

CONTAINER DEPOT TERMS AND CONDITIONS ("CONDITIONS")

THE CUSTOMER'S ATTENTION IS DRAWN TO CONDITION 8 WHICH CONTAINS EXCLUSIONS AND LIMITS ON THE COMPANY'S LIABILITY AND WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES

1. APPLICATION OF THESE CONDITIONS

1.1 **Application** - These Conditions shall apply to:

1.1.1 all Services of any nature whatsoever performed by, or undertaken on behalf of, Solent Stevedores Limited (the "**Company**") in relation to Containers, Equipment, Cargo or Vehicles (or any combination of the foregoing);

1.1.2 all Vehicles which call at a Depot;

1.1.3 any person who visits the Premises, utilises, receives or benefits from the Services or the Facilities (or any combination of the foregoing) (the "**Customer**").

Definitions – For the purposes of these Conditions: (a) "**Cargo**" means goods of any kind, size or weight/measurement whatsoever transported or to be transported in a Container (including any packaging within which the said goods may be contained); (b) "**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; (c) "**Cyber Event**" means the loss or unauthorised destruction, alteration, disclosure of, access to, or control of a Digital Environment; (d) "**Depot**" means any container depot owned, operated or managed by the Company; (e) "**Digital Environment**" means information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems; (f) "**Equipment**" means such other property (other than Containers or Vehicles) owned, supplied, operated or otherwise controlled by the Customer (including but not limited to gensets, power packs, tanks, spare parts or related equipment); (g) "**Facilities**" means all loading/unloading areas, Depot and storage areas, roads, paths, maintenance facilities, buildings, lifting equipment and any other facilities owned, operated or managed by the Company at the Premises; (h) "**Premises**" means any Depot or other premises from where the Company provides the Services; (i) "**Service Schedule**" means the service schedule annexed to these Conditions as Appendix 1; (j) "**Services**" means the services as further described in the Service Schedule, and such other services to be provided by the Company to the Customer as mutually agreed in writing; (k) "**Vehicles**" means any road haulage or rail haulage vehicles, including but not limited to trucks, trailers, trains and wagons.

1.2 **Interpretation** – In these Conditions: (a) a reference to a party or a Condition shall be to a party subject to, or 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; and (d) a reference to writing shall include email.

1.3 **Deemed acceptance** – Use of the Facilities by, or the provision of the Services to, the Customer, entry into the Premises or the presence of any Container, Equipment, Cargo or Vehicle at the Facilities (or any combination of the foregoing) shall be treated as acceptance of these Conditions.

1.4 **Compulsory Legislation** – If any international convention, national law or regulation is compulsorily applicable to any of the Services ("**Compulsory Legislation**") these Conditions shall, as regards such Services, be read as subject to such Compulsory Legislation, and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such Compulsory Legislation. Any part of these Conditions which contravenes such Compulsory Legislation to any extent, shall in respect of the Services to which such Compulsory Legislation applies compulsorily be overridden to that extent and no further.

2. REQUEST FOR SERVICES AND INFORMATION REQUIREMENTS

2.1 **Request for Services** – At least forty-eight (48) hours or such other reasonable period as may be agreed in writing by the Company before the time when the Services are required, the Customer and the Company shall agree the Service Schedule and the Customer shall thereafter provide (as applicable) a written notification including all the information required by the Company in connection with the provision of the Services, as set out in such Service Schedule.

2.2 **Termination** – The Company may terminate any Service Schedule or part thereof on prior thirty (30) days' written notice.

2.3 **Pre-advice information** – The Customer shall promptly, and in any event at least twenty-four (24) hours prior to arrival at a Depot, notify the Company of any relevant information about the Containers, Equipment, Cargo (type, description, any special characteristics, weight, number and dimensions as more particularly described in Condition 5) and Vehicles all as required pursuant to Condition 2.1.

3. PROVISION OF THE SERVICES BY THE COMPANY

3.1 **The Company's obligations** – The Company will provide the Services using a reasonable degree of care, diligence, skill and judgment. The Company will provide the Services subject to and in accordance with these Conditions and any applicable laws. The Company will obtain all necessary licences and permits required to provide the Services.

3.2 **Means and procedures** – Subject to specific written instructions given by the Customer and accepted by the Company in writing, the Company reserves to itself full liberty in respect of the means and procedures to be employed in the provision of the Services. The Company may deviate from the Customer's instructions (whether or not accepted by the Company) in any respect if the Company 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 the Company with all reasonable expenses incurred thereby.

3.3 **Operating and working hours** – The normal working hours of the Premises are available on request from the Company. Any Services required outside the normal working hours must be pre-agreed with the Company together with any applicable overtime rates that the Company may apply.

- 3.4 **Inspection** – The Company (or its nominated representatives) may at any time on reasonable notice in writing by electronic communication or by post, inspect any Containers (including any Cargo contained therein or thereon), Equipment or Vehicles at the Premises for the purpose of ensuring compliance with these Conditions.
4. **CUSTOMER'S WARRANTIES AND RESPONSIBILITIES**
- 4.1 **Authority of the Customer** – The Customer represents and warrants that it is authorised to contract with the Company on the terms of these Conditions in respect of the Containers, Equipment, Cargo and Vehicles (as appropriate) and that it is accepting these Conditions not only for itself, but also as agent for and on behalf of the owners of the Containers, Equipment, Cargo and Vehicles and any other person who is or may become interested in them (as appropriate).
- 4.2 **Information accuracy** – The Customer represents and warrants that any description, particulars, information and documentation provided by or on behalf of the Customer is accurate and complete.
- 4.3 **Warranties about the Cargo** – The Customer represents and warrants that the Cargo: (a) has been properly and sufficiently prepared, packed, stowed, labelled or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Cargo; (b) requires no special protection for its safekeeping (other than as may be agreed in writing between the parties) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other cargo or from inflammability and will remain safe if left standing in the open or in covered accommodation at the Premises; (c) will not contaminate or cause danger, injury or pollution or damage to any person, the Premises, the Facilities or any other cargo, equipment, Container, Vehicle, or ship or the environment; (d) is not infested, verminous, rotten or subject to fungal attack and not liable to become so while being handled; (e) (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; (f) is not overheated or under-heated or liable to become so whilst at the Premises; and (g) contains no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter or substances or stowaways.
- 4.4 **Warranties about the Equipment** – The Customer represents and warrants that, save where the Company is specifically engaged to provide Equipment maintenance and repair services pursuant to the Service Schedule, the Equipment is in good working order, properly maintained and fit for purpose.
- 4.5 **Customs formalities, duties and taxes** – The Customer shall be responsible for, and shall comply with, all requirements of HM Revenue & Customs, UK Border Force, the relevant Port Health Authority or any other authority in respect of the import or export of the Cargo. The Customer shall be responsible for, and reimburse the Company for, all duties, taxes, imposts, levies, deposits and outlays of whatever nature levied by any authority and/or any expenses incurred in complying with the requirement of any authority in relation to the Containers, Equipment, Vehicle or Cargo (or any combination of the foregoing). In the event that any part of the Depot or any other part of the Premises which are being used mainly by the Customer is separately assessed to non-domestic / local authority rates or other such charges as a result of such activities by the Customer, the Customer will be responsible for paying such rates in full. It is not the intention of the Company or the Customer that the Customer be granted exclusive use of any part of the Depot or any other part of the Premises and in carrying out the Services the Company will use any area of a Depot or any other part of the Premises which is convenient to it at the relevant time.
- 4.6 **Compliance with laws and directions** – The Customer shall ensure that it, and shall procure that any person acting on its behalf, shall comply with all: (a) applicable laws and legal requirements relating to the Containers, the Equipment, the Cargo, the Vehicles, the Premises or the use of the Facilities; (b) the provisions of all licences, permits, consents and all directions given by any competent authority in respect of the Containers, the Equipment, the Cargo, the Vehicles, the Premises or the use of the Facilities; and (c) the directions, instructions, notifications, signage and marking, security, health and safety and environmental procedures and policies notified or published by the Company or its landlord from time to time (each of which will be deemed to be incorporated into these Conditions).
5. **RESTRICTIONS REGARDING CARGO**
- 5.1 **Dangerous Goods** – The Company will not deal with any Container containing Cargo which is or may become dangerous, hazardous, noxious (including radioactive materials), inflammable, explosive, or which is or may become liable to damage any property or person whatsoever ("**Dangerous Cargo**") unless it is given prior written notice of the nature of the Dangerous Cargo and it expressly accepts in writing to deal with the Container containing Dangerous Cargo. The Customer's notice will include such information as is necessary for it to perform its obligation in connection with the Container containing Dangerous Cargo in accordance with all applicable laws, regulations or requirements (or any combination of the foregoing), including without limitation information about the characteristics of the Dangerous Cargo, the appropriate manner and method of storage, handling and transportation, and the relevant Container must be distinctly marked on the outside so as to indicate the nature and characteristics of the Dangerous Cargo and so as to comply with all applicable laws, regulations and requirements. Additional charges may apply to the handling of Dangerous Cargo.
- 5.2 **Failure to notify the dangerous nature of any Dangerous Cargo** – If the Customer fails to give prior written notice of the nature of any Dangerous Cargo and the Company 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 Dangerous Cargo may, in the Company'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 loss, damage, delay or expenses arising out of the destruction or rendering the Dangerous Cargo harmless.
- 5.3 **Temperature control** – The Company will not deal with any Container containing Cargo 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 Container containing Cargo. The Customer's notice will include the nature of the Cargo and the particular temperature range and any other settings to be maintained. The Customer undertakes that any Container has been properly pre-cooled and its thermostatic and other controls have been properly set by the Customer (or any person acting on its behalf) before receipt of the Container by the Company. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Cargo caused by the Container not being at the required temperature setting or other setting. The Company shall not be liable for any loss of or damage to the Cargo arising from defects in or failure, breakdown, stoppage of the temperature controlling machinery, plant, insulation or any apparatus of any Container, Equipment or Vehicle (including but not limited to reefer Containers) released by the Company to the Customer (or its appointed representatives) unless the same is caused by the negligence or wilful misconduct of the Company) unless specifically engaged to provide reefer maintenance and repair services pursuant to the Service Schedule.

6. CONTAINERS AND SERVICES

- 6.1 **Right to move a Container** – The Company may in its absolute discretion require a Container to be removed from a Depot, including without limitation on the grounds of safety or in order to avoid disruption to the operation of the Premises or Facilities.
- 6.2 **Right to suspend Services** - The Company reserves the right to suspend the provision of any Services at any time in the event of any breach of these Conditions.
- 6.3 **Right to refuse to handle Containers** – The Company may refuse to handle any Container: (a) with a weight which exceeds its stated weight or the safe working load of any container handling equipment; or (b) where, in the reasonable opinion of the Company, the handling or the storage of the Container is or would be dangerous, hazardous or unsafe. The Customer shall (at its expense) remove or otherwise deal with any Container which the Company has refused to handle under this Condition.
- 6.4 **IT** – the Company and the Customer shall co-operate with each other as to integration of their IT systems and the use of any electronic data interchange (EDI) (if applicable). Each party shall bear its own costs for any such integration. If the Customer transfers, or causes the transfer of, data to any of the Company's systems from time to time, the Customer shall be responsible for the quality and timeliness of such data and its transfer, and shall indemnify the Company against any claim, loss, corruption or damage caused by or in respect of such data or transfer.

7. REMOVAL AND DISPOSAL OF CONTAINERS

- 7.1 **Perishable Cargo** – Any Container containing perishable Cargo which is unclaimed for a period of more than five (5) working days following arrival or which is insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by the Company without any notice to the Customer and the Company will apply the proceeds in, or towards the payment of, any sums due to the Company (including but not limited to any additional charges incurred by the Company in plugging in reefer Containers and providing electricity supply to maintain such Cargo). The Company shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal of the perishable Cargo, be discharged of any liability whatsoever in respect of the Container containing perishable Cargo. The Customer shall remain liable for any Charges or other amount due to the Company which are still outstanding.
- 7.2 **Non-perishable Cargo** – Any Container containing non-perishable Cargo which is unclaimed for a period of more than twenty-one (21) days following arrival or which is insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by the Company without any notice to the Customer and the Company will apply the proceeds in, or towards the payment of, any sums due to the Company (including but not limited to any additional charges incurred by the Company). The Company shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal of the non-perishable Cargo and any additional charges incurred by the Company, be discharged of any liability whatsoever in respect of the Container containing non-perishable Cargo. The Customer shall remain liable for any Charges or other amount due to the Company which are still outstanding.

8. LIABILITY

- 8.1 **Loss or damage to Containers** – The Company 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 the Company (or any other person for whom it is responsible) 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 Container lost or damaged; and (b) £2,000 per 20' Container, £3,000 for any other size/type of Container and £5,000 per reefer Container. Wherever possible the Company shall have the right of first refusal to effect any such Container repairs.
- 8.2 **Loss or damage to Equipment** - The Company will only be liable for loss of or damage to any Equipment to the extent the same was caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible) 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 lost or damaged; and (b) £10,000 per incident or series of connected incidents.
- 8.3 **Loss or damage to Cargo** – The Company will only be liable for loss, contamination, deterioration of, or damage to, any Cargo to the extent the same is caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible) and such liability shall be limited to the lesser of: (a) the value of the Cargo lost, contaminated, deteriorated or damaged (which shall be net invoice purchase price (excluding value added tax) or the manufacturing cost (excluding value added tax) for such Cargo (as the case may be)) or in the case of contaminated, deteriorated or damaged Cargo, the reduction in value of the Cargo; and (b) £1,300 per tonne of gross weight of the Cargo lost, contaminated, deteriorated or damaged.
- 8.4 **Loss or damage to Vehicles** – The Company will only be liable for loss of or damage to any Vehicle including any of its equipment to the extent the same was caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible) and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with a vehicle of the same age and in the same condition) of the Vehicle lost or damaged; and (b) £100,000 per incident or series of connected incidents.
- 8.5 **Proof of liability** – The Company shall not be liable under Condition 8.1, 8.2, 8.3 or 8.4 unless the Customer can establish that the loss, damage or, where relevant, the contamination or deterioration was caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible). If the loss or damage was contributed to by the act or omission of the Customer or any other person, the Company shall be exonerated from liability under Condition 8.1, 8.2, 8.3 or 8.4 to the extent that such act or omission contributed to the loss or damage.
- 8.6 **Delay** – The Company 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 charges incurred by the Customer (whether in relation to the Containers, Equipment, Cargo, Vehicles or otherwise).
- 8.7 **Contract of carriage limitation to apply** - 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 clause to the effect that the Company, its employees, agents and subcontractors will have the benefit of the provisions of that bill of lading or other document to the extent such provisions benefit the Company.

- 8.8 **Entire liability** - Save as set out in Condition 8, the Company shall not be liable for loss of or damage to any Container, Equipment, Cargo or Vehicle howsoever arising (whether caused by negligence or otherwise).
- 8.9 **Exclusion of liability for certain losses** - Notwithstanding any other provision of these Conditions, but subject to Condition 8.11, the Company shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss howsoever arising, and 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**").
- 8.10 **Overall liability limit** - Notwithstanding any other provision of these Conditions, but subject to Condition 8.11, the liability of the Company in respect of any Claim shall be limited to the Charges paid in respect of that part of the Services to which the Claim relates.
- 8.11 **Exceptions** - Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury caused by its negligence, fraud or 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 8.10 shall not apply to the Company's liability under Condition 8.1, 8.2, 8.3 or 8.4.
- 8.12 **Notification of claims and time limits** - Any Claim by the Customer against the Company arising in respect of any Service provided to the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within fourteen (14) days 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. The Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Service provided to the Customer, or which the Company has undertaken to provide, unless legal proceedings are commenced and written notice thereof given to the Company within twelve (12) months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.
- 8.13 **Joint and several liability** - These Conditions are between the Company and the Customer. Every person defined as the Customer is jointly and severally liable to the Company for all of the Customer's undertakings, responsibilities and liabilities under or in connection with these Conditions and to pay the Charges.
- 8.14 **Indemnity from Customer** - The Customer shall indemnify the Company against any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by the Company, its employees or Subcontractors, 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 Containers, the Equipment, the Cargo or the Vehicles or any other person who is or may become interested in the Containers, the Equipment, the Cargo or the Vehicles or any customs authority) when such claim arises from or in connection with the Services (whether caused by the Company's negligence or otherwise) and to the extent such claim exceeds the Company'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 Company acting in accordance with the Customer's instructions; and (d) any death or personal injury of any person 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 a Vehicle at the Premises or the presence of the Cargo in a Container on a Vehicle (whilst the Vehicle is at the Premises) or within the Facilities (and whether or not the Cargo was Dangerous Cargo which the Company had accepted under Condition 5.1).
9. **INSURANCE**
- 9.1 Unless expressly agreed, the Company does not insure Containers, Equipment, Cargo or Vehicles, and the Customer shall self-insure or make arrangements to cover Containers, Equipment, Cargo or Vehicles against all insurable risks to their full insurable value (including all duties and taxes).
- 9.2 The Company will, at its own expense, procure and maintain policies of insurance covering:
- 9.3 any liabilities assumed by it under Condition 8.1, 8.2, 8.3 or 8.4; and
- 9.3.1 any requirements by law, including employer's liability and public liability.
10. **CHARGES AND PAYMENT**
- 10.1 **Charges** - The charges payable by the Customer for the Services shall be calculated in accordance with the rates agreed by the parties and annexed to these Conditions as Appendix 2 ("**Charges**"). The Company shall be entitled to vary the Charges at any time by giving written notice of any such variation to the Customer at least fourteen (14) days before the date on which the varied Charges will become effective. 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 law.
- 10.2 **Invoices and payment terms** - The Company shall issue invoices for the Services in accordance with the invoicing frequency agreed by the parties. In respect of any of the element of the Charges which relate to storage, part days are charged at full day rates. Unless otherwise agreed in writing by the parties, invoices issued by the Company shall be payable within thirty (30) days of invoice date. Invoices shall be paid in full without any set-off, counterclaim, restriction, condition, deduction or withholding (except for any deduction or withholding required by law). If payment is not received by the Company within thirty (30) days of the relevant invoice date or by any other date agreed in writing by the parties as may be applicable, the Company may charge interest on the overdue amount at the rate of four per cent. (4%) per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis from the date due until actual payment of the overdue amount and shall be payable together with the overdue amount.
- 10.3 **Lien and right to sell** - Without prejudice to any other rights and remedies the Company may have under these Conditions or otherwise, the Company shall have a general as well as a specific lien on the Containers, the Equipment and the Cargo, and any documents relating thereto, for all sums whatsoever due at any time to the Company under these Conditions or otherwise. To enforce and satisfy the Company's lien, the Company shall have the right, at the Customer's expense, to sell the aforementioned Containers, Equipment, Cargo and documents, without notice to the Customer and without any liability to the Customer and to apply the proceeds in, or towards the payment of, such sums. The Company shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost and expenses of exercising the lien (including any costs incurred in enforcing and preserving its lien (including storage charges) and in recovering or attempting to recover any sums due) and the cost of sale, be discharged of any liability whatsoever in respect

of the Containers, Equipment, Cargo and the documents. The Customer shall remain liable for any Charges or other amount due to the Company which are still outstanding.

11. **FORCE MAJEURE**

Neither party shall be liable to the other for any loss or damage to any Containers, Equipment, Cargo or Vehicles, 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 (including the COVID-19 pandemic), compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light), inherent vice of the Cargo, criminal acts, Cyber Event, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), shortages of labour, materials and services and inability or delay in obtaining supplies and other events beyond a party's reasonable control. The parties agree that if the Company's performance of its obligations under these Conditions is delayed, prevented or hindered by any of the above-mentioned events, the Company shall be entitled to invoke and rely on the provisions set out in this Condition 11 even if such event was current on or before the date on which provision of the Services commenced and even if the impact of such event was known or foreseeable.

12. **GENERAL PROVISIONS**

- 12.1 **Assignment** - Subject to the remainder of this Condition 12.1 and to Condition 12.2, neither party may assign, transfer, mortgage, charge, subcontract or declare a trust over or deal in any other manner with its rights or obligations under these Conditions or any part thereof without the prior written consent of the other party (such consent not to be unreasonably withheld or unduly delayed). Either party may assign or transfer its rights and obligations under these Conditions to an affiliate which is capable of meeting the liabilities of the assigning party ("**Assignee**"). If at any time after the assignment under this Condition 12.1, the Assignee ceases to be an affiliate of the assigning party or if it is no longer capable of meeting the liabilities of the assigning party, the obligations of the Assignee shall immediately revert to the assigning party. For the purpose of this Condition an affiliate means a company or other legal entity which controls or is controlled by a party, or which is controlled by an entity which controls a party, and control means the ownership, directly or indirectly, of fifty per cent. (50%) or more of the shares or voting rights in a company or legal entity.
- 12.2 **Subcontracting** - Notwithstanding the provisions of Condition 12.1, the Company 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 contractor, servant or agent employed by the Company in performance of the Services ("**Subcontractors**")) that any Subcontractor can, at its option, apply its own terms of contract with the Company to defend claims brought by the Customer.
- 12.3 **Agency** - Nothing in these Conditions shall be construed as creating a partnership, association or joint venture between the parties, or to make one party an agent or representative of the other party. Neither party shall: (a) hold itself out as an agent of the other party; and (b) have the authority to act on behalf of the other, except to the extent necessary for the Company to accomplish its obligations under these Conditions.
- 12.4 **Entire agreement** - These Conditions (together with any document expressly incorporated or annexed by the parties (if any) and any document incorporating these Conditions (if any)) comprises the entire agreement between the parties with respect to the provision of the Services and supersedes all previous agreements and arrangements between the parties with respect to the provision of the Services. If the Customer's documentation contains terms or conditions additional to or at variance with these Conditions, every such additional or varying term or condition shall be of no effect. Any representation, statement, warranty or other undertaking whether made orally or written elsewhere which is not fully reflected in these Conditions is hereby excluded (including without limitation where such representations or statements were made negligently) provided always that this Condition shall not exclude or limit any liability or any right which any party may have in respect of pre-contractual statements made or given fraudulently. All conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 12.5 **Third parties** - Any Subcontractors shall have the benefit of all the warranties, indemnities, exclusions and limits of liability contained herein and which benefit the Company, and shall have the right to enforce them in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this Condition, a person who is not a party to these Conditions may not enforce, or otherwise have the benefit of, any provision of these Conditions under the Contracts (Rights of Third Parties) Act 1999. The parties reserve the right to rescind or vary these Conditions or vary any term of them without the consent of any of the Subcontractors.
- 12.6 **Severability** - If any provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, then these Conditions will be deemed amended to the minimum extent necessary to render the otherwise unenforceable provision, and the rest of these Conditions, valid, legal and enforceable. If a court declines to amend these Conditions as provided herein, the invalid, illegal or unenforceable provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if these Conditions had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of any such severance as described in this Condition 12.6, the parties will negotiate in good faith with a view to replacing the provisions so severed with valid, legal and enforceable provisions that have similar economic and commercial effects to the provisions so severed.
- 12.7 **Waiver** - The failure of either party to insist upon strict performance of any provision of these Conditions, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by these Conditions. A waiver of any breach of contract shall not constitute a waiver of any subsequent breach of contract. No waiver of any of the provisions of these Conditions shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Condition 12.9.
- 12.8 **Variation** - Any modification, variation, amendment or addition to these Conditions must be in writing and signed by a duly authorised representative of each party.
- 12.9 **Notice** - 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 or its principal place of business. Such notice shall be served by hand, courier, registered mail or email (to headoffice@solentstevedores.com). Notice shall be deemed served: (a) if delivered by hand, at the time of delivery; (b) if sent by courier, on the date and at the time of signature of the courier's delivery receipt; (c) if sent by registered mail, at 9:00 am on the third working day after

posting; or (d) if sent by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume.

12.10 **Governing law** - 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) are governed by and construed in accordance with the laws of England and Wales.

12.11 **Jurisdiction** - Any claims against the Company 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. The Company 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 the Company in one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.

**APPENDIX 1
SERVICES SCHEDULE**

**APPENDIX 1A
Depot Services**

APPENDIX 1B
Maintenance and Repair Services

APPENDIX 2
CONFIDENTIAL SCHEDULE OF CHARGES FOR SERVICES