

TERMS AND CONDITIONS

CARGO HANDLING AND MOORING SERVICES ("CONDITIONS")

1. DEFINITIONS AND INTERPRETATION

1.1. For the purposes of these Conditions:

Applicable Law means applicable laws and regulations relating to the Equipment, the Goods, the Premises, use of the Facilities or the provision of the Services.

Berth means any berth, quay, wharf, pier, jetty, docks, ramp, landing place and any wall and building adjoining the foreshore or sea-bed at the Port.

Cargo Handling Services means any operation, works or services performed or provided by PoDCL in connection with the Goods and Equipment including without limitation, the loading, unloading, receiving, delivering, handling or storing of Goods and Equipment.

Charges mean, unless otherwise agreed in writing in advance between the Parties, the charges payable by the Customer for the Services.

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

Container means any empty article of transport equipment (including but not limited to dry, flat-rack, open top, pallet-wide, platform, reefer and tank containers) constructed to the specification of the International Standards Organisation (ISO) with ISO recommended lifting arrangements.

Customer means any person who, whether directly or by their Customer Agents, visits the Premises, utilises, receives or benefits from the Services or the Facilities (or any combination of the foregoing).

Customer Agents means Customer agents, employees, independent contractors or any other person for whom it is responsible and includes any third party accessing the Facilities for the delivery or collection of any Goods, including Containers, brought to the Premises by the Customer.

Dangerous Space means any space on the Vessel not continuously or adequately maintained or ventilated in respect of which it is reasonably foreseeable that the atmosphere might contain toxic or flammable gases or be deficient in oxygen to the extent that it may endanger life or health of any person entering that space and shall include any space which has been fumigated.

Equipment means any plant, machinery, Container, package, case, pallet, Vehicle (private or commercial) other than Vessel's Equipment.

ETA means estimated time of arrival at the Berth.

Facilities means all Berths, loading/unloading areas, storage areas, warehouses, roads, paths, buildings, the Transit Shed and any other facilities operated or managed by PoDCL at the Premises.

Goods means goods of any kind, size or weight/ measurement whatsoever, whether dry bulk, break bulk, project cargo, palletised, otherwise unitised or in a Container (including any packaging or Containers within which the said goods may be contained) but excluding stores and bunkers.

Moorings Services mean any mooring services and associated operations performed or provided by PoDCL to the Customer in respect of the Vessel.

Party means the Customer or PoDCL, as the case may be, and **Parties** means both of them.

PoDCL means the Port of Dover Cargo Limited, a company incorporated in England and Wales with company number 10333520, whose registered office is at Harbour House, Waterloo Crescent, Dover, CT17 9BU and any reference to "PoDCL" shall be deemed to include PoDCL Agents.

PoDCL Agents means PoDCL's agents, employees, independent contractors or any other person for whom it is responsible.

Port means the Port of Dover.

Premises mean the relevant area at the Port, including the Berth, Transit Shed or other area (whether landside or waterside) within the Port at which the Services will be provided.

Services mean the Cargo Handling Services and the Mooring Services.

Transit Shed means PoDCL's temperature controlled stores located at the Premises.

Vehicle means any road haulage vehicle, including but not limited to trucks/trailers.

Vessel means the vessel the Customer uses to transport the Goods, whether owned, chartered, operated or leased by the Customer and any reference to "Vessel" shall be deemed to include the Vessel's Equipment.

Vessel's Equipment means the equipment referred to in Condition 8.1 other than Equipment (whether supplied by the Customer or others) which will be required by PoDCL to provide the Services.

VGM means the verified gross mass of a packed Container.

VGM Declaration means a signed shipping document provided to PoDCL, or electronic certification certifying the VGM in accordance with the VGM Regulations.

VGM Regulations means regulations pursuant to the Safety of Life at Sea Convention ("SOLAS") Chapter VI Regulation 2 concerning the declaration of VGM by shippers of containerised cargoes, and requirements under The Merchant Shipping (Carriage of Goods) Regulations 1999 S.I. 1999 No. 336 in relation to the declaration of gross mass of cargo units in advance of loading, as either may be amended, supplemented or superseded from time to time.

1.2. In these Conditions:

- (a) a reference to a Condition shall be to a condition of these Conditions;
- (b) a reference to a person shall include a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (c) words in the singular include the plural and words in the plural include the singular;
- (d) Condition headings are for ease of reference and do not form part of or affect the interpretation of these Conditions;
- (e) references to Applicable Law, any statute or statutory provision shall be construed as a reference to that Applicable Law, statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; and in the event that any liability or duty arising hereunder (including payment of the Charges) attaches to more than one

Customer such liability shall be joint and several.

2. APPLICATION OF THESE CONDITIONS

- 2.1. These Conditions shall apply to:
- (a) the Customer and all Services of any nature whatsoever performed by, or undertaken on behalf of PoDCL, in relation to Containers, Equipment, Goods, Vessels or Vehicles (or any combination of the foregoing); and
 - (b) any person who, whether directly or by their agents, employees, independent contractors or any other person for whom it is responsible, visits the Premises, utilises, receives or benefits from the Services or the Facilities (or any combination of the foregoing).
- 2.2. The acceptance by the Customer of these Conditions may be express, but even if not made expressly, acceptance will be implied from the use of the Facilities or Services by the Customer, entry into the Premises or berthing of any Vessel at a Berth (or any combination of the foregoing).
- 2.3. These Conditions prevail over and apply to the exclusion of any terms and conditions proposed by the Customer (whether in writing or otherwise) and any terms implied by trade, custom or practice unless specifically agreed to in writing by PoDCL.
- 2.4. These Conditions may be altered or varied at any time by PoDCL as it may consider appropriate from time to time in such manner and in such respects as PoDCL may consider desirable.
- 2.5. If any international convention, national law or regulation is compulsorily applicable to any of the Services these Conditions shall, as regards such Services, be read as subject to such convention, law or regulation, and nothing in these Conditions shall be construed as a surrender by PoDCL of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such convention, law or regulation. Any part of these Conditions which contravenes such convention, law or regulation to any extent, shall in respect of the Services to which such convention, law or regulation applies compulsorily be overridden to that extent and no further.

3. SUPPLY OF THE SERVICES

- 3.1. In consideration of payment of the Charges, PoDCL will provide the Services in accordance with these Conditions.
For the avoidance of all doubt, PoDCL is not an agent or employee of the Customer. All employees or other third parties employed in the performance of the Services are either employees of PoDCL or its subcontractors at all times and have no direct relationship with the Customer.
- 3.2. Notwithstanding the time agreed for the commencement of Services, the Cargo Handling Services will commence once the Vessel is berthed safely at the Premises.
- 3.3. PoDCL reserves the right to:
- (a) suspend the provision of any Services at any time in the event of any breach of these Conditions;
 - (b) at any time before it commences the performance of any Services, serve written notice on the Customer declining to undertake the performance of such Services and giving reasons for so declining;

- (c) decline to load a Container onto a Vessel where PoDCL has not been provided with a VGM Declaration or where the VGM is otherwise unknown in respect of such Container by the time specified by PoDCL from time to time;
- (d) decline to provide the Services where the Customer is not (or is reasonably suspected not to be) in compliance with any other Applicable Laws with regard to any Goods or Containers.

- 3.4. Subject to Condition 16, in the event PoDCL declines to perform the Services or suspends performance of the Services in accordance with Condition 3.4, PoDCL shall have no liability.
- 3.5. Where the provision of the Services is suspended in accordance with Condition 3.4(a), and PoDCL declines to recommence the provision of the Services, PoDCL shall notify the Customer and the Customer shall, at its own expense, remove any Goods and/or Equipment from the Premises within thirty (30) days of the date of the said notice, failing which PoDCL may so remove them at the expense and risk of the Customer.
- 3.6. Where PoDCL declines to perform any Services by written notice in accordance with Condition 3.4(b), or any reason other than its own inability to perform the Services, the Customer shall, at its own expense, remove any Goods and/or Equipment from the Premises within thirty (30) days of the date of the said notice. If the Customer fails to comply with the notice, PoDCL may remove the Goods or Equipment at the expense and risk of the Customer.

4. CUSTOMER'S WARRANTIES

- 4.1. The Customer represents and warrants that it has power to enter into a contract for the Services based on these Conditions and that it has obtained all necessary approvals to do so either as principal or as agent in which event the Customer is fully authorised to legally bind both the Customer and its principal and to accept these Conditions on behalf of itself and of its principal.
- 4.2. The Customer is deemed to represent and warrant that:
- (a) any description, particulars, information and documentation provided by or on behalf of the Customer is accurate and complete in all material respects;
 - (b) the Equipment and Vessel's Equipment is in good working order, properly maintained and fit for purpose; and
 - (c) the Goods:
 - (i) are safely and securely packed, stowed, labelled and marked in compliance with Applicable Law and in a fit and proper condition for PoDCL to supply the Services;
 - (ii) require for their safekeeping no special protection (other than as may be agreed in writing between the Parties) and will remain safe if left standing in the open or in covered accommodation at the Premises;
 - (iii) will not contaminate or cause danger, injury or pollution or damage to any person, the Premises or any other Goods, Equipment or Vessel or the adjacent environment or generally;

- (iv) is not infested, verminous, rotten or subject to fungal attack and not liable to become so while being handled;
 - (v) (other than as may be agreed in writing between the Parties) is not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
 - (vi) is not overheated or under-heated or liable to become so whilst at the Premises; and
 - (vii) contain no unauthorised controlled drugs, prohibited or stolen goods, contraband or other illegal matter or substances or stowaways.
- (d) it will bring these Conditions (including the limits and exclusions herein) to the attention of any person who the Customer may instruct to enter upon the Premises or otherwise deal with PoDCL including, but not limited to, any Customer Agents instructed by the Customer.
- 4.3. The Customer warrants that all Customer Agents which enter the Premises shall comply with all Applicable Laws, byelaws of the Port and reasonable instructions of PoDCL relating to health and safety, security and protection of the environment. The Customer understands that any failure of a Customer Agent to do so may result in that Customer Agent being removed from the Premises and being refused re-entry.

5. **CUSTOMER'S OBLIGATIONS**

- 5.1. The Customer must ensure that PoDCL is given reasonable access and control over areas of the Vessel or to the Vessel's Equipment reasonably needed by it to properly perform the Services.
- 5.2. When the Customer is acting as the carrier of Goods, then the Customer shall procure that:
- (a) it and any person acting on its behalf, shall comply with all Applicable Laws.
 - (b) the persons requiring any Vessel carrying Goods to be discharged must disclose in writing to PoDCL full details, to the satisfaction of PoDCL, of the situation of all obstructions existing in the hold of the Vessel prior to the commencement of the discharge;
 - (c) the master of the Vessel, immediately after berthing the Vessel, advises PoDCL of any Dangerous Space within the Vessel; and
 - (d) it shall be responsible for all duties, taxes, imposts, levies, deposits and guarantees of whatever nature levied by any Competent Authority and/or any expenses incurred in complying with the requirement of any Competent Authority in relation to the Containers, Equipment or Goods (or any combination of the foregoing).

6. **PODCL OBLIGATIONS**

- 6.1. Subject to these Conditions, PoDCL will, with reasonable skill and care, provide the Services from time to time as agreed between the Parties.
- 6.2. Subject to specific written instructions given by the Customer and accepted by PoDCL in writing, PoDCL reserves to itself full liberty in respect of the means and procedures to be employed in the provision of the Services. PoDCL may deviate from the Customer's instructions (whether or not accepted by

- PoDCL) in any respect if PoDCL considers it is necessary in the interest of the Customer or health and safety (or any combination of the foregoing), and the Customer shall reimburse PoDCL for all reasonable expenses incurred thereby.
- 6.3. Where it becomes exceptionally difficult to provide the Services due to (without limitation);
- (a) unsoundness of the Goods;
 - (b) bad or collapsed stowage;
 - (c) damage to the Goods or the Vessel; or
 - (d) any other matter creating exceptionally difficult working conditions (including but not limited to adverse weather conditions),

- then PoDCL may in its absolute discretion elect whether to perform or provide or continue to perform or provide the Services. PoDCL shall be the sole arbiter as to whether Goods are exceptionally difficult to work, or the prevailing weather conditions permit the Services to be provided.
- 6.4. If PoDCL elects to perform or provide or continue to perform or provide the Services in the circumstances set out in Condition 6.3, then PoDCL will not be liable for any loss or damage whatsoever or howsoever caused to the Goods or the Vessel including any claim for loss of use or loss of a particular market.
- 6.5. PoDCL shall immediately notify the Customer of any property damage or of any illness, injury or death of any person which occurs in relation to the performance of the Services and shall cooperate fully with the Customer in developing full and complete information about the facts and circumstances of the occurrence and the nature and extent of the resulting damages or injuries.

7. **VESSEL ON BERTHS**

- 7.1. The Customer shall procure that the Vessel shall vacate the Berth without undue delay upon completion of the Services unless otherwise agreed in writing by PoDCL.
- 7.2. PoDCL may in its absolute discretion require a Vessel to be moved from its Berth and/or require a Vessel to be moved from one Berth to another, including without limitation on the grounds of safety, in order to avoid disruption to the operation of the Premises or in the event of Vessel breakdown. The Customer shall be responsible for all costs associated with or incurred as a result of a Vessel being moved under this Condition 7.2.

8. **VESSEL'S EQUIPMENT**

- 8.1. The Customer must ensure that PoDCL has, without any charge:
- (a) the full use of all lighting, cranes, gantries, winches, derricks, runners and tackle on the Vessel;
 - (b) access to all available power supply to use such equipment and lighting at all times; and
 - (c) use of all necessary standing and running gear, hatch and winch tents, gear and dunnage.
- 8.2. The Customer must satisfy itself that the Vessel's Equipment is maintained in good working order before use by PoDCL and must ensure that the ship owner produces to PoDCL upon request a current certificate of test for such Vessel's Equipment if it is to be used by PoDCL showing the same meets the requirements of any Applicable Law.
- 8.3. To the extent that the Vessel's Equipment is not available to PoDCL or is not maintained or certified

in the manner specified in Condition 8.2, PoDCL may at its discretion:

- (a) refuse to supply the Services; or
- (b) supply the same at the expense (and with the approval of) the Customer and applicable Charges will be levied.

9. DOCUMENTATION

- 9.1. Any tally of Goods prepared by PoDCL in connection with the loading or discharging of any Vessel or Vehicle shall be the property of PoDCL and PoDCL shall not be under any obligation to disclose such document to any other Party. 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 PoDCL in respect of the document in question.
- 9.2. PoDCL's outturn reports showing the quantity of Goods delivered and damage to such Goods shall be deemed to be the quantity and condition of the Goods when landed.
- 9.3. Where Goods received from a Vessel and delivered to their owner are damaged or are less than the quantity stated on the relevant bill of lading (or similar document evidencing receipt, including waybill), the Customer may request in writing that PoDCL provide within a reasonable period of time an outturn for the Goods described on the relevant bill of lading for the purposes of assisting them in making a claim in respect of the alleged damage or shortfall.

10. DELIVERY OF GOODS

- 10.1. No Goods will be available for delivery by PoDCL until such time as H.M. Revenue & Customs clearance has been obtained in respect of such Goods. Unless agreed otherwise with PoDCL, responsibility for the clearance of Goods with H.M. Revenue & Customs rests with the owner of the Goods.
- 10.2. Delivery orders in respect of Goods to be delivered by PoDCL shall be lodged with PoDCL by, or on behalf of, the owner of the Goods.
- 10.3. On no account will Goods be delivered by PoDCL without production of the relevant delivery order issued by, or on behalf of, the Customer in its usual form authorising such delivery.
- 10.4. If the document of title is lost, or there is an irregularity, PoDCL will not deliver the Goods until it is satisfied that the person claiming delivery is entitled to delivery and against an indemnity by a bond or otherwise as PoDCL may require by or on behalf of the person taking delivery of the Goods.

11. NON-REMOVAL OF GOODS

- 11.1. Any perishable Goods which are unclaimed for a period of more than five (5) working days following arrival at the Premises or which is insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by PoDCL with prior notice to the Customer. PoDCL shall apply the proceeds of sale in, or towards the payment of, any sums due to PoDCL (including but not limited to any additional costs incurred by PoDCL to maintain such Goods). PoDCL shall, upon accounting to the Customer for any balance remaining after payment of any sum due to PoDCL, and for the cost of sale and/or disposal of the perishable Goods, be discharged of any liability whatsoever in respect of the perishable Goods. The Customer shall remain liable for any Charges or other amount due to PoDCL which are still outstanding.

- 11.2. Any non-perishable Goods which are unclaimed for a period of more than twenty-one (21) days following arrival at the Premises or which is insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by PoDCL with prior notice to the Customer. PoDCL will apply the proceeds of sale in, or towards the payment of, any sums due to PoDCL (including but not limited to any additional costs incurred by PoDCL). PoDCL shall, upon accounting to the Customer for any balance remaining after payment of any sum due to PoDCL, and for the cost of sale and/or disposal of the non-perishable Goods, be discharged of any liability whatsoever in respect of the non-perishable Goods. The Customer shall remain liable for any Charges or other amount due to PoDCL which are still outstanding.

12. WAREHOUSING

- 12.1. Pending forwarding or delivery, Goods and/or Containers may be warehoused or otherwise held at any place or places at the sole discretion of PoDCL, and relevant Charges will apply.
- 12.2. The following additional conditions are applicable to Goods stored in the Transit Shed (subject to relevant Charges):
 - (a) PoDCL will not deal with Goods which requires temperature control unless it is given prior notice of the temperature control requirement and it expressly accepts in writing to deal with such Goods. The Customer's notice will include the nature of the Goods and the particular temperature range and any other settings to be maintained. PoDCL shall not be liable for any loss of or damage to the Goods arising from following the Customer's instructions, defects in or failure, breakdown, stoppage of the temperature controlling machinery, plant, insulation or any apparatus of any Container, Vessel or Vehicle;
 - (b) Goods shall be presented in good and wholesome condition, adequately labelled for identification purposes and in the form and at such temperature as may be required by Applicable Law;
 - (c) Goods which in the reasonable opinion of PoDCL appear either not to be in compliance with Condition 12.2(b) or to be likely to cause personal injury or damage to other Goods or property, must be removed by the Customer immediately on receipt of notice requiring the same. PoDCL shall give any such notice to the Customer as soon as reasonably practicable on becoming aware of any problem with the condition of the Goods; and
 - (d) if speedy removal is required to mitigate such damage, PoDCL may at the Customer's expense and risk arrange for alternative storage or disposal or, if appropriate, destruction of such Goods as soon as reasonably practicable upon becoming aware of damage to the Goods.
- 12.3. When Goods are presented to PoDCL for storage, it shall be entitled, but not obliged, to open packages to ascertain whether or not there exists any deficiency in the Goods.
- 12.4. The Customer undertakes that any Container arriving at the Facilities, whether on a Vessel or Vehicle, has been properly pre-cooled and its

- thermostatic controls have been properly set by the Customer (or any person acting on its behalf) before receipt of the Goods by PoDCL. If the Customer fails to comply with the requirements of this Condition 12.44, PoDCL shall not be liable for any loss of or damage to the Goods caused by the Goods not being at the required temperature.
- 12.5. If, as a result of the presence or handling of the Goods, PoDCL incurs any expenses in complying with Applicable Law in relation to the Goods, then PoDCL shall be entitled to recover from the Customer the expense incurred in complying with the same.
13. **HAZARDOUS GOODS**
- 13.1. PoDCL will not deal with Goods which are or may become dangerous, hazardous, noxious (including radioactive materials), inflammable, explosive, or which are or may become liable to damage any property or person whatsoever ("**Hazardous Goods**") unless it is given prior written notice of the nature of the Hazardous Goods and it expressly accepts in writing to deal with the Hazardous Goods. The Customer's notice will include such information as is necessary for it to perform its obligation in connection with the Hazardous Goods in accordance with all Applicable Laws including, without limitation, information about the characteristics of the Hazardous Goods, the appropriate manner and method of storage, handling and transportation and the Hazardous Goods (when unitised or in a Container) must be distinctly marked on the outside so as to indicate the nature and characteristics of the Hazardous Goods and so as to comply with all Applicable Laws.
- 13.2. All extra costs and expenses incurred by PoDCL in handling Hazardous Goods shall be repaid by the Customer.
- 13.3. If the Customer fails to give prior written notice of the nature of any Hazardous Goods and PoDCL is unaware of its nature and the necessary precautions to be taken and if, at any time, it is deemed to be a hazard to life or property, the Hazardous Goods may, in PoDCL's sole discretion and as circumstances may require, be destroyed or rendered harmless without compensation to the Customer. The Customer shall be liable for all injury, loss, damage, delay or expenses arising out of the destruction or rendering the Hazardous Goods harmless.
14. **CHARGES AND PAYMENT**
- 14.1. All Charges are exclusive of value added tax and any other tax which shall be paid by the Customer at the rate and in the manner prescribed by Applicable Law.
- 14.2. PoDCL shall issue invoices in arrears. Unless otherwise agreed in writing by the Parties, invoices issued by PoDCL shall be payable immediately on receipt. If payment is not received by PoDCL within thirty (30) days of the relevant invoice date or by any other date agreed in writing by the Parties as may be applicable, PoDCL shall apply interest on the overdue amount in accordance with the Late Payment Commercial Debts (Interest) Act 1998.
- 14.3. Invoices shall be paid in full without any set-off, counterclaim, restriction, condition, deduction or withholding (except for any deduction or withholding required by Applicable Law).
- 14.4. All payments made to PoDCL will be paid into the following specified bank account:
- Lloyds Bank plc
Sort: Code 30-93-34
Account no: 58183960
or to any alternative bank account as may be specified by PoDCL from time to time.
- 14.5. Without prejudice to its rights under this Condition 14, PoDCL shall have the absolute right to suspend the provision of the Services until all amounts payable to PoDCL by the Customer have been paid in full.
15. **LIEN**
- 15.1. Without prejudice to any other rights and remedies PoDCL may have under these Conditions or otherwise, PoDCL shall have a general lien as well as a particular lien on the Goods, any documents relating to such Goods, and any Containers for all sums whatsoever due at any time to PoDCL under these Conditions or otherwise.
- 15.2. To enforce and satisfy PoDCL's lien, PoDCL shall have the right, at the Customer's expense, to sell the aforementioned Goods, documents and Containers and without any liability to the Customer and to apply the proceeds in, or towards the payment of, such sums;
- (a) where the Goods are liable to perish or deteriorate, immediately without notice to the Customer (subject to PoDCL taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so); or
- (b) in any other circumstances, if any monies due to the Customer are not paid within one (1) month after notice has been given to the Customer that such Goods are being detained.
- PoDCL's lien shall be inclusive of any costs incurred in enforcing and preserving its lien (including, but limited to, storage charges based on relevant Charges).
- 15.3. PoDCL shall, upon accounting to the Customer for any balance remaining after payment of any sum due to PoDCL, and for the cost of sale, be discharged of any liability whatsoever in respect of the Goods, the documents and the Containers. The Customer shall remain liable for any Charges or other amount due to PoDCL which are still outstanding.
- 15.4. PoDCL shall be entitled to refuse to allow a Vessel to leave the Port until:
- (a) all charges claimed by PoDCL for Services whether in relation to that Vessel (whenever performed) or to other Vessels of the Customer have been paid or secured to the satisfaction of PoDCL; and
- (b) security to the satisfaction of PoDCL has been given in relation to claims for any indemnity pursuant to these Conditions against the Customer (whether or not such claims arise in relation to that or another Vessel).
16. **LIMITATION OF LIABILITY**
- 16.1. PoDCL will only be liable for loss, contamination, deterioration of, or damage to, any Goods to the extent the same is caused by the negligence or wilful misconduct of PoDCL and such liability shall be limited to the lesser of:
- (a) the value of the Goods lost, contaminated, deteriorated or damaged (which shall be net invoice price (excluding value added tax) to the Customer or the manufacturing cost

- (excluding value added tax) incurred by the Customer for such Goods (as the case may be)) or in the case of contaminated, deteriorated or damaged Goods, the reduction in value of the Goods; or
- (b) one hundred pounds (£100) per tonne of gross weight of the Goods lost or damaged.
- 16.2. PoDCL will only be liable for loss of or damage to any Vessel or Vessel's Equipment to the extent the same was caused by the negligence or wilful misconduct of PoDCL and such liability shall be limited to the lesser of:
- (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Vessel or Vessel's Equipment; or
- (b) one million pounds (£1,000,000) per incident or series of connected incidents.
- 16.3. PoDCL will only be liable for loss of or damage to any Equipment (excluding Containers) to the extent the same was caused by the negligence or wilful misconduct of PoDCL and such liability shall be limited to the lesser of:
- (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Equipment; or
- (b) one hundred thousand pounds (£100,000) per incident or series of connected incidents.
- 16.4. PoDCL will only be liable for loss of or damage to any Container to the extent the same was caused by the negligence or wilful misconduct of PoDCL and such liability shall be limited to the lesser of:
- (a) the reasonable repair cost or replacement cost (with an item of the same age, size and type and in the same condition) of the Container; and
- (b) one thousand pounds (£1,000) per twenty foot (20)' Container, two thousand five hundred pounds (£2,500) for any other size/type of Container and two thousand five hundred pounds (£2,500) per reefer Container.
- 16.5. PoDCL shall not be liable under Conditions 16.1, 16.2, 16.3 and 16.4 unless such loss or damage exceeds one hundred and fifty pounds (£150) per occurrence and the Customer can establish that the loss, damage or, where relevant, the contamination or deterioration was caused by the negligence or wilful misconduct of PoDCL. If the loss or damage was contributed to by the act or omission of the Customer or any other person, PoDCL shall be exonerated from liability under Conditions 16.1, 16.2, 16.3 and 16.4 to the extent that such act or omission contributed to the loss or damage.
- 16.6. PoDCL accepts no responsibility whatsoever and howsoever arising (including negligence) with regard to any failure to adhere to any timeframe or any delay in the performance of the Services or for any demurrage or detention incurred (whether in relation to the Vessel, Containers, Vehicles or otherwise) by the Customer.
- 16.7. The Customer shall ensure that all bills of lading or other document to be issued by the Customer, its carrier, principal, agents or subcontractors or the carrier of the Customer's counterparty incorporate a condition to the effect that PoDCL will have the benefit of the provisions of that bill of lading or other document to the extent such provisions benefit PoDCL.
- 16.8. Save as set out in this Condition 16, PoDCL shall not be liable for loss of or damage to any Vessel, Goods, Equipment or Container howsoever arising (whether caused by negligence or otherwise).
- 16.9. Save to the extent prohibited by a mandatory provision of Applicable Law, PoDCL shall not be liable for:
- (a) any indirect, special or consequential loss; or
- (b) for any loss of profits, business, production, revenue, goodwill or anticipated savings,
- in respect of all claims, losses, damages, expenses, demands, liabilities, orders, awards, fines, penalties, proceedings and judgments whether arising in tort (including negligence), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Conditions, performance or any failure or delay in performance of the Services or any obligation under these Conditions ("**Claims**").
- 16.10. Notwithstanding any other provision of these Conditions, but subject to Condition 16.11, the liability of PoDCL in respect of any Claim shall be limited to the Charges payable in respect of that part of the Services to which the Claim relates.
- 16.11. Nothing in these Conditions shall exclude or restrict PoDCL's liability for death or personal injury caused by its negligence, fraudulent misrepresentation or any other act or omission for which liability may not be excluded or limited under Applicable Law. The overall liability limit contained in Condition 16.10 shall not apply to PoDCL's liability under Conditions 16.1, 16.2, 16.3 and 16.4.
- 16.12. Any Claim by the Customer against PoDCL arising in respect of any Service provided for the Customer, or which PoDCL has undertaken to provide, shall be made in writing and notified to PoDCL within 24 hours of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such Claim, and any Claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred. PoDCL shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Service provided for the Customer, or which PoDCL has undertaken to provide, unless legal proceedings are commenced and written notice of such proceedings is given to PoDCL within twelve (12) months from the date of the event or occurrence alleged to give rise to a cause of action against PoDCL.
- 16.13. The Customer shall indemnify PoDCL against any and all costs (including the costs of investigating and defending any Claims) and Claims of whatsoever nature howsoever assumed, incurred or suffered by PoDCL as a result of or in connection with:
- (a) any Claim made by any third party (including without limitation a Claim made by the owner of the Goods, the Vessel or the Equipment or any other person who is or may become interested in the Goods, the Vessel or the Equipment or any Competent Authority) when such Claim arises from or in connection with the Services (whether caused by PoDCL's negligence or otherwise) and to the extent such Claim exceeds PoDCL's liability to the Customer under these Conditions;

- (b) any breach by the Customer of the obligations or warranties given in Condition 4 (or any combination of the foregoing);
 - (c) the failure to make such the disclosure required by Condition 5.2(b) or if such disclosure is made, as a result of inadequacy or inaccuracy of such disclosure, except where such liability, arises as result of personal injury directly caused by the negligence or wilful misconduct of PoDCL;
 - (d) PoDCL electing to perform or provide or continue to perform or provide the Services in the circumstances set out in Condition 6.3, including all costs and Claims relating to the handling of Goods at the Berth or in the Transit Shed;
 - (e) any accident howsoever arising out of or caused or contributed to by any defect in the Vessel Equipment (save if the accident was directly caused by the negligence or wilful misconduct of PoDCL);
 - (f) the condition of the Goods, subject to PoDCL's obligation to notify the Customer as set out in Condition 12.2(c);
 - (g) any failure by the Customer to comply with Condition 13;
 - (h) PoDCL acting in accordance with the Customer's instructions; and
 - (i) any death or personal injury of any person or loss of or damage to any property whatsoever arising from the presence of the Customer at the Premises, the use by the Customer of the Facilities, the presence of the Vessel/ Containers at the Berth or the presence of the Goods on the Vessel (whilst the Vessel is at the Berth) or within the Facilities (unless directly caused by the negligence or wilful misconduct of PoDCL).
- 16.14. Notwithstanding the above, PoDCL shall in addition have the right in any circumstances to rely on any Applicable Law providing for limitation or exclusion of liability.
- 16.15. PoDCL Agents shall be entitled to the benefit of all provisions herein which exclude or restrict liability of any kind. PoDCL, in undertaking the Services and entering into any contract based on these Conditions, does so on its own behalf and as agent for PoDCL Agents.
17. **INSURANCE**
- 17.1. All Goods at or on the Premises are the sole responsibility of the Customer in every respect and shall at all times remain at the entire risk of the Customer. Unless expressly agreed, PoDCL does not insure Goods, Vessels or Equipment and the Customer shall self-insure or make arrangements to cover Goods, Vessels and Equipment against all insurable risks to their full insurable value (including all duties and taxes) and shall procure that any Vessel using the Port pursuant to these Conditions is insured against all risks of loss or damage to their full replacement value and to cover their legal liabilities.
- 17.2. The Customer shall, at its own expense, procure and maintain policies of insurance covering:
- (a) any liabilities assumed by it under these Conditions; and
 - (b) any requirements by Applicable Law, including employer's liability and public liability.

18. **TERMINATION**

- 18.1. PoDCL may terminate the Services at any time and without any liability whatsoever where the Customer is in breach of its obligations under these Conditions and has persistently failed to remedy same on being notified by PoDCL.
- 18.2. PoDCL may immediately terminate the Services without any liability whatsoever in any of the following circumstances:
- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or
 - (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer; or
 - (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors; or
 - (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer; or
 - (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within twenty one (21) days; or
 - (f) where the Customer suspends or ceases, or threaten to suspend or cease, carrying on business.

19. **EFFECT OF TERMINATION**

- 19.1. Where the Services are terminated pursuant to Condition 18, then the Customer will:
- (a) use all reasonable endeavours to enable PoDCL to terminate its provision of the Services by the due date of termination; and
 - (b) continue to pay all sums due hereunder in accordance with these Conditions for so long as the Services continue to be provided.

20. **FORCE MAJEURE**

Neither Party shall be liable to the other for any loss or damage to any Goods, Vessels or Equipment, delay or non-performance of its obligations under these Conditions (or any combination of the foregoing) to the extent that such, loss or damage, delay or non-performance is due to any acts of God, flood, severe weather condition, storm, tempest, epidemic, pandemic, compliance with Applicable Laws, acts of any Competent Authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, heat or cold (including heat within the Goods itself and unintended exposure to natural or artificial light), inherent vice of the Goods, criminal acts, computer viruses, lock-outs, strikes and other industrial

disputes (in each case, beyond the control of the Parties), shortages of labour, materials and services and inability or delay in obtaining supplies and other events beyond a Party's reasonable control.

- (b) if sent by courier, on the date and at the time of signature of the courier's delivery receipt; or
- (c) if sent by UK registered mail, at 9:00 am on the second working day after posting.

21. **CONFIDENTIALITY**

- 21.1. Neither Party shall disclose any information to third parties about the other Party's activities, including but not limited to customer lists, manifests, commodity details, zero damage reports and other confidential data, concerning the other Party's business, excluding cargo details required for wharfage calculation, and shall not use such information competitively against the other Party as the case may be.
- 21.2. Either Party may disclose the other Party's confidential information:
 - (a) to those of its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out that Party's obligations under these Conditions. The Parties shall ensure that their employees, officers, representatives or advisers to whom they disclose such information comply with this Condition 21; or
 - (b) as may be required by law, court order or any Competent Authority.
- 21.3. Neither Party shall use any of the other Party's confidential information for any purpose other than to perform its obligations under these Conditions.

22. **MISCELLANEOUS PROVISIONS**

- 22.1. PoDCL may sub-contract on any terms whatsoever the whole or any part of the Services. The Customer agrees (to the extent that it is entitled to bring Claims against any PoDCL Agent) that any PoDCL Agent can, at its option, apply its own terms of contract with PoDCL to defend Claims brought by the Customer.
- 22.2. If any provision of these Conditions becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this Condition 22.3 shall not affect the validity and enforceability of the rest of these Conditions. If any provision of these Conditions is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 22.3. Unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Condition 22.4, no failure or delay by either Party to exercise any right or remedy provided under these Conditions or by Applicable Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.4. Any notice to be given to a Party under these Conditions shall be in writing in English and addressed to that Party at its registered office. Such notice shall be served by hand, courier or registered mail. Notice shall be deemed served:
 - (a) if delivered by hand, at the time of delivery;

23. **GOVERNING LAW AND JURISDICTION**

- 23.1. These Conditions and any disputes or Claims arising out of or in connection with their subject matter or formation (including non-contractual disputes or Claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 23.2. Any Claims against PoDCL under these Conditions or otherwise arising from the Services shall be determined exclusively by the courts of England and Wales to which jurisdiction the Customer irrevocably submits. PoDCL shall be entitled to bring legal proceedings against the Customer in the courts of England and Wales or in any other jurisdiction (including jurisdiction(s) where the Customer has a place of business or assets) and legal proceedings by PoDCL in one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.