

Denholm Port Services Limited

Terms and Conditions of Trading

All transactions entered into by Denholm Port Services Limited (hereinafter "the Company") in connection with or arising out of the Company's business shall be conducted solely upon and subject to the following terms and conditions (hereinafter "the Conditions") to the exclusion of all other terms put forward by either party whatever their date, unless otherwise agreed or stated by the Company in writing.

THESE CONDITIONS CONTAIN PROVISIONS RELATING TO THE COMPANY'S CHARGES (INCLUDING THE CHARGING OF MANAGEMENT FEES).

THEY ALSO CONTAIN PROVISIONS RELATING TO THE EXCLUSION AND LIMITATION OF LIABILITY AND TIME LIMITATION AND PROVISIONS WHICH REQUIRE THE PRINCIPAL TO INDEMNIFY THE COMPANY. YOU MAY WISH TO INSURE AGAINST THESE RISKS.

If any international convention or transport law or other regulation or directive is compulsorily applicable to any part of the Services provided by the Company, these Conditions shall, with regard to such part of the Services only, be subject to such compulsory legislation. However nothing in these Conditions shall be construed as a waiver by the Company of any of its rights or an increase of any of its responsibilities, obligations or liabilities under such legislation. If any part of these Conditions is in any way contrary to such legislation, such part shall, in connection with such Services, be overridden to that extent and no further.

1 In these Conditions the following expressions have the following meanings respectively:

- (a) "Agency Fee for Port Tariff Services" means the agency fee due to the Company for arranging the Port Tariff Services (as defined in clause 8.1), as set out in the Estimate and Invoice.
- (b) "The Company" means Denholm Port Services Limited.
- (c) "Contract" means the contract between the Company and the Principal which is concluded when the Estimate is accepted by or on behalf of the Principal.
- (d) "Direct Agent" means the Company acting in the name of and on behalf of the Principal with H M Revenue and Customs ("HMRC"), as defined by section 21 Taxation (Cross-border Trade) Act 2018.
- (e) "Estimate" means the Estimate of Port Call Costs and Proposed Contract Terms document, or (where Services are provided for the benefit of the Goods) any equivalent estimate document.
- (f) "Goods" means any wares, merchandise and articles of every kind whatsoever including any container, chassis, trailer or similar equipment used for the purpose of carrying cargo.
- (g) "Invoice" means the Final Invoice of Port Call Costs and Confirmation of Contract Terms document, or (where Services are provided for the benefit of the Goods) the equivalent invoice document.
- (h) "Principal" means the company, firm or person for whose benefit the Services are provided namely:
 - (i) where Services are provided to or for the benefit of the Vessel, the owner and/or charterer and/or operator and/or manager of the Vessel and/or the carrier under

the bill of lading in respect of which Services are provided; and/or (as appropriate);

- (ii) where Services are provided for the benefit of the Goods carried or to be carried on the Vessel, the receiver and/or owner and/or forwarder of the Goods, and/or the holder of the bill of lading or the person who is entitled to immediate possession of the Goods.
- (i) "Services" means the services which are provided (or facilitated/arranged) by the Company to or for the Principal, whether the Company acts as agent or principal, and whether or not for reward, whether any such reward be by way of charge, fee, commission, management fee or remuneration of any other kind.
- (j) "Sub-Agent" means a company, firm or person to whom the Company delegates all/certain of its duties as agent of the Principal.
- (k) "Supplier" means the company, firm or person who contracts to supply Services or goods to the Principal through the Company.
- (l) "Vessel" means any ship or boat, or any other description of vessel used in navigation, being the vessel in respect of which Services are to be provided and/or upon which the Goods are carried.
- (m) Words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall incorporate bodies corporate, unincorporated associations and partnerships.
- (n) The headings in these Conditions are for convenience only and shall not affect their interpretation.

Services provided to or for the benefit of the Vessel

The following terms and conditions shall apply in relation to Services provided to or for the benefit of the Vessel:

- 2 The Principal shall pay forthwith by telegraphic transfer to the Company's bank account such sums as the Company may request as an advance on port call costs which the Company estimates will be incurred during the term of the Contract. If the Principal should fail to comply with the Company's request, the Company may at any time give notice of the termination of its agency and the Contract.
- 3 The Company shall be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company from the Principal.
- 4 In the event that the Company is required by the Principal to file data with a port facility in compliance with the ISPS Code, the Company will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines. However, the Company cannot accept any responsibility or liability for the correctness and accuracy of the information provided by the Principal or if the Principal fails to provide the data in a timely manner or there are technical problems or human error beyond the Company's control. The Company provides the filing process as a data exchange service only. Any losses or liabilities resulting from the filing of such data, whether or not the Company was or is claimed to have been negligent or at fault in any way, rest with the Principal.

Services provided for the benefit of the Goods carried or to be carried on the Vessel

The Principal agrees that the following shall apply in respect of Services provided to or for the benefit of the Goods carried on or to be carried on the Vessel:

- 5 The Company shall not be obligated to arrange any insurance of any kind.
- 6 In all and any dealings with HMRC and any other tax or customs authority, the Company acts for and on behalf of the Principal as a Direct Agent only.
- 7 Unless the Company has previously so agreed in writing, the Company will not provide Services for Goods of a dangerous or damaging nature. If such Goods are accepted pursuant to a special arrangement, and, thereafter (in the opinion of the Company) constitute a risk to health or to other goods or property, the Company shall, where reasonably practicable, contact the Principal in order to require him to remove or otherwise deal with the Goods, but reserves the right, in any event, to do so at the expense of the Principal. Should the Principal fail to provide such details at the time of Contract the Principal shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right to rescind the Contract.

Remuneration for Services including Management Fees

- 8 The Services provided by the Company consist of:
 - 8.1 Port Tariff Services: these Services consist of those associated with a Vessel entering and departing port, including but not limited to ship's dues, conservancy, mooring/unmooring, pilotage, ISPS, light dues, and will be specified in the Estimate and/or Invoice. The Company's remuneration for arranging these Services is covered solely by the Agency Fee for Port Tariff Services (subject to clause 8.4 below);
 - 8.2 Husbandry Services, being all other Services provided, arranged or facilitated by the Company other than the Port Tariff Services: these may be provided on any of the following bases:
 - (a) solely provided by the Company: these Husbandry Services consist of any Services that may be provided by the Company during a Vessel's port call, and which do not involve the use of a Supplier. Where these Husbandry Services are requested prior to the port call, the Company's remuneration for providing these Husbandry Services shall be specified within the Estimate under the heading "Husbandry Services Provided by Agent". Where these Husbandry Services are requested during the port call and/or are not specified within the Estimate, the Company's remuneration shall be specified in communications from the Company, or the Services shall otherwise be supplied by the Company for reasonable remuneration;
 - (b) solely arranged by the Company: these Services consist of Husbandry Services that are procured by the Company as agent on behalf of the Principal during the Vessel's port call. These Husbandry Services are procured by the Company from a range of Suppliers. The payment to be made by the Principal for such Services shall consist of the Supplier's charge as set out in the Estimate or notified in writing to the Principal. The Company will charge the Supplier of such Services a fee in respect of the arrangement, administration and/or management of such Services ("**Management Fee**") based on the value of the Supplier's invoice supplied with the Invoice as provided to the Principal and this Management Fee will be the Company's remuneration in respect of such Services. The Company's remuneration for arranging such Services consists solely of the payment of such Management Fee, which it is agreed the

Company is entitled to retain without accounting to the Principal or any other person in respect thereof; or

- (c) Husbandry Services which involve both Services provided by the Company and Services procured by the Company from a range of Suppliers. In any such case:
 - (i) that part of such Husbandry Services provided by the Company itself shall be provided as principal on the basis as to remuneration set out in clause 8.2(a); and
 - (ii) that part of such Husbandry Services arranged by the Company with the Suppliers shall be arranged as agent on the basis as to remuneration set out in clause 8.2(b). This shall be the case as regards all Husbandry Services other than those referred to in paragraph 8.2(c)(i) above.

8.3 The Company shall be entitled to pay a portion of its Agency Fee to any third party including, but not limited to, any charterer of the Vessel and any Sub-Agent.

8.4 As regards any item in the Estimate or Invoice which is marked with an asterisk, the Supplier will provide a rebate/commission to the Company which the Company, in its absolute discretion, may either retain or share with any third-party, including the charterer of the Vessel.

8.5 In addition to the provisions regarding remuneration set out elsewhere in these Conditions, the Company shall be entitled to retain and be paid all customary brokerages, commission, allowances and other remuneration without accounting therefor to the Principal or any other person.

Indemnity and Liability

9 When procuring, facilitating or arranging the provision or supply of Services or goods by a Supplier, the Company acts at all times as agent of the Principal and shall be under no liability to the Supplier in relation to such Services. The Principal shall be deemed to have authorised the Company to conclude any and all contracts necessary for the provision of the Services and shall indemnify the Company in respect of all liabilities incurred by the Company when acting as agent on the Principal's behalf and/or when otherwise providing any Services to the Principal. This indemnity shall include but not be limited to all third party claims, liabilities, losses, damages, taxes, duties, charges, fines and expenses whatsoever and howsoever arising that the Company may incur during or in relation to the performance of the Services or as a result of undertaking any liability in connection with the Services (including but not limited to any liability in respect of any bond issued to Customs or any other statutory authority by the Company). This indemnity will remain in full force and effect notwithstanding any termination of the Contract between the Principal and the Company. This indemnity shall not extend to matters to the extent that they arise by reason of the negligence or wilful misconduct of the Company.

10 Nothing in these Conditions shall limit or exclude the liability of any person for negligence resulting in death or personal injury or for fraudulent misrepresentation.

11 The Company shall exercise reasonable care and diligence in providing or arranging Services.

12 Unless otherwise agreed in writing, and subject to clause 10, the liability of the Company shall in all circumstances be limited to the lesser of sums calculated in the following manner:

- (a) where Goods are lost or damaged:

- (i) the value of Goods so lost or damaged; or
 - (ii) a sum calculated at the rate of £ Sterling 2.00 per kilo of the gross weight of any Goods lost or damaged;
 - (b) in all other circumstances the amount of the direct loss or £ Sterling 75,000.
- 13 The Company will not provide Services in connection with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants but if the Company should, in the course of providing the Services, handle or deal with such Goods (otherwise than under special arrangements previously made in writing) the Company shall (subject to clause 109), be under no liability whatsoever for or in connection with such Goods howsoever arising and whether in contract or tort or otherwise.
- 14 The Company shall perform the Services with due despatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent. Without prejudice to the foregoing, in the event that the Company is held to be liable for delay its liability shall not in any event exceed the aggregate amount of the Agency Fee and the sum of any Management Fee charged or earned in each case in respect of the transaction or the sum of £ Sterling 75,000 whichever is the lower.
- 15 No liability whatsoever shall attach to the Company for consequential or indirect loss or for loss of profit or loss of market, however caused.
- 16 The Company shall not in any event be liable for loss of or damage to Goods unless it is advised thereof in writing within three days after the completion of provision of the Services and the claim is made in writing within 42 days thereof, provided always that these limits shall not apply if the Principal can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time. Notwithstanding the above provisions, the Company shall in any event be discharged from all liability whatsoever and howsoever arising in connection with the Services unless suit is brought within nine months after completion of the Services.
- 17 The Company shall not be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 14 or more days, the Company may terminate this agreement by giving written notice to the Principal.

General

- 18 The Company shall have authority to appoint Sub-Agents to arrange the provision of Services or the supply goods for the benefit of the Principal, including such Services or supply of goods as may be subject to these Conditions, remaining at all times responsible for the actions of the Sub-Agent.
- 19 Where the entity which accepts the Estimate is not the company, firm or person referred to at 1(h)1(h)(i) or 1(h)1(h)(ii) above, that entity warrants that it has authority on behalf of the company, firm or person referred to at 1(h)1(h)(i) or 1(h)1(h)(ii) to enter into a contract incorporating these Conditions with the Company on behalf of such company, firm or person.
- 20 Whenever the Company issues a bill of lading for the carriage of Goods on a Vessel it does so as agent for the carrier of the Goods and subject to these Conditions. The carriage of such

Goods shall, however, be subject to the terms and conditions of the bill of lading and/or the carrier's tariff rules (if any) which may be inspected on request.

- 21 The Principal is required to pay to the Company, within 30 days of the Invoice, all sums shown on the Invoice, including any sums ultimately due to Suppliers.
- 22 If the Principal fails to make payment in full of any sums due or payable to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding with effect from the date of first demand at a rate of 2 % above the Bank of England Base Rate (being the Bank of England's base rate as published by the Bank of England from time to time) applicable during the period when the sums are outstanding. The same interest rate shall apply should the Company fail to make payment in full of any sums due to the Principal on demand or within any period agreed in writing, applicable during the period when the sums are outstanding.
- 23 The Company shall have a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time from the Principal and shall be entitled to sell or dispose of such Goods or documents as agent for and at the expense of the Principal and apply the proceeds towards the monies due and the expenses of the retention, insurance, sale and disposal of the Goods. 28 days notice of the intention to sell will be given by the Company to the Principal unless the Goods are liable to perish or deteriorate in which case the Company shall have the right to sell or dispose of the Goods immediately. The Company shall, upon accounting to the Principal for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.
- 24 Where liability to contribute in General Average arises in connection with the Goods, the Principal shall promptly provide security to the entity entitled to make a recovery in General Average (or claiming to be so entitled) in a form acceptable to the entity entitled to make a recovery.
- 25 It is hereby expressly agreed that no servant or agent of the Company shall in any circumstances whatsoever be under any liability whatsoever under these Conditions for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment.
- 26 Without prejudice to the generality of the foregoing provisions, every exemption from liability, limitation, condition and liberty herein contained and every right, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled, shall also be available and shall extend to protect every such servant and agent of the Company acting as aforesaid.
- 27 Subject to clause 10, the Supplier and the Principal each undertake with the Company that no claim or allegation of any kind shall be made against any of the Company's directors officers employees servants or agents (herein collectively called "the Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting directly or indirectly from any negligent act error or omission of the Beneficiaries in the performance of the Services the subject of these Conditions. The Beneficiaries shall have the benefit of, and shall be entitled to rely on and enforce this undertaking and in addition in entering into this Contract the Company, to the extent of this provision, does so not only on its own behalf but also as agent or trustee for the Beneficiaries, who shall to the extent of this clause only be or be deemed to be parties to this Contract.
- 28 These Conditions and any contract to which they apply shall be subject to English Law. Without prejudice to clause 29, any dispute arising in connection with the Company's business shall be

determined by arbitration in London pursuant to the LMAA Terms for the time being in force by a sole arbitrator appointed for that purpose by the parties. Failing agreement as to the identity of the sole arbitrator, each party shall nominate its own arbitrator and the party appointed arbitrators shall appoint a chairman.

- 29 Nothing in these Conditions shall prevent or restrict either party from seeking injunctive or other urgent relief in any court of competent jurisdiction.
- 30 If there is any conflict between the terms set out in these Conditions and any other terms and conditions agreed between the parties these Conditions shall prevail unless the Company specifically agrees otherwise in writing.