

# DFDS SEAWAYS PLC

# STANDARD TERMINAL OPERATOR AND STEVEDORING CONDITIONS

## 1. Applicability

- The provisions set out and referred to in these conditions shall apply to every contract concluded with the Company, whether evidenced by the issue of a document or not.
- b) These conditions do not apply to freight forwarding Services or to Services of a general agency nature carried out by the Company, such Services being carried out under separate conditions applicable only to those Services.
- c) The Company does not act as a carrier under this contract and does not undertake any liability as such.

## 2. <u>Definitions</u>

Handling means the whole or any part of the operations and Services of whatsoever nature undertaken by the Company in relation to the Goods, including but not limited to the loading, unloading, storage, warehousing and Handling of the Goods.

Charges means all charges, expenses or other sums which are due to be paid by the Customer to the Company.

The Company means DFDS Seaways Plc.

Customer means any person, firm, Company or statutory body at whose request or on whose behalf the Company provides Services in accordance with these Terms and Conditions.

Dangerous Goods means Goods identified within the meaning of the current edition of the IMDG Code for the time being currently in force.

Goods means the whole or any part of the cargo and includes any Article of Transport not supplied by or on behalf of the Company.

Article of Transport includes, unless otherwise indicated, any vehicle, container, flat, pallet, trailer, transportable tank, and similar items used for the Consolidation of Goods as well as mobile plant, timber and steel packages.

Services means any Services to be provided by the Company for the Customer under the contract, whether gratuitously or not.

Ship means any vessel in respect of which the Company provides Services under the contract.

Terminal means the terminal(s) operated by DFDS Seaways Plc.

Terms & Conditions means the DFDS Seaways Plc Standard Terminal Operator and Stevedoring Conditions as set out in this document, or unless any special Terms and Conditions are agreed separately in writing between the Company and the Customer.

Consolidation includes stuffing, packing, loading, transhipping or securing of Goods on or within articles of transport.

SDR means Special Drawing Right as defined by the International Monetary Fund

## 3. Content of Contract

By delivering the Goods to the Company, the Customer acknowledges that the contract between the Customer and the Company ("the Contract") shall be governed by these Terms and Conditions, which shall override and exclude any other Terms and Conditions stipulated or incorporated or referred to by the Customer and any course of dealing between the Customer and the Company. Any addition or variation to these Conditions must be made in writing and signed on behalf of the Company by a duly authorised employee or agent.

## 4. <u>Warranty of Authority by Customer</u>

The Customer expressly warrants to the Company that he is either the owner or the authorised agent of the owner of the Goods the subject

matter of the transaction and further warrants that he accepts these Conditions not only for himself but also as duly authorised agent for and on behalf of every other person, firm or corporation who is or may hereafter become interested in the Goods.

## 5. The Customer's Liability and Duty to Inform

Subject to specific written instructions given to the Company by the Customer and accepted by the Company in writing, the Company reserves to itself complete freedom in respect of the means and procedure to be employed in the receipt, collection, unitisation, stuffing, stripping, storage, packing, carrying, Handling, tallying, loading, discharging or delivery up of Goods. If in the Company's opinion in the interests of safety or the preservation of life or property or the interests of the Customer so require, the Company may deviate from the Customer's instructions (whether or not accepted by the Company) in any respect and any expenses reasonably incurred thereby shall be for the Customer's account.

### 6. <u>Payment of Charges</u>

- a) Without prejudice to sub-condition c) of this Condition, all Charges, expenses or other sums which, under these Conditions, fall due to be paid by the Customer to the Company shall be paid by the end of the calendar month following the month in which the Company submitted its account relating thereto, and any sums remaining unpaid at the expiry of such period shall bear interest thereafter, such interest to accrue from day-to-day at the rate of 2% per annum, above the base rate of National Westminster Bank after as well as before any judgement for such sums.
- b) The Customer shall be liable for any duty, tax, impost or outlay of whatsoever nature levied by any authority for or in connection with the Goods and for any payment fine expense loss or damage incurred or sustained by the Company in connection therewith.
- c) The Company may at any time demand prepayment of the whole or part of its Charges or expenses or on account of the whole or part of its Charges or expenses. If further Charges or expenses are incurred as a result of any delay or default howsoever arising, the Customer shall forthwith on demand pay all such sums to the Company.
- d) The Customer shall remain liable to the Company for all Charges, expenses, losses, fines, etc. which the Company has been unable to collect from any other party at the request of the Customer

## 7. Description of Goods

- Before delivery of the Goods to the Company, the Customer will inform the Company in writing of any special precautions or instructions necessitated by the nature, weight or condition of the Goods and of any statutory duties or requirements specific to the Goods with which the Company may need to comply.
- b) On delivery of the Goods to the Company the Customer shall ensure that the Company is given a full description of the cargo sufficient to identify it and in addition is given full particulars of the cargo and any hazards connected therewith and the Company shall be permitted by the Customer to give any such particulars to whomsoever the Company deems necessary.
- c) The Customer shall be bound by and deemed to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for the purpose of identifying the cargo or for Customs, Consular or other purposes and undertakes to indemnify the Company against all losses, damages, expenses and fines arising from the inaccuracy in or omission from the above particulars even if such inaccuracy or omission is not due to any negligence.



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## 8. <u>Fitness of Goods</u>

The Customer warrants that all Goods have been correctly and sufficiently prepared and/or packed and/or labelled and are in all respects in a fit condition for Handling by the Company.

### 9. The Duty of the Company and Applicable Limitation of Scope

- a) The Company undertakes no responsibility for the maintenance or repair of any part of the Goods neither for the provision of power, fuel or other supplies thereof. Further, the Company will not accept any liability in respect of maintaining the Goods at any particular temperature or in any other particular state or condition, neither for the watering and or feeding of livestock.
- b) Notwithstanding the foregoing, the Customer shall reimburse to the Company any expense reasonably incurred by the Company in taking any such action as aforesaid together with a reasonable charge for so doing.

#### 10. <u>Company's Liability for Loss etc.</u>: Wilful Default to be <u>Proven: No Liability for Consequential Loss</u>

- a) The Company shall not be liable for loss of or damage to the Goods or for failure to ship the Goods or make them available for collection punctually or at all unless it is proved that such loss or damage or failure was due to the wilful neglect or default of the Company or its own servants.
- b) The Company shall only be liable for any non-compliance or mis-compliance with the instructions given to it if it is proved that the instructions were given in writing and the non-compliance or mis-compliance was caused by the wilful neglect or default of the Company or its own servants.
- c) Save as aforesaid the Company shall be under no liability in connection with any Goods or the Handling thereof or provision of Services, advice or information in connection therewith.
- d) Further and without prejudice to the generality of the preceding sub-condition, the Company shall not in any event be under any liability for any delay in the movement of any vessel or deviation thereof or for consequential loss, loss of profit, loss of revenue or loss of market or fire or consequence of fire however caused.

### 11. Company's Liability for Loss etc: Monetary Limits

In the event of loss for which the Company has incurred a liability, the amount of compensation payable by the Company shall under no circumstances exceed :

- a) In the case of claims for loss or damage to Goods
  - 1) the value of any Goods lost or damaged; or
  - a sum at the rate of two SDR's per Kg gross weight of the Goods lost or damaged whichever of the above is the least.
- b) In the case of all other claims
  - 1) the value of any Goods lost or damaged; or
  - a sum at the rate of two SDR's per Kg gross weight of the Goods lost or damaged;
  - 3) 50,000 SDR's in respect of any one transaction whichever of the above is least.

Under no circumstances will the Company accept liability for loss and/or damage in respect of the following :

- A) The wrongful act of neglect of the Customer;
- B) Compliance with the instructions of the person entitled to give them;
- C) The lack or insufficiency of, or the defective condition of, packing, which by their nature are liable to wastage or to be damaged when not packed or properly packed;
- D) Inherent vice of the Goods;
- E) Insufficient or inadequacy of marks, labelling or numbers on the Goods;

- F) Strikes or lockouts, or stoppages or restrains of the Company's labour from whatsoever cause whether partial or general;
- G) Fire, unless caused by the actual fault or privity of the Company
- H) Any cause or event which the Company could not avoid and the consequence whereof it could not prevent by the exercise of reasonable diligence.

### 12. <u>Time Bar for Claims and Notice of Loss</u>

Without prejudice to any exclusion of liability in these Conditions, any claim by the Customer or the owner of the Goods in respect of any alleged loss, damage, deviation, mis-delivery, delay, detention or other claim of any kind whatever shall be notified in writing to the Company:

- Within 14 days of the date upon which the Customer became or should have become aware of the alleged damage in the case of damage to Goods;
- within 14 days from the date when the Goods should have been shipped from or have arrived at the Company's Terminal (as the case may be) in the case of delay in delivery or non-delivery; and
- c) within 14 days of the event giving rise to the claim, in any other case.

Any claim not made in accordance with the above terms of the Condition shall be deemed to be waived, extinguished and absolutely barred. Without prejudice to the foregoing no suit may be brought against the Company in respect of any claim after the expiry of 12 months when the Goods should have been delivered to the Terminal.

#### 13. <u>Customer's Indemnity against Claims in Excess of Company's</u> <u>Contractual Liability</u>

- a) The Customer warrants and undertakes to the Company that the exclusions and limitations of liability conferred by the Contract for the benefit of the Company are and shall be binding upon all persons who have or acquire any interest in the Goods and the Customer hereby agrees to save harmless and indemnify the Company against all claims or demands whatsoever by whomsoever made in excess of the liability of the Company under these Conditions in respect of any loss or damage however caused, whether or not caused by the negligence of the Company, its servants, sub-agents or sub-contractors.
- b) Without prejudice to the foregoing or any other indemnity contained in these Terms & Conditions, the Customer shall save harmless and keep the Company indemnified from and against:-
  - (i) All liability, loss, damage, costs and expenses whatsoever (including and without prejudice to the generality of the foregoing all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer of any warranty contained in these Terms & Conditions or from the negligence of the Customer, its servants or agents; and
  - Without derogation from sub-clause (I) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party; and
  - (iii) All claims, costs and demands whatsoever and by whomsoever made against the Company where under these Terms and Condition the Company is not liable or would not be liable to the Customer if the claim had been brought by the Customer.

#### 14. <u>Defences and Limits for the Company's Sub-Contractors,</u> <u>Agents and Servants</u>

- a) The defences and limits of liability provided for in these Conditions shall apply in any actions against the Company for loss of or damage to the Goods, whether the action be founded in contract, bailment, tort or otherwise.
- b) The Customer undertakes that no claim shall be made against any



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director, servant or employee of the Company which imposes or attempty to impose upon them any liability in connection with any services which are the subject of these Terms & Conditions and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

### 15. Disposal of Undeliverable Cargo if Perishable

Where the Company is in possession of perishable cargo of any nature which is not taken up immediately upon arrival or which is liable for any reason to perish before shipment or which, in the opinion of the Company, is insufficiently addressed or marked or is otherwise so unidentifiable that the Company cannot determine on what vessel it should be shipped or to whom it should be made available for collection, the Company may sell or otherwise dispose of such cargo in urgent cases without any notice to the Customer, sender, owner or consignee of the cargo. All Charges and expenses arising in connection with the sale or disposal of the cargo shall be paid by the Customer, and, in event of a sale, payment or tender of the net proceeds of sale, after deduction of the aforesaid Charges and expenses and all other sums due to the Company under these Conditions, shall discharge all liability of the Company to any person, firm or corporation in respect of the Goods.

### 16. Disposal of Undeliverable Goods

The Company shall be entitled to sell or otherwise dispose of all nonperishable Goods which, in the opinion of the Company, are insufficiently or incorrectly addressed or marked or are otherwise so unidentifiable that the Company cannot determine on what vessel they should be shipped or to whom they should be made available for collection or which are not collected or accepted by the consignee, upon giving 21 days notice in writing to the Customer. All Charges and expenses arising in connection with the storage sale or disposal of the Goods shall be paid by the Customer, and, in the event of a sale, payment or tender of the net proceeds of the sale, after deduction of the aforesaid Charges and expenses, and all other sums due to the Company under these Conditions, shall discharge all liability of the Company to any person, firm or corporation in respect of the Goods.

## 17. Destruction or Disposal of Dangerous Goods

- a) Where this Condition applies the Company or the person in whose custody the Goods then are shall be at liberty to destroy or otherwise deal with the Goods as in its or his discretion may seem desirable for the purpose of rendering the Goods harmless;
- This Condition applies where any Goods are or while in the h) custody of the Company or its employees, agents, independent contractors, sub-contractors or sub-agents become noxious., hazardous inflammable, explosive or in any way dangerous or otherwise likely to cause damage (which includes Goods which are infectious, diseased or verminous or likely to harbour or encourage infection or disease or vermin or other pests) whether alone or in combination with other Goods and whether or not by reason of the act or omission of any person other than the wilful neglect of the Company's servant or agents. Where this Condition applies the Customer shall indemnify the Company against all loss, damage, costs and expenses arising out of or in connection with the fact or matter by reason whereof this paragraph applies.

# 18. General Lien with Power of Sale

All Goods (and the documents of title thereto) in the possession of the Company pursuant to the Contract shall be subject to a particular and general lien for all sums owed to the Company either in respect of such Goods or otherwise, by the Customer or by the owner, of the Goods. Unless payment of all such sums is made, or security given therefore to the satisfaction of the Company within 10 days of notice that the Goods are detained, the Company may sell the Goods by auction or otherwise as it may in its discretion think fit and apply the proceeds in or towards satisfaction of such particular and/or general lien and of the expenses of the sale.

## 19. Working Hours

As per agreement between the Company and the Customer

#### 20. <u>Access to the Premises: Exclusion of Liability Indemnity</u> <u>Cover</u>

- a) All persons entering the Terminal do so at their own risk and the Company shall not be liable to the Customer in any way whatever for any injury to any such person or for any loss or damage suffered by them or by any vessels or property brought by them to the premises whether or not arising out of any negligence on the part of the Company or its servants or agents.
- b) The Customer shall indemnify the Company against all loss damage claims demands actions costs Charges or expenses arising out of any injury loss or damage suffered or caused by any servant agent or independent contractor of the Customer or any person for whom the Customer is an agent or by any property of any such person
- c) All persons entering the premises of the Company shall obey the regulations and instruction of the Company, which may at its sole discretion and without giving any reason refuse admission to any person and require any person to leave the premises at any time.
- d) The Customer shall indemnify the Company against all loss damage claims demands actions costs Charges expenses arising out of any failure to obey the Company's regulations or instructions on the part of the Customer his servants agents independent contractors Customers or persons for whom the Customer acts as agent.

## 21. Arrival of Vessels and Vehicles

The Company shall not be bound to admit vehicles to the Terminal or to allow vessels to berth there except by prior arrangement with the Customer.

### 22. Sequence of Handling Vessels and Vehicles

- Vessels moored and vehicles arriving at the Terminal will be dealt with in the order determined by the Company at its sole discretion.
- b) The Company shall not be liable to pay or refund demurrage or any other compensation for the use of vessels or vehicles or for their not being ready in time, nor to make good any other loss or damage suffered as a result of delay or interruption in the Handling of vessels or vehicles or in receiving Goods into or delivering them out of the Terminal.
- c) The Customer shall ensure that all vessels and vehicles arrive and are handled and depart in conformity with the Company's requirements and regulations as well as those of any competent authority.

## 23. Health and Safety at Work

The Customer shall supply to the Company in writing all such information relating to the Goods as shall be necessary to enable the Company to comply with its duties under the Health and Safety at Work etc. Act 1974 and any regulations made thereunder, or made by or under any other enactment for securing or protecting the health or safety of persons or property or the prevention or reduction of damage to or pollution of the environment or its natural resources.



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# 24. <u>The Opinion of the Company</u>

The Certificate of a Director or the Secretary of the Company for the time being shall be conclusive evidence as to the opinion of the Company where in these Conditions any matter is to be determined in accordance with such opinion.

### 25. Force Majeure

- a) The Company shall be released from its obligations hereunder to the extent that performance thereof is delayed, hindered or prevented by force majeure.
- b) Where by reason of force majeure performance by the Company of its obligations to the Customer would delay, hinder or prevent performance by the Company of its obligations to other persons, the Company shall be entitled to limit, delay or refrain from performance of all or any of such obligations to the Customer and/or one or more of such other persons to such extent as it may in its discretion determine to be just and equitable between the Customer and such other persons.
- c) Subject to sub-condition d) below, force majeure means any circumstances beyond the reasonable control of the Company.
- d) Without prejudice to the generality of sub-condition c) above and without being thereby limited, force majeure includes any one or more of the following: acts or restraints of government or public authorities; war, revolution, riot and civil commotion; strikes, lock-outs or other industrial action, whether of the Company's employees or others; blockade or embargo; quarantine restrictions; inherent vice; any damage caused without the fault or privity of the Company; failure or breakdown of power, fuel, transport, equipment or other Goods or Services whether of the Company or others; and damage to any Goods, equipment, machinery or premises by explosion, fire, corrosion, ionising radiation, radioactive contamination, flood, natural disaster, accident or malicious or negligent act.

### 26. <u>Headings</u>

The headings set out in these Conditions are provided only for convenience, and they shall not limit, control, or affect the meaning of the provisions to which they refer.

### 27. English Law and Jurisdiction

The Contract shall be governed and interpreted in accordance with English law and the Customer submits to the jurisdiction of the High Court of Justice in England but the Company may enforce the Contract in any court of competent jurisdiction.

### 28. Giving of Notices

Any notice required to be given hereunder shall be sufficiently given if sent by registered or recorded delivery post or left at the principal or registered office for the time being of the party to be served. Any such notice shall be deemed to be served at the time when the same is handed to or left at the address of the party to be served and if served by post on the third day (not being a Sunday or public holiday) following the day of posting.