



PORT OF WORKINGTON

TERMS AND CONDITIONS

DATED

1ST JUNE 2016

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INDEX TO CLAUSES

<u>Clause</u> <u>No</u>	<u>Title</u>	<u>Page</u> <u>No.</u>
1.	Interpretation	3 & 4
2.	Port Services	4
3.	Notice of Agreement	4
4.	Extent	4 & 5
5.	Force Majeure	5
6.	Restricted Areas	5
7.	Dredging and Maintenance Dock of Gates	5
8.	Pollution and Waste Material	6
9.	Limitation of Liability	6 & 7
10.	Notice of Damage or Loss	7 & 8
11.	Indemnity	8
12.	Lien on Goods and Vessels	8 & 9
13.	Protection of Port Authority's Employees and Agents	9
14.	Relationship to Special Agreements	9
15.	Law and Jurisdiction	9 & 10
16.	General Clauses	10
17.	Notices under the Terms and Conditions	10 & 11
18.	Charges & Tariff Rates	11 & 12
19.	Insurance	12

PARTICULAR REFERENCE IS MADE TO THE LIMITATION CLAUSE (CLAUSE 9), WHICH MAY AFFECT YOUR LEGAL RIGHTS.

LIST OF SCHEDULES

Schedule 1 – Use of Berth & Cargo Handling Services.

Schedule 2 – Warehousing & Cargo Storage.

Schedule 3 – Plant/Crane Hire – Contract Lifting Services

Schedule 4 – Pilotage.

Schedule 5 – Towage and Boatmen.

Schedule 6 – Fishing and Leisure Craft.

Schedule 7 – Drivers and Visitors to the Port.

Safe System of Work - Pedestrians on the Port Estate.

Safe Systems of Work – Road Vehicles on the Port Estate.

PORT OF WORKINGTON TERMS AND CONDITIONS

1. Interpretation

1.1. In these conditions: -

- 1.1.1. "Berth" means any berth operated by the Port Authority in the Port Area and shall include any quay, transit shed or other area situate thereat.
- 1.1.2. "Byelaws" shall mean the General Byelaws applicable to the Port of Workington at the relevant time and more particularly the "General Byelaws 2000" or such General Byelaws enacted to replace them.
- 1.1.3. "Cargo Handling Services" means any operation or service performed or provided by the Port Authority in connection with the receiving or delivering of goods or the loading or discharging of goods into or from a vessel, wagon or rail truck, the storage of such goods whether in a warehouse or otherwise and any other similar type services.
- 1.1.4. "Cargo Owner" means the owner of any goods and any bailor, bailee consignor shipper consignee or other respective agents in relation thereto (but shall not include the Port Authority).
- 1.1.5. "Charges" includes charges of every description for the time being payable to the Port Authority in respect of cargo handling services.
- 1.1.6. "Container" means any container that complies with ISO standards, including by way of example only reefer and tank containers, flats and platforms.
- 1.1.7. "Contract Lifting Services" means the supply of a supervised lifting service including planning and execution of the lifting operation in accordance with the relevant Regulations and Codes of Practice.
- 1.1.8. "The Dock Estate" means the docks, quays, berths, stages, jetties, bridges and all works, lands and property of every description whatsoever and the buildings, structures and erections thereon for the time being vested in or occupied by the Port Authority.
- 1.1.9. "Harbour Board" means the Workington Harbour Board as appointed by the Port Authority.
- 1.1.10. "Harbour Master" means the Marine Operations Manager or other Officer appointed by the Port Authority to act as Harbour Master as defined by the Workington Harbour Act 1974 or any modification or re-enactment thereof.
- 1.1.11. "Port Area/Port" means the Port of Workington as defined in the Workington Harbour and Dock (Transfer) Act 1957 or any modification or re-enactment thereof.
- 1.1.12. "Port Authority" means Cumbria County Council or other authority appointed by the Workington Harbour Act 1974 or any modification or re-enactment thereof.
- 1.1.13. "Port Manager" means the Officer appointed by the Port Authority to act as Harbour Manager as defined by the Workington Harbour Act 1974 or any modification or re-enactment thereof.
- 1.1.14. "Port User" means any Cargo Owner, Ship owner or other person using the Port for any purpose whatsoever.
- 1.1.15. "Port Warehouse" means any building or other storage area as designated by the Port Authority as a Warehouse.
- 1.1.16. "Ro/Ro traffic" means any trailers, chassis, wheeled units, vehicles or any other towable or drivable units to be handled by a Ro/Ro operation including block stowed containers and neo-bulk cargo which are so loaded or discharged.
- 1.1.17. "SDR" shall mean Special Drawing Rights.

- 1.1.18. “Ship owner” means the owner of any vessel to which these Terms and Conditions relate and any part owner, Charterer or master or other person in charge of the vessel, disponent owner, consignee or mortgagee in possession.
- 1.1.19. “Statutory Port Area” means the area defined in the Workington Harbour and Dock (Transfer) Act 1957 or any modification or re-enactment thereof.
- 1.1.20. “Tariff Rates” shall mean the charges and tariffs of the Port Authority for the time being in respect of the provision of services.
- 1.2. Words importing the singular shall include the plural and vice versa unless the context otherwise requires. The headings for clauses are for ease of reference only and shall not affect the construction hereof. Reference herein to any statutory provision includes reference to any consolidation, re-enactment or modification thereof. Reference to clauses or schedules are references to the clauses and schedules of these Terms and Conditions unless otherwise stated.

2. Port Services

- 2.1. The Port Authority shall provide upon these Terms and Conditions:
- 2.1.1. the use in common with vessels in other ownerships of a Berth together with Cargo Handling Services and which shall also be subject to the additional Terms and Conditions set out in **Schedule 1**; and/or
- 2.1.2. warehousing and which shall also be subject to the additional Terms and Conditions set out in **Schedule 2**; and/or
- 2.1.3. Plant/Crane Hire – Contract Lifting Services and which shall also be subject to the additional Terms and Conditions set out in **Schedule 3**; and/or
- 2.1.4. pilotage and which shall also be subject to the additional Terms and Conditions set out in **Schedule 4**; and/or
- 2.1.5. towage and boatman services and which shall also be **subject to** the additional Terms and Conditions set out in **Schedule 5**; and/or
- 2.1.6. services and facilities for Fishing and Leisure craft and which shall also be subject to the additional Terms and Conditions set out in **Schedule 6**; and/or
- 2.1.7. other similar or specified services.
- 2.2. All services performed or provided by the Port Authority are performed and provided subject to:
- 2.2.1. these Terms and Conditions: and
- 2.2.2. such Statutes, Byelaws, Regulations and Directions of the Port Authority as may be in force from time to time; and
- 2.2.3. the Merchant Shipping (Liability of Ship owners and Others) Act 1990, as amended by the Merchant Shipping Act 1979 and its schedules;
- 2.2.4. the Port Security Regulations 2009; and
- 2.2.5. the Pilotage Act 1987 and in particular section 22 of that Act, as from time to time amended

3. Notice of Agreement

- 3.1. Prior agreement and/or use of a Berth and/or Cargo Handling Services and/or other Port services by a Port User shall be deemed to constitute notice of and agreement to these Terms.
- 3.2. In the case of cargo, the Port User warrants that they are the Owners of the goods or that they have the authority to accept these Terms and Conditions on behalf of the Owner of the Goods.

4. Extent

- 4.1. These Terms and Conditions shall be applicable during such time that:
- 4.1.1. A vessel enters into the Statutory Port Area; and/or
- 4.1.2. A Port User or any other person enters into the Statutory Port Area; and/or

- 4.1.3. A Berth is being used by a vessel for
 - 4.1.3.1. The loading or discharging of goods; or
 - 4.1.3.2. The loading or discharging of ship's stores or bunkers; or
 - 4.1.3.3. Mooring or laying up
- 4.1.4. A vessel is anchored or moored within the Statutory Port Area
- 4.1.5. At any time a Port Warehouse or other storage area at the Port is being used for the receiving or delivering, loading or discharging, or storage of goods.

5. Force Majeure

The Port Authority shall not be liable for any failure to perform or provide services or for any loss and/or damage arising or resulting from Act of God; Casualty (including fire or explosion) unless caused by the negligence of the Port Authority, its servants or agents; damage; breakdown; any consequence of war or hostilities (whether war be declared or not); riots, civil commotions or invasions; industrial disputes or actions of any nature; storm, flood, earthquake, subsidence, epidemic or other natural physical disaster; act of any Government or any other cause or event which could not be avoided and the consequence whereof could not be prevented by the exercise of reasonable care by the Port Authority.

6. Restricted Areas

- 6.1. The Port Authority shall be entitled to implement all directions and requirements concerning security measures in relation to any areas designated as a Restricted Area ("RA"), Restricted Zone ("RZ") or Controlled Zone ("CZ") set up, in connection with the handling of vessels at the Port, pursuant to (i) EU Regulation – (EC) No. 725/2004 on Enhancing Ship and Port Facility Security, (ii) the International Ships and Port Facility Security Code (iii) the Aviation and Maritime Security Act 1990 or (iv) the Merchant Shipping and Maritime Security Act 1997 or (v) the Port Security Regulations 2009.
- 6.2. All persons including Port Users shall comply with the requirements of the security regulations referred to in Clause 6.1 for the proper operation and security of any such RA/RZ/CZ together with all proper instructions given by the Port Authority in relation to the operation and security of any RA/RZ/CZ comprising part or all of the Port.
- 6.3. Port Users shall comply in every respect with all UK and EU Regulations and any instructions or directions issued by the Transport Security Compliance Division relating to the said regulations, and in particular Port Users shall at all times comply fully with the Port Authority's Security Plan and any other such Plan approved from time to time by the Transport Security Compliance Division relating to the Port or any other property adjacent thereto.
- 6.4. Port Users shall be responsible at their own expense for agreeing with the Transport Security Compliance Division for implementing and maintaining, in accordance with the International Ships and Port Facility Security Code, a Port Facility Security Plan in respect of any premises leased by them from the Port Authority.
- 6.5. Should the Port Authority be obliged to carry out any searches of persons or property in order to comply with directions issued by the Transport Security Compliance Division, the Port Authority shall not be responsible for any losses or damage arising from compliance with the directions. Furthermore, should the Port Authority incur any expenses as a result of carrying out the searches, they shall be entitled to a full indemnity from the Port User.

7. Dredging and Maintenance of Dock Gates.

- 7.1. The Port Authority shall in accordance with its statutory authority arrange for third parties to carry out dredging services at the Port of Workington including the Prince of Wales Dock. The Port Authority shall have no liability in respect of dredging carried out under its statutory authority or at all and any liability for dredging shall be subject to these Terms and Conditions in any event.

- 7.2. The Port Authority shall provide Port Users upon request with information relating to the draft of the channel and the Prince of Wales Dock taking into account knowledge of prevailing conditions and implementation of safe berthing procedures as laid down in the current edition of the Port of Workington Marine Operations Safety Management System. The Port Authority shall have no liability in respect of any information given or at all and any liability for any information given shall be subject to these Terms and Conditions in any event.
- 7.3. Port Users shall provide the Port Authority with accurate information relating to the draught and trim of vessels entering the Port. In the event that any vessel does run aground or cause damage the Port User shall indemnify the Port Authority for all losses arising including any economic loss suffered by the Port Authority.
- 7.4. The Port Authority shall use best endeavours to ensure that the Dock Gates to the Prince of Wales Dock are properly maintained. The Port Authority shall not be liable for any losses or damages (including economic loss) arising from any problems occurring with the Dock Gates of whatsoever nature including inter alia:
- 7.4.1. Damage to vessels arising from the level of water in the Prince of Wales Dock falling; and
- 7.4.2. Vessels being unable to move into or out of the Prince of Wales Dock.
- 7.5. In the event that it is necessary to close or restrict access to the Prince of Wales Dock for any period to enable repairs or maintenance to the Dock Gates, the Port Authority shall provide reasonable notice.
8. **Pollution and Waste material**
- 8.1. Port Users shall take all reasonable steps to ensure that no substance material article or other deposit shall enter or be deposited either ashore or in the water within the Port except as may be permitted by the appropriate regulatory bodies and the Port Authority.
- 8.2. Any costs, including fines or other costs (including legal costs), incurred by the Port Authority in respect of such deposit or the cleaning-up of any such substance material article or other deposit shall be reimbursed by the Port User to the Port Authority on demand upon a full indemnity basis including all costs and expenses incurred by the Port Authority.
- 8.3. Vessels using the Port should inform the Port Authority 24 hours before arrival of any waste they intend to land. Any waste shall only be landed provided that the vessel fully complies with all relevant legislation for the landing and disposal of waste material and with the permission of the Port Authority.
9. **Limitation of Liability**
- 9.1. The Port Authority shall not be responsible for any loss or damage whatsoever of or to any vessel, vehicle, cargo or any other property of a Port User howsoever caused or arising unless caused by neglect or wilful act or default of the Port Authority, and in particular the Port Authority shall not be liable for indirect or consequential damage including any claims for economic loss including but not limited to loss of use or profits or the loss of a particular market.
- 9.2. If and to the extent that loss or damage is directly caused by neglect or wilful act or default of the Port Authority, its employees (acting in furtherance of their duties as employees) or sub-contractors (acting in furtherance of their duties as sub-contractors), the Port Authority will accept liability for loss or damage up to the limits fixed in the sub-clauses below.
- 9.3. The Port Authority shall only be liable under these Terms and Conditions for physical loss of or damage to vessel, vehicle, cargo or any other property of a Port User and such liability will only apply to physical loss or damage to the extent that such loss or damage exceeds £250 per occurrence or incident and is limited to occurrences proved to be caused solely by the negligence of the Port Authority or its employees acting in the course of their employment during the performance or provision of cargo handling services provided that:-

- 9.3.1. The Port Authority's liability in respect of physical loss of or damage to any vessel, vehicle, cargo or any other property of a Port User shall not exceed £5,000 per occurrence; and
- 9.3.2. The Port Authority's liability in respect of physical loss, mis-delivery or damage to cargo shall not exceed a maximum amount of
- 9.3.2.1. the value of the goods actually lost, mis-delivered or damaged; or
 - 9.3.2.2. the cost of repairing any damage or reconditioning the goods; or
 - 9.3.2.3. 2 SDR's per kilo of gross weight of the goods lost or damaged.
- 9.3.3. If the Port Authority is liable to the Ship owner for any loss or damage to the Vessel in accordance with the above sub-clauses, the Port Authority shall be also entitled to limit its liability in accordance with the provisions of the Merchant Shipping (Liability of Ship owners & Others) Act 1990, as amended.
- 9.3.4. In its capacity as Pilotage Authority, the Port Authority is only liable for any loss or damage to any Vessel to the extent and within the limits provided by the Pilotage Act 1987, as from time to time amended.
- 9.4. In relation to goods received for delivery or otherwise handled by the Port Authority, the Port Authority shall not be liable to the Port User as bailee of the goods for (i) any misdelivery due to misleading or faint markings or absence of markings or (ii) any loss or damage arising from defects in the goods or the packaging thereof.
- 9.5. For the avoidance of doubt it is hereby declared that the Port Authority's liability in respect of any physical loss or damage whether in contract or in tort shall not extend outside the minimum and maximum limits specified in the above sub clauses and that the Port User will indemnify the Port Authority against all proceedings and claims howsoever arising and by whomsoever brought in respect of the liabilities as mentioned under this Clause so far as the amounts so claimed are outside the exclusions or limits prescribed above.
- 9.6. Notwithstanding the above, the Port Authority shall have the right in any circumstances to elect or to rely on (in the alternative) any relevant statutory provisions providing for limitation or exclusion of liability.
- 9.7. Should the Port User require an increase in the limitation figures herein they must serve notice in writing on the Port Authority at least 7 days before the date ("the Date") on which the increased Limit is required to be operative. The notice shall state the increased Limit and the nature and maximum value of the Goods, including duty and taxes. The increased Limit shall apply in respect of any cause of action arising after the Date. The Port Authority shall accept such increase subject to payment by the Port User within 7 days of invoice of the Port Authority's costs in insuring against its increased liability under the increased Limit.
- 9.8. Without prejudice to the Port Authority's rights under these Terms and Conditions to be paid free from deductions, any limitation of liability on the part of the Port Authority shall be applied to any claim by the Port User before any set off or counterclaim is asserted against money due to the Port Authority.
- 10. Notice of Damage or Loss**
- 10.1. The Port Authority shall be freed and discharged from all liability
- 10.1.1. in respect of any physical loss or damage to any vessel or goods or equipment or any other matter or thing unless Notice of a claim in respect of such loss or damage be made in writing to the Port Authority within 48 hours of the occurrence causing such loss or damage or from which such loss or damage arose and/or within 48hours of such loss or damage coming to the knowledge of the Port User; and /or prior to the vessel leaving the Port (if this is the earlier) so as to enable the Port Authority to forthwith commence investigations into the alleged loss or damage.

- 10.1.2. in respect of any physical loss or damage to any vessel or goods or equipment or any other matter or thing unless full details of the said loss or damage shall be submitted in writing together with all supporting vouchers and survey reports to the Port Authority within 3 months after the said occurrence.
- 10.1.3. In the case of alleged damage to a vessel arising from contact with a quay wall and/or the bottom of the harbour or any other area within the Port Area unless written Notice shall be given within 24 hours of the event or prior to leaving Port (whichever is the earlier) so as to enable the Port Authority to forthwith commence investigations into the alleged loss or damage.
- 10.1.4. In the case of latent physical loss or damage to goods unless notice of such loss or damage and the particular nature thereof has been given to the Port Authority immediately after the Port User has been notified of or become aware of or should reasonably have become aware of such loss or damage but in any event not later than 28 days after the loading or discharging of the goods by the Port Authority or 14 days after delivery of the goods to final consignee whichever shall be the earlier.
- 10.2. The Port Authority shall in any event be freed and discharged from all liability for any loss or damage to any vessel, goods or equipment or any other matter or thing unless arbitration proceedings are commenced within nine months of the said occurrence. In the case of loss of or damage to any vessel or any other property of the Ship owner, the Ship owner shall grant full and reasonable facilities to the Port Authority to survey all such loss or damage.
- 10.3. For avoidance of doubt, nothing in the sub-clauses above shall apply in respect of any claims or counterclaims made by the Port Authority against a Port User or any other person.

11. Indemnity

- 11.1. The Port User shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever arising from the use of or the presence in the Port including the Dock Estate and its facilities and will indemnify the Port Authority against all proceedings and claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any act, neglect or default of inter alia the master of the vessel or Port User their respective contractors, agents or servants (other than the Port Authority), its servants and agents) or of any inherent quality or defect of any goods on the Dock Estate or on the vessel.
- 11.2. The Port User shall pay to the Port Authority full compensation for all damage done to or suffered by the Dock Estate and other property of the Port Authority and arising as aforesaid and shall fully indemnify the Port Authority for all expenses and legal costs.
- 11.3. The Port User shall be responsible for insuring the goods for any damage which they may sustain within the Port Area.
- 11.4. All vehicles entering the Port Area do so entirely at the risk of the owner of the vehicle. Any deterioration or damage to the bodywork (including canvas and other recovering materials) or tyres of vehicles will be presumed to have been caused by normal wear and tear and the Port Authority will not be responsible for it except upon proof that it was occasioned whilst in the custody of and by the neglect or default of the Port Authority or its employees.

12. Lien on Goods and Vessels

- 12.1. The Port Authority shall be entitled to refuse to allow cargo discharged at or stored at the Port to be removed from the Port until: -
- 12.1.1. All charges claimed by the Port Authority against the Port User and/or the owner of the cargo for Cargo Handling Services or other Port Services or in relation to any other claims by the Port

Authority of whatsoever nature whether in relation to that cargo (whenever performed) or to any other charges owed by the Port User have been paid or secured to the satisfaction of the Port Authority, and/or

12.1.2. Security to the satisfaction of the Port Authority has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Port User (whether or not such claims arise in relation to that cargo or any other charges owed by the Port User).

12.2. The Port Authority shall be entitled to refuse to allow a vessel to leave the Port until: -

12.2.1. All charges claimed by the Port Authority for Cargo Handling Services or other Port Services or in relation to any other claims by the Port Authority of whatsoever nature whether in relation to that vessel (whenever performed) or to other vessels of the Ship owner have been paid or secured to the satisfaction of the Port Authority, and/or

12.2.2. Security to the satisfaction of the Port Authority has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Ship owner (whether or not such claims arise in relation to that or another vessel).

12.3. Should the Port Authority be caused to exercise its rights under this lien clause, it shall be entitled to a full indemnity for the continuing Port Charge incurred in doing so including a full indemnity in respect of any legal expenses incurred.

13. Protection of Port Authority's Employees and Agents

13.1. The employees, independent contractors and agents of the Port Authority shall be entitled to the benefit of all provisions herein which exclude or restrict liability of any kind. The Port Authority in contracting with the Port User for provision of services does so on its own behalf and as agent for all its employees, independent contractors and agents.

13.2. The Port User and the Owner of the Goods will not take any proceedings against any employee or sub-contractor of the Port Authority for a Claim. If an employee or sub-contractor pays or is liable to make a payment to the Port User or Owner of the Goods in connection with a Claim, the Port User and the Owner of the Goods will each fully indemnify the Port Authority against any claim (including all costs and expenses) by the employee or sub-contractor against the Port Authority for reimbursement of or indemnity against that payment.

13.3. In any of the circumstances referred to Clause 13.4 below, and otherwise with the written consent of the Port User, the Port Authority shall be entitled to sub-contract all or any part of its business and in this event these Terms and Conditions shall apply to such services. The Port Authority shall be entitled to sub-contract with others for the security, cleaning, maintenance, repair and other services and works at the premises where the Goods are located.

13.4. The circumstances referred to in Clause 13.3 above are actual or anticipated storm, flood, fire, explosion, breakdown or failure of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance, requirement of a responsible Authority or any emergency reasonably requiring such action by the Port Authority.

14. Relationship to Special Agreements

14.1. These Terms and Conditions are supplemental to any special agreement (if any) made between the Port Authority and any party relating to services except insofar as is expressly excluded thereby or inconsistent therewith.

15. Law and Jurisdiction

15.1. Any disputes arising under these Terms and Conditions shall be governed by and construed in accordance with English Law and without prejudice to the provision at Clause 15.2 below to refer the matter to arbitration the Parties accept the exclusive jurisdiction of the English courts.

- 15.2. Any dispute, other than claims by the Port Authority for payment of charges and Tariff Rates, arising out of or in connection with these Terms and Conditions shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause and to the exclusion of the courts of any other country.
- 15.3. Before commencing arbitration proceedings the Port Authority and the Port User shall actively seek to resolve any disputes including the consideration of mediation.
- 15.4. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and give notice that it has done so within the 14 days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.
- 15.5. Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 15.6. In cases where neither the claim nor any counterclaim exceeds the sum of £50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- 15.7. Any claims by the Port Authority for payment of charges or Tariff Rates may at the option of the Port Authority be subject to the arbitration clause above or the jurisdiction of the English courts.

16. General Clauses

- 16.1. Any previous agreement relating to the same subject matter, whether formal or informal, shall be subject to these Terms and Conditions as from the date that these Terms and Conditions are enacted.
- 16.2. No variation of these Terms and Conditions or of any of the documents referred to in it shall be valid unless it is in writing and signed by all relevant parties.
- 16.3. If any provision of these Terms and Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions which shall remain in full force and effect.
- 16.4. If any provision of these Terms and Conditions is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 16.5. Nothing in this Agreement confers or is intended to confer any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a Party to this Agreement and the rights of any third party under the aforementioned Act are expressly excluded.

17. Notices under the Terms and Conditions

- 17.1. Each Notice, Statement of Account or other communication to be given under these Terms and Conditions shall be given in writing in English.
- 17.2. Service on the Port User shall be deemed good service if Notice in writing is given either by personal service or by fax or by post to the last known business or registered office address or to the last notified E-Mail address

17.3. Service on the Port Authority shall be by deemed good service if Notice is provided in writing to, the Port Manager, Harbour Master or the Chair of the Harbour Board at the following address:- Port of Workington, Harbour Office, Prince of Wales Dock, Workington, Cumbria, CA14 2JH, England.

17.4. In the case of a Ship owner and/or a vessel, good service may also be made by:

17.4.1. serving a written Notice upon the Master; or

17.4.2. placing the Notice aboard the vessel and leaving it in a prominent place.

17.5. If any such Notice, Statement of Account or communication is sent by first class post it shall be deemed to have been received on the second business day next following the date on which it was posted, and shall be effective notwithstanding it be returned undelivered and any notice or communication transmitted by fax or E-Mail shall be deemed to have been received on the Business Day following the date of transmission.

18. Charges and Tariff Rates

18.1. The charges and Tariff Rates for Cargo Handling Services and other Port Services are those specified from time to time by the Port Authority and are payable in full by the Port User or the Cargo Owner on demand unless otherwise agreed by the Port Authority without reduction or deferment on account of any claim, counterclaim or set off.

18.2. Port Users shall not be entitled to raise any objections to items set out in invoices raised by the Port Authority unless objections are raised in writing within 21 days of the invoice being rendered by the Port Authority.

18.3. Interest at the rate of 5 percent above the then prevailing Nat West Bank Plc Base Rate calculated on a day to day basis will be payable on the charges remaining unpaid twenty eight days after the date of the Port Authority's account. Notwithstanding the foregoing the Port Authority reserves the right to require a deposit of 80% of the estimated total charges for the Cargo Handling Services or other Port Services to be performed or provided, plus the full amount of any other charges as are payable to the Port Authority in respect of such vessel, before the commencement of such services and which deposit shall be payable on demand and failing receipt of which such services will not be commenced.

18.4. The above charges are in addition to conservancy, ships and goods dues as defined by the Harbours Act 1964, pilotage charges, boatmen charges, the environmental levy and any other statutory payment charged by the Port Authority and charges for ancillary services levied by the Port Authority.

18.5. The charges for cargo handling services specified by the Port Authority from time to time cover the provision of such of the services as are specified by the Port Authority in relation thereto where the cargo is sound general cargo under normal conditions on a normal vessel such that a reasonable rate of receiving loading discharging or delivering in relation to that particular vessel or cargo is achievable PROVIDED that where time is lost for any reason such time shall in addition be charged in accordance with the rates specified by the Port Authority from time to time or on a labour basis plus the cost of plant gear and equipment supplied whichever is the greater.

18.6. Any cargo handling services including, but without prejudice to the generality of the foregoing, the provision of all plant gear and equipment hereto shall be a Special Service, the provision of which shall be at the discretion of the Port Authority. Special Services, and any cargo handling services for which the rate is specified as "labour basis", shall be charged for in accordance with the rates of pay of the Port Authority's employees engaged thereon (including percentage uplift for reasonable overheads) plus the Port Authority's standard charges for plant gear and equipment or the charges of any hirer of plant or sub-contractor. All such charges shall, except in respect of any cargo handling services for which the rate is specified as "Labour Basis", be in addition to the rates per tonne specified by the Port Authority from time to time.

18.7. Notwithstanding the provisions above, if any Statute or Statutory Instrument shall become compulsorily applicable to the cargo handling services performed hereunder, the Port User will reimburse the Port Authority any extra cost occasioned thereby for the duration that such Statute or Statutory Instrument shall apply or until such time as the said extra costs shall be incorporated in the Port Authority's charges for such cargo handling services.

18.8. Storage Charges

18.8.1. The Port Authority reserves the right to charge Quay Rent and/or storage in respect of goods situate at the Berth, such charges being paid as and when incurred at the rates specified from time to time by the Port Authority.

18.8.2. The Port Authority reserves the right on giving 7 days prior notice to the Port User to remove goods that are on the quay or in the transit sheds at the Berth to a longer term storage area within the Dock Estate. Any costs incurred by the Port Authority in relation to or arising out of such removal and storage shall be paid by the Port User.

19. Insurance

19.1. The Port Authority does not insure the Goods and the Port User shall make arrangements to cover the Goods against all risks to the full insurable value thereof (including all duties and taxes).

SCHEDULE 1 - USE OF BERTH AND CARGO HANDLING SERVICES

1. Provision of Berth

- 1.1. The Port Authority shall provide upon these Terms and Conditions the use, in common with vessels in other ownerships, of a Berth together with cargo handling services.
- 1.2. Unless agreed otherwise, the berth shall be provided in the Prince of Wales Dock.
- 1.3. Although the Port Authority does provide stevedoring services (subject to these Terms and Conditions), the Port User may use alternative stevedoring services provided that
 - 1.3.1. The Harbour Manager gives prior consent. The consent shall not be unreasonably withheld but the Harbour Manager shall have regard to the competence and ability of the stevedoring company to carry out the cargo work in a professional and safe manner; and
 - 1.3.2. The stevedoring company produces evidence to the Harbour Manager that they have adequate Insurance Cover and which is considered to be satisfactory to the Port Authority; and
 - 1.3.3. The Port User and/or the Stevedoring Company shall indemnify the Port Authority for all claims brought either directly or indirectly against the Port Authority.
 - 1.3.4. The Port User and/or the Stevedoring Company shall prior to commencing any stevedoring or lifting operations apply to the Port Authority for a Stevedoring & Lifting Permit.

2. Vessel on Berth

- 2.1. The Port Authority shall permit a vessel once on a Berth to remain at the Berth until the completion of Cargo Handling Services in relation to that vessel, but subject to the discretion of the Port Authority in regard to its operational requirements for the Berth and to the statutory powers of the Harbour Master of ordering the movement of vessels within the Port.
- 2.2. A Ship owner may with the prior approval of the Port Authority and at agreed times load/discharge stores and bunkers whilst a vessel is on a Berth, subject to such terms and conditions as the Port Authority may from time to time specify and provided also that such loading or discharging does not interfere with the operational activities of the Port Authority.

3. Arrival of Vessel

- 3.1. The expected date and time of arrival of a vessel at the Berth ("E.T.A.") shall be given in writing by the Ship owner to the Harbour Master not later than three (3) days prior to the said date of arrival or such lesser period as may be agreed to by the Port Authority and all changes to that date shall be promptly notified by the Ship owner to the Harbour Master. Notice of the vessel's final E.T.A. at the Berth shall be given in writing to the Harbour Master between the hours 0800 to 1600 Monday – Thursday inclusive, 0800 to 1200 Friday and not later than 24 hours (excluding Bank or other National Holidays) prior to the said time of arrival.

4. Working Periods

- 4.1. Cargo handling services may be performed or provided during the following working periods (except on Christmas Day, Boxing Day, New Year's Day and Good Friday) unless otherwise notified in writing by the Port Authority:
 - 4.1.1. Shipwork (loading/discharging cargo) shall be between the following times always provided that labour is available and the maximum working period will normally be 12hours:
 - 4.1.1.1. 0700 – 2200 hours Monday to Friday inclusive (Midweek Periods)
 - 4.1.1.2. All time between 2200 hours and 0700 hours and all time at weekends and bank holidays shall be at overtime rates unless otherwise agreed.
 - 4.1.2. Other cargo handling services (including receiving/delivering cargo)
 - 4.1.2.1. 0800 – 1700 hours Monday to Friday inclusive (Midweek Periods)

4.1.2.2. All times outside these hours plus Bank Holidays shall be at overtime rates unless otherwise agreed.

4.2. Work performed at the request of a Ship owner or Cargo Owner on Bank and other National Holidays (i.e. between 0700 hours on a Bank or other National Holiday and 0700 hours the following day), will be subject to additional charges as specified by the Port Authority from time to time – subject to a minimum charge of 8 hours per gang.

5. Attendance

5.1. Where labour has been arranged by the Port Authority in reliance on the vessel's final E.T.A. given to the Port Authority pursuant to Clause 3 or in compliance with the Ship owner's request that work should commence at or finish before a particular time, and time is lost consequent on a vessel's late arrival or non arrival at the Berth or due to material delays attributable to the Ship owner or to adverse weather, then the period of working time with labour standing by may be charged for at the appropriate rates.

5.2. Time lost shall be deemed to commence at the time for which labour has been arranged and to cease when a vessel is safely secured at its intended Berth and ready to work, or, if later, on the termination of the period for which labour has been arranged; and the time lost calculated thereby shall be charged to the Ship owner at the rates specified by the Port Authority from time to time.

5.3. Time lost or work delayed due to adverse weather, or to material delays attributable to the Ship owner, his servants or agents or independent contractors (other than the Port Authority), shall also be charged to the Ship owner at the rates specified by the Port Authority from time to time; Provided always that the Ship owner shall not, in any event, be liable to pay the time lost or work delayed charged if such time lost or work delayed occurs or is solely as a result of breakdown of the Port Authority's plant or equipment, or labour disputes between the Port Authority and its employees at the Berth, unless occasioned by or resulting from the act or default of the Ship owner, or its servants, agents, independent contractors or sub-contractors or any other circumstances not being the act or default of the Port Authority. Any additional charges payable shall nonetheless remain payable notwithstanding the above proviso.

5.4. Notice of cancellation of shipwork labour previously arranged by the Port Authority in reliance on the vessel's final E.T.A. given to the Port Authority pursuant to these Terms and Conditions or in compliance with the Ship owner's request that work should commence at or finish before a particular time:

5.4.1. for any working period for which an Overtime Charge is payable – must be received by the Port Authority not later than 1200 hours on the normal working day, Monday to Friday inclusive (Bank/National Holidays excepted), next preceding the day for which such labour has been arranged.

5.4.2. for any other working period – must be received by the Port Authority not later than 24 hours before the start of the working period for which labour has been arranged.

5.5. If such notice is not duly received, then the relevant Overtime Charge and/or, at the Port Authority's discretion, charge for lost time will remain payable in full by the Ship owner.

6. Provision and Use of Gear, etc.

6.1. The Ship owner shall permit the Port Authority the full use of all lighting, cranes, gantries, winches, derricks, runners and tackle on the vessel and shall supply full power therefore and for lighting at all times without charge. The Ship owner shall provide all necessary standing and running gear, hatch and winch tents, gear and dunnage.

6.2. All the equipment and gear referred to above shall be maintained in good working order by the Ship owner and before work commences the Ship owner shall produce to the Port Authority a current

certificate of test for such equipment and gear showing the same meets the requirement of any relevant schedule statute, order or regulation then in force within the United Kingdom.

- 6.3. To the extent that the equipment and gear referred to above is not available to the Port Authority or is not maintained or certified in the manner specified above, the Port Authority shall be at liberty at its discretion and subject to availability to supply the same at the expense of the Ship owner in accordance with the Port Authority's standard rates current from time to time.
- 6.4. The Ship owner shall indemnify the Port Authority against any claim in relation to any accident howsoever arising out of or caused or contributed to by any defect in the equipment or gear referred to above.

7. Manning and Performance of Cargo Handling Services

- 7.1. Subject to these Terms and Conditions, the Port Authority shall provide if requested supervision, labour, plant and equipment as available for the discharging, loading, receiving and delivering of goods at the Berth.
- 7.2. The Port Authority may in its absolute discretion elect to commence ship working in respect of any vessel at any time and on any day, and, provided that the Port Authority has given due notice thereof to the Ship owner or Cargo Owner as appropriate, the said Ship owner or Cargo Owner shall take such steps as shall be prudent and necessary to facilitate the commencement of such ship working at the time and date specified in such notice.
- 7.3. The Port Authority shall be entitled not to commence cargo handling operations until a suitable berth, quay and, if required, transit shed and suitable plant and equipment are available and sufficient port operations, workers and other employees are available to perform cargo handling services on the vessel, the quay or in the transit shed. After the commencement of cargo handling services on a vessel or quay, they will be continued as and to the extent that plant and port operations, workers and other employees are reasonably available in all the circumstances from time to time bearing in mind the need to meet the requirements of other users of the Port. No liability shall attach to the Port Authority in consequence of its not commencing or continuing cargo handling services for the reasons specified in this Clause.
- 7.4. The Port Authority shall perform or provide such of the cargo handling services as the Port Authority in its reasonable discretion considers appropriate and expedient for each vessel and its cargo or for particular goods unless instructed to the contrary in writing by the Ship owner or the Cargo Owner.
- 7.5. The Port Authority may use such plant and equipment on cargo handling services as it considers suitable for the type of cargo being handled.
- 7.6. All stevedoring or other operations to be performed by the Port Authority shall be performed in accordance with the normal working practices of the Port Authority. The Port Authority reserves the right to alter such working practices at any time and without prior notice.
- 7.7. Without prejudice to the generality of the foregoing, when a cargo is exceptionally difficult to work due to unsoundness of the cargo, bad or collapsed stowage, damage to the cargo or the vessel or other matter creating exceptionally difficult working conditions, then the Port Authority may in its absolute discretion elect whether to perform or provide or continue to perform or provide cargo handling services and if it should so elect and inform the Ship owner for that vessel thereof then the Port Authority shall not be liable for any loss or damage whatsoever, howsoever caused (including where caused by the negligence of the Port Authority, its servants, agents or independent contractors) to the cargo or the vessel including any claim for loss of use or loss of a particular market and the said Ship owner shall indemnify the Port Authority against all proceedings, claims and expenses out of or consequent on any such election by the Port Authority including all proceedings, claims and expenses relating to the

handling of cargo on the vessel, quay or in a shed. The Port Authority by reason of its specialised knowledge, shall be the sole arbiter as to whether a cargo is exceptionally difficult to work or not.

7.8. The Port Authority shall have the right, having made an election, to subsequently reverse that election in the light of circumstances then prevailing and no liability shall attach to it thereby.

7.9. All extra costs, charges and expenses incurred by the Port Authority hereby shall be repaid by the Ship owner of the vessel on which the cargo was or was to be carried.

7.10 In relation to loose cargo:

7.10.1 Whilst the Port Authority will use its best endeavours to collect and bind at the Berth any loose pieces of loose cargo, and other goods as appropriate, according to mark and will deliver the same to consignee, the Port Authority shall not be liable for any loss or damage whatsoever arising out of or consequential on such collection and binding.

7.10.2 The Port Authority shall be under no obligation to rebind such loose goods to a greater standard than is deemed by the Port Authority to be reasonable for the safe onward transportation of such goods and in particular the Port Authority shall not be required to rebind to the same standard as the goods were in when originally bound.

8. Documentation

8.1. All manifests, shipping notes/advices, consignment notes, packing lists, documents of title and instructions and orders concerning cargo handling services must be lodged in writing with the Port Authority between 0800 – 1200 hours and 1300 hours to 1700 hours Monday to Thursday and 0800 – 1200 hours and 1300 hours to 1400 hours on Friday inclusive and not less than 24 hours (excluding Bank or other National holidays) before the relevant service is required to be or is to be performed or provided.

8.2. Any tally of goods prepared by the Port Authority in connection with the loading or discharging of any vessel or vehicle or railway wagon shall be the property of the Port Authority which shall not be under any obligation to disclose such document to any other parties as the standard of accuracy required for the Port Authority's purposes is such that they record only approximate quantities and do not need to record marks. Thus, the accuracy of any document based whether wholly or partially upon such tallies shall not be presumed by any other party unless and until such accuracy is confirmed by the Port Authority in respect of the document in question.

8.3. The Port Authority's outturn reports showing the quantity of goods delivered and damage thereto shall be deemed to be the quantity and condition of the cargo landed. Such reports shall, if required, be prepared on final delivery count from the quay, rendered within 21 days of delivery of the goods from the Berth or, if final delivery from the quay has not taken place within 6 months of the vessel from which such cargo was landed completing discharge in the Port ("the Discharge Date"), within 6 months of the Discharge Date. The Cargo Owner may request the Port Authority in writing to provide an indication of outturn for a vessel within 10 working days of such vessel completing discharge in the Port.

9. Description of Cargo

9.1. The Ship owner warrants the accuracy of all descriptions, values, weights and other particulars of any goods supplied to the Port Authority for any purpose whatsoever or marked thereon in relation to cargo handling services and shall indemnify the Port Authority against all proceeding claims, expenses and pecuniary penalties that the Port Authority may suffer or incur as a result of any inaccuracy or omission thereon.

9.2. Where cargo is not sound cargo able to be worked under normal conditions on a normal vessel or at the discretion of the Port Authority, for any other reason such that a reasonable rate of receiving, loading or discharging delivering is not achievable, and in such regard the Port Authority, by reason of

its specialised knowledge shall be the sole arbiter, then the rates per tonne specified from time to time by the Port Authority shall not be applicable but shall be substituted by the Port Authority's standard charges for labour, plant, gear and equipment and, in addition, all extra costs, charges and expenses incurred by the Port Authority hereby shall be repaid by the Ship owner of the vessel on which the cargo was or was to be consigned.

- 9.3. No goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature including but without prejudice to the generality of the foregoing those enumerated in the Maritime Dangerous Goods Code (as defined in the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997) as applicable from time to time will be handled by the Port Authority except with the consent of the Port Authority and then only in accordance with any conditions prescribed by the Port Authority and in accordance with statutory and the Port Authority's directions, regulations and byelaws governing the handling of such goods.
- 9.4. The Port Authority shall have complete discretion as to what constitutes goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature.
- 9.5. All extra costs, charges and expenses incurred by the Port Authority in handling goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated natures shall be repaid by the Ship owner of the vessel on which they were or were to be carried.
- 9.6. The Port User shall give written notice to the Port Authority of any Dangerous Goods in respect of which it wishes services to be rendered pursuant to these terms conditions and shall obtain the Port Authority's prior written agreement before delivering such Goods to the port area.
- 9.7. The Port User shall give the Port Authority all necessary information as to the precautions to be taken in respect of the Dangerous Goods and shall affix warning notices to the Goods showing appropriate regulatory instructions and indicating that the Goods are dangerous.
- 9.8. Dangerous Goods remain at all times at the sole risk of the Port User. The Port Authority shall have no liability for any delay in the transport of the Dangerous Goods caused by the dangerous nature of the Goods nor shall the Port Authority be liable for any loss of or damage to the Dangerous Goods except upon proof by the Port User that such loss or damage arose from the wilful misconduct of the Port Authority or its employees or agents.
- 9.9. The Port User shall be responsible for any injury, loss or damage caused as a result of the dangerous nature of the Dangerous Goods and shall indemnify the Port Authority against any loss or damage suffered by it, its property or employees or agents caused by the Dangerous Goods and shall indemnify the Port Authority for any liability it may incur to any third party for any loss or damage suffered by such a third party caused by the Dangerous Goods.
- 9.10. The Port Authority shall be at liberty to load, unload, destroy, render innocuous or otherwise deal with the Dangerous Goods at its discretion, if in its opinion the condition of the Goods by their very nature is such as to cause loss or damage, and the Port Authority shall not be liable to compensate the Customer for any resulting loss of any kind from any cause. In any event the Port Authority's charges shall remain due from the Port User.

10. Haulier's Duty to Set Down Goods

- 10.1. The Cargo Owner or his haulier shall be responsible for setting down the goods on the quay when the Port Authority gives permission. The Port Authority may at its discretion provide assistance to the Cargo Owner or haulier at no expense to the Cargo Owner or the haulier and thus the Port Authority shall not be responsible for any loss of or damage to the goods or the vehicle or its equipment of whatsoever nature, howsoever caused (including where caused by the negligence of the Port Authority,

its servants, agents or independent contractors) arising out of or in connection with such assistance as aforesaid and the Port Authority shall be indemnified by the Cargo Owner against such loss or damage.

11. Delivery of Goods

- 11.1. No goods shall be available for delivery by the Port Authority until such time as H.M. Customs clearance has been obtained in respect thereof. Responsibility for the clearance of goods with H.M. Customs rests with the Port User or Cargo Owner.
- 11.2. Delivery Orders in respect of goods to be delivered by the Port Authority shall be lodged with the Port Authority by or on behalf of the Cargo Owner.
- 11.3. On no account will goods be delivered by the Port Authority without production of a Delivery Order issued by, or on behalf of, the Ship owner in his usual form authorising such delivery and in the case of sub-orders issued by or on behalf of the owner of the goods named in the original Delivery Order and being in a form satisfactory to the Port Authority and authorising such delivery.
- 11.4. The Port Authority's normal practice is to deliver goods according to the principal or leading mark specified in the Bill of Lading.

12. Rail Traffic

- 12.1. No goods shall be sent from or forward to the Dock Estate by rail unless and until the necessary arrangements have been made with both the Port Authority and the appropriate rail freight company.
- 12.2. A standard shipping note, and (where appropriate) Dangerous Goods Note and/or Dangerous Goods Packing Certificate, must be lodged with the Port Authority in respect of goods forwarded to the Dock Estate by rail for the performance or provision of cargo handling services not later than the arrival of the rail wagons conveying such goods.
- 12.3. The Port Authority shall not be responsible to any rail/rail freight company for any loss or damage of whatsoever nature of or to railway wagons and sheets, ropes, chains or other similar fittings thereof or any demurrage charges in relation thereto howsoever caused and the Cargo Owner shall be responsible for and indemnify the Port Authority against such loss, damage or charges.

13. H.M. Customs Examination

- 13.1. No extra charges will be raised for routine Customs examination of goods carried out in situ at the Berth at which the goods are discharge/received. However, additional charges will be made if the goods are stored in a container or moved to another location, or if H.M. Customs order a more extensive or thorough examination for any reason, including use of a scanning machine.
- 13.2. In the event that the Port Authority is obliged to provide documentation to H.M. Customs on behalf of a Port User, they shall do so as agents only on behalf of the Port User. The Port Authority shall have no liability whatsoever arising from the completion of the documentation and the Port User shall provide the Port Authority a full indemnity for any claims of whatsoever nature made by H.M. Customs including but not limited to payments of duty and fines.

14. Check Weighing

- 14.1. The Port Authority reserves the right to check the weight of any goods at the expense of the Ship owner of the vessel on which the same were or are to be shipped.

15. Non-Shipment of Goods

- 15.1. The receiving by the Port Authority for and on behalf of the Port User of goods for shipment does not imply that such goods will be shipped. The acceptance or refusal of goods for shipment is the responsibility of the Ship owner concerned, for whom the Port Authority accepts as agent.

15.2. Where goods are not shipped, the Ship owner shall pay to the Port Authority such reasonable sum as the Port Authority shall determine in relation to the work performed by the Port Authority or in connection with the re-delivery of such goods to the Cargo Owner who shall take delivery of the goods at the part of the Dock Estate at which they are lying but the Port Authority shall be at liberty nevertheless to transfer such goods at the expense of the Ship owner to another location if in the opinion of the Port Authority such goods could otherwise cause congestion at their existing location and to delay or decline to perform the work of re-delivery until such reasonable sum shall have been paid to them.

16. Covered Accommodation and Sheeting

16.1. If the Port User requests the Port Authority to provide sheeting or covered accommodation for weather sensitive commodities (all together referred to herein as "Dry Cargo") then the Port Authority shall provide, subject to availability, such sheeting or covered accommodation provided that the Ship owner or the Cargo Owner has notified the Port Authority in writing between 0800/1600 hours Monday to Friday inclusive (excluding Bank and other National Holidays) and at least 72 hours (excluding weekends) before cargo handling services commence in respect of the vessel on which the Dry Cargo is carried. Where covered accommodation for Dry Cargo is requested but is not available at the Berth at which such cargo was discharged from a vessel, the Port Authority may at its discretion: -

16.1.1. transfer such cargo to covered accommodation at another Berth – in which event the costs associated with such transfer shall be charged to the Ship owner or Cargo Owner, as appropriate, or

16.1.2. sheet such cargo,

16.2. Without prejudice to the generality of Clause 21 hereof, no responsibility shall attach to the Port Authority as a result of its performing or not performing the services of sheeting or providing covered accommodation for Dry Cargo other than panel products, tin plate and cold-rolled steel, unless any loss or damage resulting therefrom is caused solely by negligence of the Company, its servants, agents or independent contractors.

16.3. Any extra charge specified by the Port Authority in respect of the provision of sheeting or covered accommodation for Dry Cargo, shall be paid by the Ship owner or the Cargo Owner requesting such sheeting or covered accommodation.

16.4. Subject to Clause 16.1 the Cargo Owner warrants that the goods require for their safekeeping no special protection arising from vulnerability to heat, cold, salt, moisture, pilferage or proximity to other goods or from inflammability, but will remain safe if left standing in the open on the Dock Estate.

17. Bill of Lading

17.1. The Ship owner for a vessel which it is intended to sail to or from a Berth shall be the agent of the Port Authority for the purposes of agreeing with the Cargo Owners in his usual contract of carriage to exempt or limit the liability inter alia of the Port Authority whether as agent, sub-bailee, stevedore or independent contractor or otherwise howsoever. Nothing herein shall prevent the Port Authority, at its discretion, from being the principal of the Ship owner in relation to provisions exempting or limiting liability, where the relevant law and Courts are not English Law and English Courts respectively.

17.2. The Port Authority hereby accepts the benefit of such provisions and appoints the Ship owner as the Port Authority's agent for the purpose of entering into the contracts of carriage evidenced by the Bill of Lading and the Shipping Note.

17.3. If such Bills of Lading, Shipping Notes or Notices to Shippers do not so provide then the Ship owner shall, without prejudice to any other rights of the Port Authority herein, indemnify the Port Authority against all proceedings, claims and expenses (including legal costs on a full indemnity basis) arising

out of or consequent on the failure of such Bills of Lading, Shipping Notes or Notices to Shippers so to provide.

SCHEDULE 2 – WAREHOUSING AND CARGO STORAGE.

1. All cargo discharged at the Port whether from a vessel, a rail truck or from a road truck, may be stored at the Port for such period agreed with the Port Authority but:
 - 1.1. the Port Authority shall be entitled to charge the Port User or owner of the cargo storage charges in accordance with prescribed tariffs and/or Quay Rent. The Quay Rent shall be such reasonable sum that the Port Authority considers to be appropriate having regard to the amount and type of cargo; and
 - 1.2. the Port Authority shall be at liberty to move the cargo at the expense of the Port User or owner of the Cargo to a more convenient storage area within the Port or elsewhere if there is no convenient site within the Port.
2. Goods standing within the Port Area with the consent of the Port Authority because they are awaiting shipment or collection shall be left in such part of the Port Area as may be set aside by the Port Authority for such purpose or as the Port Authority's employees may direct. Goods left otherwise than in accordance with this clause shall not be regarded as in the custody of the Port Authority, which have no responsibility for them.
3. The Port Authority shall not be liable to the Port User or cargo owner for any partial or total loss or damage to any Goods left in the Port Area where such Goods have been left for a period exceeding 72 hours after entry of such Goods by road or rail transport into the Port Area or unloading of such Goods from a Vessel (as the case may be) no matter when or how such loss or damage may have arisen. In such circumstances the Port Authority may at its discretion (and without liability) arrange suitable storage or standage for the Goods and charge the Port User an additional amount for such services which shall be payable prior to shipment or collection of the Goods. The Port Authority may at the Port User's request agree that it should retain and, if necessary, store the goods for a period beyond the said 72 hours. In such a case the Port Authority remains liable for the Goods in accordance with the provisions of these Conditions until collection or sale as set out below.
4. If Goods are not removed from the Port Area within a reasonable time of their having been at the disposal of the Port User or his agent, the Port Authority may sell the Goods (in accordance with any applicable legislation) and deduct from the proceeds of the sale an amount equivalent to the storage or standage charges and/or Quay Rent incurred and any related costs and expenses. The balance of the sale proceeds only will be for the account of the Port User. In the case of perishable Goods the Port Authority may sell at any time if it is considered advisable to do so, to prevent loss, damage or nuisance of any kind. If the Port Authority has agreed to retain or store the Goods as above, the Port Authority's right to sell does not arise until the period of storage has expired.
5. Livestock must always be accompanied and may only be delivered to the Port Area immediately before the relevant sailing and must be removed immediately after unloading.
6. Except as otherwise provided by these Terms and Conditions, the Port Authority has no liability for any loss or damage to the Goods whilst awaiting shipment or collection, unless it is proved the same was caused by the neglect or default of the Port Authority, its employees, agents or independent contractors. In particular, the Port Authority shall never be liable for any loss or damage caused to perishable or fragile Goods and is not obliged to enquire into the nature of any uncollected Goods. If the Port Authority assists the Port User in unforeseen circumstances, such as breakdown or theft of a vehicle, by arranging storage or standage for the Goods or otherwise, the Port Authority is not liable for any loss or damage suffered by the Goods whilst so stored or left standing.
7. If the Port Authority shall be liable as a matter of law for loss or damage to Goods awaiting shipment or collection, its liability shall be limited in accordance with these Terms and Conditions.

8. In the case of Dangerous Goods which are not removed within a reasonable time and in any event within 24 hours of the Port Authority requesting the Port User in writing to remove them, the Port Authority may, at the Port User's sole risk and expense, destroy the Goods or return them to the Port User (who will take redelivery of them at once) or otherwise dispose of them.
9. The Port Authority shall be entitled at its absolute discretion to waive or reduce any tariff payments and/or Quay rent payable by the Port User. Should the Port Authority choose to exercise this discretion this shall not amount to evidence of waiver of rights to tariff payments or Quay Rent should the Port User incur further liability at a later date.
10. The Port User undertakes that: -
 - 10.1. When presented for warehousing, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of the Port Authority or to any other goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever.
 - 10.2. Before presentation of the Goods for warehousing, the Port User will inform the Port Authority in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which the Port Authority may need to comply.
 - 10.3. The Port User will reimburse all duties and taxes that the Port Authority may be required to pay in respect of the Goods including situations where the liability to pay them arises due to the fault of the Port Authority or its employees or sub-contractors.
 - 10.4. Unless prior to acceptance of the Goods by the Port Authority, the Port Authority receives written notice containing all appropriate information, none of the Goods constitute "Waste" as defined in the Environmental Protection Act 1990.
 - 10.5. Unless prior to acceptance of the Goods by the Port Authority, the Port Authority receives written notice containing all appropriate information, none of the Goods are or contain substances the storage of which would require the obtaining of any consent or license or which, if they escaped from their packaging, would or may cause pollution of the environment or harm to human health.
 - 10.6. It shall be liable for any breach of HM Customs & Excise Regulations relating to goods warehoused and undertakes to indemnify and keep indemnified the Port Authority against all actions, proceedings, costs, claims and demands arising out of any further breach, non-observance or non-performance of the same.
11. Notwithstanding any notice hereunder, if there is a breach of contract by the Port User, the Port User will indemnify the Port Authority against any loss or damage it suffers which is related to the breach, and will pay all costs and expenses (including professional fees) incurred in, and the Port Authority's reasonable charges for, dealing with the breach and its consequences. The Port User will pay an extra storage charge equal to the amount of any fine or penalty payable by the Port Authority wholly or partly as a result of a breach by the Port User of this contract. If the Port Authority suspects a breach of warranty or of any undertaking by the Port User, it may demand the immediate removal of any goods held for the Port User, or itself arrange their removal without notice, at the Port User's expense.
12. The Port Authority shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Port User's warranties and undertakings. The Port Authority shall be relieved of its contractual obligations to the extent that their performance is prevented by, or their non-performance results wholly or partly, directly or indirectly from the act, neglect, or default of the Port User, including any breach by the Port User of these Conditions, or by storm, flood, fire, explosion, breakdown or unavailability of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance or cause

beyond the reasonable control of the Port Authority.

13. The Port User may give written authority for the Goods or any part thereof to be transferred by the Port Authority to the account of another party but subject to the Port User ensuring before the effective date of the transfer that such other party notifies the Port Authority in writing that it is to become the Port User and is to be bound by these Conditions and specifically the exclusion and limitation clauses. Further, the Port User agrees to continue to pay the Port Authority's charges until receipt and acceptance by the Port Authority of the other party's written notification.
14. The Goods shall be removed by the Port User from the custody or control of the Port Authority at such date as may have been agreed between the parties. In the absence of such agreement, and otherwise where reasonably necessary, the Port Authority may at any time by notice in writing to the Port User require the removal of the Goods within 28 days from the date of such notice or, in the case of perishable goods, within 3 days.
15. In the event of failure by the Port User by the due time to remove any of the Goods from the custody or control of the Port Authority (in accordance with a notice served by the Port Authority) or to pay any amount claimed by the Port Authority, the Port Authority may, without prejudice to its other rights and remedies against the Port User, give notice in writing to the Port User of the Port Authority's intention to sell or otherwise dispose of the Goods at the Port User's entire risk and expense if such amount is not paid and/or such Goods are not removed within 28 days, or in the case of perishable goods within 3 days from the date of such notice. On the expiry of such period, if such payment has not been made and/or the Goods have not been so removed the Port Authority shall be entitled to sell or otherwise dispose of all or any part of the Goods at the Port User's entire risk and expense and the proceeds of any sale or disposal shall be remitted to the Port User after deduction there from of all expenses and all amounts claimed by the Port Authority from the Port User or the Goods owner on any account. The Port Authority will use a reasonably appropriate method of sale but will not be liable for any inadequacy in the price achieved.
16. When reasonably necessary and at the discretion of the Port Authority the Goods may be carried, stored or handled with other compatible goods or transferred between stores.

SCHEDULE 3 – PLANT/Crane HIRE – CONTRACT LIFTING SERVICES

1. The Port Authority may use such plant and equipment on its lifting operations services as it considers suitable for the type of goods to be lifted unless instructed to the contrary in writing by the Client.
2. All lifting or other operations to be performed by the Port Authority shall be performed in accordance with the normal working practices of the Port Authority. The Port Authority reserves the right to alter such working practices at any time and without prior notice.
3. Insofar that Plant/Crane Hire and Contract Lifting Services are provided by or on behalf of the Port Authority, all work undertaken by the Port Authority is subject to the “CONSTRUCTION PLANT-HIRE ASSOCIATION STANDARD TERMS AND CONDITIONS FOR CONTRACT LIFTING SERVICES” (CPA Standard Terms and Conditions) for the time being in force a copy of which is available from the Port Manager or Harbour Master upon request. All Plant/Crane Hire and Contract Lifting Services provided by the Port Authority shall be in accordance with the tariff rates for the time being in force.
4. Should there be any discrepancy or contradiction between these Terms and Conditions and the CPA Standard Terms and Conditions then the CPA Standard Terms and Conditions shall take precedence.
5. All Plant/Crane Hire and Contract Lifting Services provided by the Port Authority shall be in accordance with the tariff rates for the time being in force.

SCHEDULE 4 – PILOTAGE

The Port Authority in exercise of powers as a Competent Harbour Authority under the provisions of the Pilotage Act 1987 or any superceding Act, and having carried out consultations required by the Act, give the following pilotage directions and guidance to ships to be navigated in the Port of Workington Pilotage Area.

1. In these Directions “the Port of Workington Pilotage Area” means the area designated by statute. A plan setting out details of the Port of Workington Pilotage Area can be obtained from the Harbour Master on request.
2. All vessels of 50 metres and over are subject to compulsory pilotage within the Port of Workington Pilotage Area and/or carrying a bulk cargo of dangerous substances as defined and categorised in the Dangerous Substances in Harbour Areas Regulations 1987subject to section 6 below. Vessels below 50 metres may also be subject to compulsory pilotage at the sole discretion of the Harbour Master.
3. Subject to adverse weather conditions the Pilot shall embark and disembark at the Workington, Silloth and Annan Pilot Station. The vessel shall be responsible for the costs of the Pilot Boat which shall be provided by or hired by the Port Authority in accordance with the published rates for the time being of the Port Authority.
4. All charges for Pilotage services are in accordance with the published tariff for the time being or such other tariff as agreed in writing with the Port Authority. Particular reference is made to the charges for cancellation of bookings.
5. The Port Authority may without any obligation provide or hire a Pilot Boat for the purposes of embarking and disembarking Pilots for vessels using other ports including the Ports of Maryport, Silloth and Whitehaven. The charges for these services shall be agreed as and when required unless a tariff rate has been agreed in advance.
6. A ship, navigating within any part of the Port of Workington Pilotage Area and which is subject to compulsory pilotage shall be in the charge of:-
 - a. a pilot authorised by the Port Authority;
 - b. a Master or Chief Officer holding a current Pilotage Exemption Certificate for the Port of Workington Pilotage Area;
7. A vessel solely seeking to anchor in the Port of Workington Pilotage Area in a designated anchorage area may do so without a pilot or person holding a Pilotage exemption Certificate unless the Harbour Master shall at his sole discretion decide that such is necessary.
8. A vessel which is hampered by size and/or draught may not transit the Port of Workington Pilotage Area without a pilot.
9. Vessels awaiting pratique or entry to the Port of Workington are advised to anchor to the North West of the entrance to the Port as shown on Admiralty Chart 2013. The Port Authority has reason to believe

that the ground is good but gives no guarantee and the anchorage area is exposed to prevailing South West winds.

10. Vessels are not to be invited to board the pilot closer in than the nominated pilot boarding area and no vessel has permission to come into the turning basin to land or board a pilot.

SCHEDULE 5 – TOWAGE AND BOATMEN

1. All vessels seeking to enter the Port of Workington are subject to compulsory towage if they are 100m LOA and/or carrying a bulk cargo of dangerous substances as defined and categorised in the Dangerous Substances in Harbour Areas Regulations 1987. All vessels above 92 m LOA may be required by the Port Authority to compulsory towage subject to the discretion of the Harbour Master. The Port Authority reserves the right to appoint a tug or tugs to attend any vessel if, with due regard to the prevailing circumstances, the Harbour Master deems it necessary.
2. Any Ship owner and/or Charterer seeking to hire a single tug (“the Hirer”) for use of providing tug and towage services in connection with the Port of Workington shall hire a tug owned or operated by the port Authority (subject to availability). If a second tug is required, the Hirer may hire the second tug through the Port Authority or may hire a tug operated by a competent Tug operator approved by the Harbour Master.
3. Insofar that tug and towage services are provided by or on behalf of the Port Authority, all work undertaken by the Port Authority is subject to the UNITED KINGDOM STANDARD TOWAGE CONDITIONS for the time being in force a copy of which is available from the Harbour Master upon request. All tug and towage services provided by the Port Authority shall be in accordance with the tariff rates for the time being in force.
4. For the purpose of these conditions, the phrase “whilst towing” shall be deemed to cover the period commencing when the tug is in a position to receive orders direct from the Hirer’s vessel to pick up ropes or lines, or when the towrope has been passed to or by the tug whichever is the sooner, and ending when the final orders from the Hirer’s vessel to cast off ropes or lines have been carried out, or the towrope has been finally slipped and the tug is safely clear of the vessel, whichever is the later. Towing is any operation in connection with holding pushing, pulling or moving the ship.
5. On the employment of a tug the Master and Crew of the tug thereof become the servant of and identified with the Hirer and are under the control of the Hirer or his servants or agents, and anyone on board the Hirer’s vessel who may be employed and/or paid by the Port Authority shall be considered the servant of the Hirer.
6. The Port Authority shall not, whilst towing, bear or be liable for damage of any description done by or to the tug, or done by or to the Hirer’s vessel, or for loss of or damage to any thing on board the Hirer’s vessel, or for loss of the tug or the Hirer’s vessel, or for any personal injury or loss of life, arising from any cause, including negligence at any time of the Tug owners’ servants or agents, unseaworthiness, unfitness or breakdown of tug, its machinery, boilers, towing gear, equipment or hawsers, lack of fuel, storm or speed, or otherwise, and the Hirer shall pay for all loss or damage and personal injury or loss of life and shall also indemnify the tug owner against all consequences thereof, and the Tug owner shall not, whilst at the request expressed or implied of the Hirer rendering any service other than towing be held responsible for any damage done to the Hirer’s vessel and the Hirer shall indemnify the Tug owner against any claim by a third party (other than a member of the crew of the tug) for personal injury or loss of life. Provided that any such liability for loss or damage as above set out is not caused by want of reasonable care on the part of the Tug owner to make his tugs seaworthy for the navigation of the tugs

during the towing or other services – the burden of proof of any failure to exercise such reasonable care being upon the owner of the tow.

7. The Hirer shall not bear or be liable for any loss or damage of any description done by or to the tug otherwise than whilst towing as herein defined, or for loss of life or injury to the crew of the tug. Nevertheless, nothing contained herein shall prejudice any claim to the Port Authority may have in Admiralty or at Common Law against the hirer.
8. The Port Authority may substitute one tug for another and may sub-let the work, wholly or in part, to other Tug Owners who shall also have the benefit of and be bound by these Conditions.
9. The Port Authority will not be responsible for the consequences of War, Strikes, Lock-outs, Riots, Civil Commotions, Disputes or Labour Disturbances (whether they be parties thereto or not) or anything done in contemplation or furtherance thereof, or delays of any description, however caused, including negligence of their servants or agents.
10. All Rope Runner and Boatman services shall be provided by the Port Authority subject to these Terms and Conditions and subject to the Rope Runner and Boatman tariff rates for the time being.

SCHEDULE 6 – FISHING AND LEISURE CRAFT

All Leisure and Fishing Craft using the Port of Workington are subject to these Terms and Conditions insofar that they are applicable. The Port Authority shall introduce specific additional terms and conditions relating to Leisure and Fishing Craft at a later date.

SCHEDULE 7 – DRIVERS AND VISITORS TO THE PORT

1. All Drivers and Visitors to the Port are subject to these Terms and Conditions and particular reference is made to the provisions in relation to security.
2. In addition and with particular emphasis upon safety, all Drivers and Visitors to the Port shall comply with such “Safe System of Work” guidelines as may be published by the Port Authority from time to time for “Travelling on Foot” and “Road Transport”. Drivers and Visitors to the Port shall also obey such directions and instructions given by employees of the Port Authority.

SAFE SYSTEM OF WORK – Pedestrians on the Port Estate

10th September 2015 Edition

The following guidelines must be observed by ALL Pedestrians at ALL times:-

1. During normal office hours (Mon/Fri 08:00 – 17:00) all visitors are to report to the Harbour Office on arrival at the Port.
2. During out of office hours (Mon/Fri 17:00 – 07:00 and weekends Fri 16:00 – Mon 07:00) all visitors are to report to the Container Terminal Gatehouse on arrival at the Port.
3. The whole of the Port estate is designated as a hard hat area. Hard hats must be worn at all times.
4. High visibility clothing is to be worn at all times and within all areas of the Port estate.
5. Steel toe cap safety boots are to be worn at all times.
6. Particular care must be taken when crossing rail tracks and also remain vigilant for slow moving rail freight. **RAIL FREIGHT HAS THE RIGHT OF WAY.**
7. Pedestrians should exercise caution when approaching the Container Terminal Gatehouse and use the designated pedestrian route. At no time shall cyclists or pedestrians attempt to pass through the barrier.
8. Avoid under all circumstances areas where mobile plant and machinery are operating.
9. Pedestrians should proceed on the designated footpaths.
10. Do not walk under the dock side cranes without permission from Harbour Office or Operations/Safety Manager.
11. Do not approach any lifting/loading/unloading operation, without permission from the Harbour Office or Operations/Safety Manager.
12. No smoking onsite other than in the designated smoking areas which are located at the following areas:-
 - Harbour Office car park
 - Dock Gate Office
 - Container Terminal Office
 - Conference Centre

Smoking areas are sign posted with cigarette bins.

13. Contractors must provide risk assessments and method statements for any work onsite.
14. Fire Policy/Plan/Assessments explained during inductions to be adhered to.
15. Exercise extreme caution when walking past parked rail wagons.
16. Avoid walking along quay edges. Persons authorised to walk/work alongside quay edges are to wear a lifejacket. Flotation aids are located on the quayside.

17. Do not walk along rail tracks.
18. Ensure supervision of all visitors by a Port management representative after arrival on the Port.
19. Do not walk onto Slipway/Ro-Ro ramp.
20. Use designated pedestrian gates only. Do not climb over fences.
18. Remain vigilant of any spillages or obstructions under foot.

The Port will remain committed to inspecting/maintaining all traffic routes and ensure suitable lighting is in place during the hours of darkness or inclement weather.

SAFE SYSTEM OF WORK
Road Vehicles on the Port Estate

27th November 2015 Edition

The following guidelines must be observed by ALL drivers at ALL times:-

1. During normal working hours (Mon/Fri 08:00 – 17:00) all drivers are to report to either the Harbour Office or Weighbridge on arrival at the Port.
2. Outside normal working hours (Mon/Fri 17:00 – 07:00 and weekends Fri 17:00 – Mon 07:00) all drivers are to report to the Gatehouse at the Port's north entrance.
3. Follow designated routes as instructed by Gatehouse/Harbour Office.
4. Port entrances are covered by CCTV cameras for security and monitoring purposes and in addition ANPR cameras are in operation.
5. Keep within the Port speed limit of 10 mph for road vehicles and 5mph for locomotives.
6. Obey all road signs and markings.
7. Stop at all rail crossings to check for slow moving freight. Where rail barriers have been lowered, vehicles must wait until they are raised by the locomotive shunter before proceeding. Under no circumstances must any unauthorised person move the barrier.
RAIL FREIGHT HAS RIGHT OF WAY.

All traffic should exercise caution when passing through the Port's security barriers.

Vehicles should only pass through the barriers when it has been raised by an operator or when triggered by the induction loop. Drivers should only proceed when the barriers have been fully raised. The barriers will lower once the vehicle has cleared the induction loop.

Only one vehicle at a time will be allowed through. **UNDER NO CIRCUMSTANCES MUST DRIVERS TAILGATE THROUGH THE BARRIERS.**

Non-vehicular traffic arriving on the Port i.e. cyclists should use alternative routes:-

South Quay entrance: Dismount cycle and use pathway adjacent to the barrier.

Gatehouse entrance: Dismount cycle at barrier and use pedestrian crossing to access footpath.

At no time shall cyclists or pedestrians attempt to pass through the barrier.

8. Exercise extreme caution when passing pedestrians.
9. Do not stop on rail crossings or adjacent to a rail crossing, so as to impede a clear view of the track by other drivers.
10. Give way under all circumstances to mobile plant and machinery.
11. Do not drive onto any surface other than tarmac or concrete road ways unless specifically instructed to do so.
12. Do not drive onto the Slipway/Ro-Ro Ramp or park on any rail/road crossings or car park entrances.
13. Do not drive under the dockside cranes or into any other operational areas without permission from the Harbour Office or the Operations Manager. Visitor/contractor vehicles are prohibited from accessing the operational area between the two blue warehouses adjacent berths 5 & 6. Only Port plant and machinery are allowed to operate in this area.
14. Do not approach any lifting or loading/unloading operation without clearance from the operations manager or crane supervisor.
15. When on foot, steel toecap safety boots, hard hats and high visibility clothing must be worn at all times within areas of the port estate.
16. Exercise extreme caution when travelling past parked rail wagons.

17. At no time should a wagon driver put themselves or any other persons in a position of danger when tipping a load onto the quayside.
18. When using the Ports north entrance, drivers must remain vigilant of warehouse operations. When approaching these areas, drivers must make themselves known to the person operating the machinery in the warehouse by sounding their horn. Drivers should only proceed after authorisation has been given to do so.
19. When driving along the north/south quays extreme caution should be taken so as not to drive close to the quay edge.

The Port will remain committed to inspecting/maintaining all traffic routes and ensure suitable lighting is in place during the hours of darkness or inclement weather.
20. Banksmen required for reversing road wagons and where applicable Port plant and machinery.
21. All Port staff/vehicle drivers trained, certified and competent to operate plant, machinery, locomotives, vehicles and equipment.
22. All Port plant, equipment, locomotives, machinery and other vehicles inspected, maintained and certified.
23. Hauliers, Site Tenants, Contractors and Agents are responsible for ensuring all drivers ordered on to the Port are aware of these guidelines. Any driver found in breach may be permanently prevented from entering the Port estate.