

Port of Liverpool

ANCILLARY SERVICES

Terms and Conditions

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1. Definitions

For the purpose of these Terms and Conditions:

- (a) "Ancillary Services" shall mean the provision of line handling services.
- (b) "Boatmen" shall mean the persons employed or provided by the Company to perform line handling services, and shall include linesmen.
- (c) "the Company" means The Mersey Docks and Harbour Company, whose head office is situated at the Maritime Centre, Port of Liverpool L21 1LA
- (d) "craft" shall include any vessel, craft or boat provided by the Company for the performance of any service to the Hirer.
- (e) "Hirer" shall mean any owner, charterer or person in possession of any vessel or any agent of the foregoing who requests or uses the line handling services of the Company.
- (f) "line handling services" includes any operation or service related to or arising from assisting the Hirer's vessel to moor, unmoor, shift berth, adjust moorings or otherwise assisting in handling moorings or tow ropes to or from the Hirer's vessel either ashore, in attendant craft or aboard the Hirer's vessel.
- (g) "Lock" shall mean the River Entrance locks at Gladstone, Langton and Alfred Docks in the Port.
- (h) "the Port" means the Port of Liverpool as defined in The Mersey Docks and Harbour Act 1971 and any statutory amendment or re-enactment thereof.
- (i) "Vessel" shall include any vessel, craft, or object of whatsoever nature (whether or not coming within the usual meaning of the word "vessel") which the Company agree to assist by providing services of whatsoever nature at the request, express or implied, of the Hirer.
- (j) The expression "whilst providing a service" shall cover the period commencing when the Boatmen leave their base or are otherwise in a position to receive and comply with the Hirer's request to commence providing a service, whichever is the sooner, and ending when the Boatmen return to their base or commence providing another service, whichever is the sooner.
- (k) The expression "load on board" shall include "discharged from". Words implying the singular include the plural and vice versa and words importing gender shall include any other gender unless the context otherwise requires.

2. Terms and Conditions

Any agreement between the Company and a Hirer for the provision or performance of line handling services by the Company is and shall be subject to these Terms and Conditions. Use of the Company's line handling service shall be deemed to constitute notice of and agreement to these Terms and Conditions provided that prior to use of the said service the Company shall take all reasonable steps to ensure that Hirers are aware of these Terms and Conditions and that copies are available on request.

3. Authorisation

If the Hirer is not the owner of the vessel (hereinafter referred to as “the Hirer's vessel”), the Hirer expressly represents that (i) he is authorised to make and does make this agreement for the provision of line handling services for and on behalf of the owner of the said vessel subject to each and all of these Terms and Conditions and (ii) he agrees that both the Hirer and the Owner are bound jointly and severally by these Terms and Conditions.

4. Company's Employees

Whilst providing a service at the request, express or implied, of the Hirer, the Company's employees shall be deemed to be the servants of the Hirer and/or his servants and/or his agents, and anyone on board the Hirer's vessel who may be employed and/or paid by the Company shall likewise be deemed to be the servant of the Hirer and the Hirer shall accordingly be vicariously liable for any act or omission by any such person so deemed to be the servant of the Hirer.

5. Liability for Loss or Damage

Whilst providing a service at the request either express or implied of the Hirer:

- (a) the Company shall not be responsible or liable:
 - (i) for loss or damage of any description caused by or to the Hirer's vessel or caused by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or by or to any other object or property; or
 - (ii) for any claim by a person other than the Hirer for loss or damage of any description whatsoever, arising from any cause, including (without prejudice to the generality of the foregoing) negligence at any time of the Company, its servant, agents or independent contractors, unseaworthiness, unfitness or breakdown of the craft, its machinery, gear, equipment, lines, ropes or hawsers, lack of fuel, stores, speed or otherwise.
- (b) The Hirer shall be responsible for and will indemnify the Company against and in respect of any loss or damage and any claims of whatsoever nature or howsoever arising or caused whether covered by the provisions of paragraph 5(a) hereof or not (including any arising from or caused by the negligence of the Company or their servants, agents or independent contractors) provided that the Hirer shall not be liable to the Company for or in respect of any loss, damage or claims which the Hirer proves (the burden of proof being on the Hirer) to have been solely caused by the actual fault or privity of the Company in failing to make its craft seaworthy for the relevant service. Provided that, notwithstanding anything hereinbefore contained, the Company shall under no circumstances be responsible for or be liable for any loss or damage caused or contributed to, by or arising out of any delay or detention of the Hirer's vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Hirer's vessel or of any other object or property or of any person, or any consequences thereof whether or not the same shall be caused or arise whilst rendering any service of whatsoever nature at the request, either express or implied, of the Hirer. The Company shall not in any event be liable in negligence or otherwise howsoever for indirect or consequential damage including any claims for loss of use or profits.
- (c) The Company shall in any event be freed and discharged from all liability for any loss or damage to any vessel cargo or other matter or thing unless suit is brought within twelve months of the provision or performance by the Company of the line handling or other service by or from which such loss or damage was caused or arose.

6. Substitution of Craft or Boatmen

The Company shall at any time be entitled to substitute one or more craft for any other craft and to contract with any other Boatmen not employed by it (hereinafter referred to as “the other Boatmen”) to hire the other Boatmen's craft and in any such event it is hereby agreed that the Company is acting (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Company may in addition if authorised whether expressly or impliedly by or on behalf of the other Boatmen act as agent for the other Boatmen at any time and for any purposes including the making of any agreement with the Hirer. Should the Company as agent contract with the other Boatmen for any purpose as aforesaid then such contract is and shall at all times be subject to the provisions of these Terms and Conditions so that the other Boatmen are bound by the same and may as a principal sue the Hirer thereon and shall have the full benefit of these conditions in every respect expressed or implied therein.

7. Salvage etc. and Limitation

Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Company may have against the Hirer including, but not limited to, any rights which the Company or their servants, agents or independent contractors may have to claim salvage remuneration or special compensation for any extraordinary service rendered to vessels or anything aboard the vessels. Furthermore, nothing contained in these conditions shall limit, prejudice or preclude in any way any right which the Company may have to limit its liability.

8. Force Majeure

The Company will not in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts or other industrial disputes or actions of any nature or anything done in contemplation or furtherance thereof or any cause or event which could not be avoided and the consequence whereof could not be prevented by the exercise of reasonable diligence.

9. Protection of Company's Servants etc.

The Hirer undertakes not to take or cause to be taken any proceedings against any servant agent or independent contractor of the Company or the other Boatmen whether or not the craft or Boatmen be substituted or hired or the contract or any part thereof has been sublet to the owner of the craft, in respect of any negligence or breach of duty or other wrongful act on the part of such servant, agent or independent contractor which, but for this present provision, it would be competent for the Hirer so to do and the owners of such craft shall hold this undertaking for the benefit of their servants agents and independent contractors.

10. Fenders

The Company will endeavour to use fenders to prevent damage to a vessel but if a Hirer requires a complete fendering service, extra men must be employed solely for this purpose.

11. Charges

- (a) The Hirer shall pay to the Company the charges in accordance with the Company's Schedule of Ancillary Services Charges from time to time in force. The Charges in paragraphs (a) and (b) of the said Schedule are based on the vessel GT and exclude hire charges for attendant craft & crew provided at the request of the Hirer (but not otherwise).
- (b) Additional charges to those listed in the said Schedule shall be payable by the Hirer for any special service over and above normal line handling services (such as, for example, the employment of attendant craft and crew).
- (c) Charges for docking, undocking or transporting vessels on week days after 0800 and up to 1700 hours shall be at the standard day rate quoted in the Schedule hereto.
- (d) Charges for docking, undocking or transporting vessels on week days after 1700 and up to 2400 hours or after 2400 and up to 0800 hours ("nights") shall be at the standard day rate plus 10%.
- (e) Charges for docking, undocking or transporting vessels after 2400 hours Friday and up to 2400 hours Sunday ("weekends") shall be at the standard day rate plus 50%.
- (f) Charges for docking, undocking or transporting vessels on Bank and other national holidays (with the exception of Christmas Day, Boxing Day and New Years Day) shall be at the standard day rate plus 120%. Rates for Christmas Day, Boxing Day and New Years Day will be available upon application to the Harbour Master of the Company.
- (g) Charges are calculated from time of order but the rates quoted in paragraphs (d), (e) and (f) above shall become due if a vessel docking crosses the outer sill of a Lock after 1700 and up to 2400 hours or after 2400 and up to 0800 hours on weekdays or after 2400 hours Friday and up to 2400 hours Sunday or on a Bank or other national holiday or when a vessel sailing or shifting does not 'break away' until such hours or holidays.
- (h) Charges for docking, undocking or transporting vessels from 1730 hours Friday and up to 0900 hours Monday and from 1730 hours Monday to Thursday inclusive and 0900 hours the following day or on a Bank or other national holiday shall be at the appropriate rate plus 30% if the order to the Company's Ancillary Services Control is received after 1630 hours on the last normal working day before the required service.

12. Attendance and Detention Charges

- (a) An attendance charge for line handling services at the rate of 10% of the relevant charge shall become due if an order for line handling services is cancelled or amended without the required notice of cancellation or re-ordering respectively being given to the Company. Notices of cancellation and re-orders for line handling services at a later time (so that no charge is applicable) shall be accepted at the following hours' notice:

	Time of original order	Hours' notice for cancellations and re-orders
(i)	from 0800 - up to 1630 weekdays	1 hour's notice
(ii)	after 1630 - up to 2300 weekdays	3 hours' notice
(iii)	after 2300 - up to 0800 weekdays and after 1630 Friday up to 0800 Monday	6 hours' notice

Notices of cancellation and re-orders for an earlier time shall be accepted at the above hours notice and shall be charged at the appropriate rate plus 30% if the time of re-order falls after 1630 and up to 2400 hours or after 2400 and up to 0800 hours on weekdays or after 1630 hours Friday and up to 0800 hours Monday or on a Bank or other national holiday.

- (b) If men are ordered to attend a vessel and are detained for a complete hour or more without working due to or resulting from the act of default of the Hirers, their servants, agents or independent contractors or any other circumstances not being the act or default of the Company, then a detention charge for each complete hour of such detention at the rate of 10% of the relevant charge shall become due in addition to the relevant charge for the operation.

13. Orders

All orders are to be requested as far in advance as possible. During weekdays after 0800 and up to 1630 hours, the minimum ordering time will be one hour in advance of the required time of the line handling services.

14. Payment of Charges

The Company's charges shall be payable by the Hirers on demand unless otherwise agreed by the Company. Interest at the rate of 4% per annum above the Bank of Scotland base rate is payable on charges remaining unpaid 28 days after the date of the Company's invoice.

15. Claims

All claims under these Terms and Conditions shall be determined according to the Laws of England by the English Courts to the exclusion of the jurisdiction of the courts of any other country.

16. Variation

These Terms and Conditions and charges may be altered or varied at any time and from time to time in such respects and in such manner as the Company may consider desirable.

April 2009