3.2 above, then without prejudice to any rights which may be available to it, the company shall be entitled:
  - 3.3.1 to suspend the provision of any outstanding Services or (at its option) to terminate its obligations to supply the same; and/or
  - 3.3.2 at its absolute discretion to charge interest on the amount due from the date for payment until payment is actually received (whether before or after any judgment) by the Company. Such interest shall accrue on a daily basis at the rate of 4% per annum above National Westminster Bank base lending rate for the time being in force.
- 3.4 If at any time the Company is not reasonably satisfied as to the Customer's ability or willingness to pay for the Services in accordance with the Contract it shall be entitled to call for payment in full of the Price (together with Value Added Tax and any other tax properly payable in respect thereof) before the Services (or the outstanding balance thereof) are undertaken.
- 3.5 Where the Contract provides for payment by instalments default in making any one or more payments in full on the date specified in the Contract Documentation shall render all outstanding instalments immediately due and payable.
- 3.6 Sums payable to the Company under the Contract are exclusive of:
  - 3.6.1 such other sums if any, which may be payable by the Customer while the Vessel is within the Port including, without limitation, any sums payable to the Crown Estate or ABP (which sums the Customer will pay); and
  - 3.6.2 all charges for gangways, mooring, labour, water, gas, electricity, telephone or other Services supplied to the Vessel (which charges the Customer will pay to ABP on demand).
- 3.7 In relation to the Customer's obligations to make payments, time is of the essence.

4. **Lien**

- 4.1 All goods the subject of the Services shall be subject to a lien for all monies due to the Company in respect of the Price or any other monies payable in connection with such goods and subject also to a general lien for all monies due to the Company from the Customer upon any account whatsoever and if any such lien is not satisfied within fourteen days from the date upon which the Company gives notice to the Customer requiring the payment of any monies due to the Company as aforesaid then the goods may be sold by the Company by auction or otherwise as the Company shall see fit at the expense of the Customer and the goods and/or the proceeds of sale shall be applied in or towards satisfaction of every such lien and of all expenses and charges incurred by the Company in doing so.

5. **Provision of Berthing Services**

- 5.1 The Company shall provide facilities for the Vessel to be moored alongside the Berth. Allocation of the Berth is dependent on availability as determined by the Company.
- 5.2 The Berth is to be used only for the berthing of the Vessel and while at the Berth lay-by, cargo handling, repair or refurbishment activities (the "Activities") to the Vessel may be carried out. The Vessel shall not be permitted to be used other than in connection with the Activities.
- 5.3 If required to do so by the Company at any time and from time to time, the Vessel will be relocated to such other position within the Dock as the Company shall determine.
- 5.4 While the Vessel is at the Berth, the Customer will have the following additional rights:
- 5.4.1 the right for all reasonable purposes connected with the Vessel but not for any other purposes of access to the Berth from the landward side along such routes as the Company may specify from time to time provided that the exercise of this right shall be subject to the condition that the Customer will not interfere with other activities at the Dock or access to the Dock by others;
- 5.4.2 the right to the free and uninterrupted passage and running of water, drainage, electricity, telephone and other utilities required by the vessel or its users only from the landward side, provided such services have previously been ordered in writing by the Vessel's Master.
- 5.5 The Company gives no representation or warranty as to:
- 5.5.1 the Customer's right to moor or berth the Vessel within the Port or at the Berth including, without limitation, as to whether such mooring or berthing shall cause any disturbance or nuisance in relation to the bed of the port or shall result in any unlawful impediment to the public right of free navigation in the Port;

5.5.2 the safety or suitability of the Port or the Berth, in either case as a location for the mooring or berthing of the Vessel or for any use to which the Customer intends to put the Vessel or the safety or suitability of the mooring scheme for the Vessel which the Customer employs.

## 6. **The Customer's obligations in respect of the Berthing Services**

6.1 The Customer shall ensure that at all times while within the Port the Vessel shall:

6.1.1 when berthed or lying at the Berth be properly, safely and effectively moored for all prevailing tidal and meteorological conditions;

6.1.2 be provided with a sufficient number of fenders adequate for the size of the Vessel and, when berthed or lying at the Berth be fended off from the Berth so as to prevent damage to any property and other vessels;

6.1.3 provide a safe means of access to and from the Vessel to the Berth for personnel, ships stores and equipment when undertaking the Activities;

6.1.4 comply fully with any safe systems of work or local working practices;

6.1.5 be properly crewed at all times, to regularly tend her moorings, to provide her own motive power, and to safely navigate from the Berth if required to do so by the Company or the Port's Harbourmaster;

6.1.6 be and remain fully insured against all usual marine and third party risks and will provide the Company with evidence of such insurance if requested to do so.

6.2 The Customer will not do or permit or suffer to be done any act or omission that could cause damage or deterioration to any of the Company's property and in particular the Customer will not stop up or obstruct in any way or permit oil, grease or other noxious or deleterious matter or substance to enter any service media serving the Vessel. The Customer will employ such plant for treating any noxious or deleterious effluent before permitting it to enter any drains, sewers and watercourses in accordance with best modern practice. If any such obstruction or injury is caused to the drains, sewers or watercourses the Customer will make good all damage to the suppliers' reasonable satisfaction.

6.3 The Customer will not carry out or do on the Vessel any act or trade in consequence of which the Company would or might be prevented from insuring any other property which the Company own at the ordinary rate of premium or whereby any insurance effected in respect of such property would be or might be vitiated or prejudiced and the Customer will not do anything whereby any additional premium may become payable for such insurance.

6.4 The Customer will not do or permit or suffer to be done anything on the Vessel which may be or become a nuisance, annoyance, disturbance or cause damage or inconvenience to the Company or other occupiers of adjoining or nearby premises.

- 6.5 The Customer will not bring onto the Vessel or place, keep, handle or store on the Vessel any Dangerous Goods.
- 6.6 The Customer will not cause, permit or suffer to be done any act or omission whereby any land, air, water or service media may be subjected to pollution. In this paragraph "pollution" includes release of substances that are capable of causing harm to man or any living organism or to any building or other structure, including sewage.
- 6.7 The Customer accepts liability for and will keep the Company, its employees, agents and duly authorised representatives, fully and effectually, indemnified and held harmless from and against all actions, proceedings, costs, expenses, loss and damage whatsoever arising out of or in connection with the Contract and the carrying out of the Activities and, in particular, the Customer's use of the Port and the Berth and the access to it and the actions or omissions of any visitor to the Vessel except where the same shall be proven only to arise from the Company's negligence or wilful misconduct, or that of the Company's employees, agents or duly authorised representatives, in which event the Company shall be solely responsible. In this paragraph, the expression "costs, expenses, loss and damage" shall be given the widest interpretation lawfully possible.
- 6.8 The Customer shall ensure at its own expense that the Vessel and the mooring scheme for the Vessel which the Customer chooses to employ and all of the Customer's Activities carried on within the Port and/or under or in connection with the Contract strictly comply with all applicable statutes, statutory instruments, regulations, safety standards and codes of practice in force from time to time including, without limitation, the terms of the Southampton Harbour Bye-laws 1988 and all relevant Merchant Shipping Regulations.
- 6.9 During any period in which there is any ambiguity or conflict between the provisions of the Contract and the provision of any regulations, directions terms and conditions and bye-laws of the nature referred to in clause 6.8 above, the provisions of the Contract shall prevail between the Customer and the Company.

## **7. The Company's liability in respect of the Berthing Services**

- 7.1 The Company shall not be liable under or in connection with the Contract whether in contract, tort or otherwise, except that the Company shall accept liability for:
- 7.1.1 death or personal injury resulting from the Company's negligence or that of the Company's employees, agents or duly authorised representatives; and
- 7.1.2 subject to clause 7.2, loss or damage suffered by the Customer under or in connection with the Contract where the Customer can prove that such loss or damage was caused by the Company's negligence or wilful misconduct or that of the Company's employees, agents or duly authorised representatives.
- 7.2 Notwithstanding clause 7.1, the Company shall not be liable for any indirect or consequential loss or damage suffered by the Customer, or for any loss or damage, direct or indirect, howsoever caused and whether or not caused or

contributed to by the Company's negligence or wilful misconduct or that of the Company's employees, agents or duly authorised representatives arising out of the Vessel resting on, or coming into contact with or disturbing or causing nuisance to the bed of the Port or impeding unlawfully the public right of navigation in the Port.

- 7.3 The Company's liability for any claim that the Customer may have against the Company under or pursuant to the Contract shall not exceed such amount as is equal to the aggregate sums received from the Customer under the Contract.

## **8. Provision of the Stevedoring Services**

- 8.1 The Company shall provide such cargo handling and/or stevedoring services and in such a manner as the Company in its reasonable discretion considers appropriate and expedient for each particular vessel or for each particular consignment of cargo unless prior written agreement to the contrary is obtained.

## **9. The parties' obligations in respect of the Stevedoring Services**

- 9.1 Where in the sole opinion of the Company the cargo handling and/or Stevedoring Services to be performed in accordance with clause 8 are rendered unusually complicated or exceptionally difficult by the nature of the cargo and/or the Vessel and/or storage conditions and/or any other factor whatsoever the Company may in its absolute discretion elect to perform or provide or continue to perform or provide the Services to the Customer in a particular manner specifying by notice in writing to the Customer the manner in which such services are to be undertaken and such notice shall constitute an agreement on the part of the Customer to indemnify the Company against all liabilities in respect of any loss or damage whatsoever, howsoever caused, to the cargo and or the Vessel and or any structure or equipment used pursuant to clause 9.3 hereof including any claim for loss of use or loss of a particular market and the Customer shall also indemnify the Company against all proceedings, claims and expenses arising out of or consequent on any such election by the Company under this paragraph including all proceedings, claims and expenses relating to the handling of cargo on the quay side or elsewhere.

- 9.2 In executing the cargo handling and/or Stevedoring Services, the Company may:

9.2.1 use such plant and equipment as it sees fit;

9.2.2 in the case of inaccurate or insufficient information as to the nature of the cargo handling and/or Stevedoring Services required or as to the nature of the goods the subject of such services being given to the Company by any person, where in the reasonable belief of the Company prejudice might be caused to the safety of operations and personnel, decline to perform or provide or to continue to perform or provide all or any cargo handling and or Stevedoring Services and no liability shall be attached to the Company in consequence of such non-commencement and or cessation of services.

- 9.3 The Customer shall make every effort to facilitate the operations of the Company, whether by permitting the Company to use all or any structure or items of equipment owned or used by the Customer whether on the Vessel or

elsewhere and by the supply of full power and or lighting therefore where appropriate at all times without charge and no responsibility shall attach to the Company for any accident howsoever arising out of or caused by or contributed to by any defect in the structure or equipment hereby supplied and the Customer shall indemnify the Company against any claims in relation to any such accidents.

## **10. The Parties' liabilities in respect of Stevedoring Services**

- 10.1 The Customer warrants the accuracy of all descriptions, values, rights and other particulars relating to the cargoes the subject of the cargo handling and/or Stevedoring Services to be provided in accordance with clause 8 and shall indemnify the Company against all expenses, loss, damages, costs, fines and pecuniary or other penalties incurred by the company or its servants or agents as a result of any inaccuracy or omission in such particulars.
- 10.2 Goods the property of or otherwise handled to the order of the Customer are not insured by the Company against any peril and are handled by the Company entirely at the Customer's own risk otherwise then appears herein.
- 10.3 Save insofar as the Company reserves the right to rely on any relevant contractual terms of carriage by virtue of its relationship as servant of the sea carrier the Company is only responsible for any loss of or damage to goods or for any non-delivery, mis-delivery or delay or for any non-compliance with instructions if the same has arisen due to the act, neglect or default of the Company, its employees or agents. Provided always that the liability of the Company shall in no case exceed a total of £100 per tonne weight of that part of the goods in respect of which a claim arises.
- 10.4 The Company shall not be liable for any indirect or consequential damages whatsoever, howsoever or wheresoever caused.
- 10.5 The Company shall not be liable for any claim unless it has been notified in writing to the Company by the Customer within 14 days of the Goods being delivered by the Company.
- 10.6 The Company shall not be liable for any loss or damage to the extent that the same is caused or contributed to by a breach of any of Customer's warranties contained herein (or by any of the circumstances by virtue of which the Company is relieved of its contractual obligations in accordance with condition 16 herein).
- 10.7 The benefit of these conditions shall extend to all the employees from time to time of the Company, who shall each be entitled to every right, defence and exemption or limitation of liability to which the Company is entitled hereunder.

## **11. Provision of Storage Services**

- 11.1 The Company shall provide facilities to the Customer for the storage of the Goods at the Dock.
- 11.2 The facilities provided by the Company in accordance with clause 11.1 shall not extend to Dangerous Goods, which may not be stored by the Customer in any part of the Dock.



- 11.3 The Company may require the removal of the Goods or any part thereof, forthwith, if in the Company's sole opinion:
- 11.3.1 the storage of the Goods poses a risk to the health and safety of the Company, its servants or any third party or to the Company's property or any third party property;
  - 11.3.2 the continued storage of the Goods will result in the Goods perishing or otherwise deteriorating and/or will cause damage to other goods or property;
  - 11.3.3 the Goods become Dangerous Goods.
- 11.4 If the Goods or any part thereof are not removed after notice given by the Company to the Customer in accordance with clauses 11.3 and 14 hereof, then the Company may, at its absolute discretion, sell the Goods after a period of 14 days after notice is given by the Company of its intention to sell the Goods or part thereof.

**12. The Customer's obligations in respect of the Storage Services**

- 12.1 The Customer warrants that he is either the owner of the Goods or is authorised by such owner to enter into the Contract on such owner's behalf.
- 12.2 The Customer also warrants that the Goods are as described to the Company with regard to their nature, weight, quantity, condition and dimensions.
- 12.3 The Customer shall give the Company not less than 24 hours' notice of its intention to deliver or remove Goods at the premises of the Company.
- 12.4 The Customer shall indemnify the Company against:
- 12.4.1 all liabilities and costs incurred by the Company (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the place of storage and to other Goods stored) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of Goods.
  - 12.4.2 all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the storage of Dangerous Goods and claims made upon the Company by HM Customs and Excise in respect of dutiable Goods consigned in bond) in excess of the liability of the Company under the Contract in respect of any loss or damage whatsoever to, or in connection with, the Goods whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Company, its servants, agents or subcontractors.

**13. The Company's liability in respect of the Storage Services**

- 13.1 Notwithstanding clause 13.2 the Company shall not be liable for any loss of or damage to the Goods however or whenever caused unless caused directly by the act or omission of the Company, its servants, agents or sub-contractors.
- 13.2 The Company shall be liable for physical loss of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones only if:
- 13.2.1 the Company has specifically agreed in writing to store any such articles; and
  - 13.2.2 the Customer has agreed in writing to reimburse the Company in respect of all additional costs which result from the storage of the said items; and
  - 13.2.3 the loss or damage is occasioned during storage and is proved to be due to the negligence of the Company, its servants, agents or sub-contractors.
- 13.3 The Company shall not in any circumstances be liable for loss of or damage to Goods arising after storage of such Goods has ended, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Company, its servants, agents or sub-contractors.
- 13.4 Except as otherwise provided in these conditions, the liability of the Company in respect of claims for physical loss, mis-delivery of or damage to Goods, howsoever arising, shall in all circumstances, be limited to the lesser of:
- 13.4.1 a sum calculated at the rate of £100 Sterling per tonne on the gross weight of the Goods, actually lost, mis-delivered or damaged; or
  - 13.4.2 an amount equal to the aggregate sums received from the Customer by the Company under the Contract.
- 13.5 The Company shall not be liable for any indirect or consequential losses whatsoever, howsoever or wheresoever caused.
- 13.6 The Company shall not be liable for any claim unless it has been notified in writing to the Company by the Customer within 14 days of the cause of the claim coming to the Customer's knowledge or of the Goods being collected by the Customer whichever is later.

#### 14. **Termination**

- 14.1 The Contract shall terminate on expiry of the Term.
- 14.2 Notwithstanding clause 14.1, the Company may terminate the Contract forthwith by sending notice in writing to the Customer if:
- 14.2.1 the Customer commits a breach of its obligations under the Contract;
  - 14.2.2 the Customer does not pay the Price or any other monies due under clause 3 in accordance with the provisions of that clause;

- 14.2.3 an encumbrancer takes possession or an administration receiver or receiver is appointed of the whole or any part of the undertaking or property of the Customer;
  - 14.2.4 the Vessel or any other property of the Customer is seized, arrested or distrained upon by any creditor;
  - 14.2.5 the Customer ceases to pay its debts or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or becomes the subject of any petition, order or other proceedings under that Act or any analogous provision of the law of any other jurisdiction to which the Customer is subject;
  - 14.2.6 the Customer disposes of the whole or any substantial part of its undertaking or assets or ceases or threatens to cease to carry on all or any substantial part of its business.
- 14.3 Either Party may terminate the Contract upon sending thirty working days' notice in writing to the other.

**15. Effect of termination**

- 15.1 Any termination of the Contract howsoever caused shall be without prejudice to any of the Customers or the Company's respective rights and liabilities which have accrued on or before the date of termination, but subject to clause 15.2 below neither the Customer nor the Company shall have rights to require performance of or liabilities to perform the Contract after such date.
- 15.2 Upon the termination of the Contract for any reason:
- 15.2.1 all fees and charges accrued (but unpaid) pursuant to the Contract shall forthwith become due and payable; and
  - 15.2.2 the Customer shall forthwith remove the Vessel from the Berth and any other property from the Dock.

**16. Force Majeure**

- 16.1 If the Company shall be unable to perform any of its obligations under the Contract by reason of fire, explosion, riot, wild cat action, industrial disputes, malicious damage, theft, storm, flood or any other act or omission or state of affairs beyond the control of the Company, the Company shall be relieved of its obligations incurred under the Contract whether and to the extent that the fulfilment of the such obligations is prevented, frustrated, impeded or delayed as a consequence of any such event.

**17. Ancillary provisions**

- 17.1 No delay or failure by either the Customer or the Company to exercise any of the Customer's or the Company's respective powers, rights or remedies under the Contract shall operate as a waiver of them, nor shall any single or partial exercise of such powers, rights or remedies preclude any other or further exercise of them. The remedies provided in the Contract are cumulative and not exclusive of any provided by law.

- 17.2 The Customer shall not assign, encumber, dispose of or otherwise transfer any of the Customer's rights under the Contract without prior written consent, which the Company shall be fully entitled to withhold.
- 17.3 If any part of the Contract is found by a court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Contract which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 17.4 All Contracts between the Company and the Customer shall be construed in accordance with and governed by the Laws of England and the parties hereby submit to the exclusive jurisdiction of the English Court.