



PORTS AND TERMINAL OPERATORS (NIG.) LIMITED
TERMINAL A – PORT HARCOURT

Terms and Conditions

Port of Port Harcourt, Terminal A



PORTS AND TERMINAL OPERATORS (NIG.) LIMITED
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All transactions entered into by the Operator in connection with or arising out of the Operator's Business shall be subject to the following terms and conditions ("**Terms and Conditions**"), unless otherwise agreed or stated by the Operator in writing.

In this Terms and Conditions, the following expressions shall have the following meanings:

1. Definitions and Interpretations

Definition

"**Cargo**" means Goods as defined herein.

"**Charges**" means the statutory Charges made available and published from time to time.

"**Confidential Information**" includes all confidential, proprietary or sensitive information, whether tangible or intangible. It also includes present and future worldwide patents, trademarks, service marks, trade names, trade secrets, goodwill, registered designs, design rights, database rights, copyrights, inventions, rights in computer software and other forms of intellectual or industrial property, and all registrations, applications, renewals, extensions, combinations, divisions, or reissues of the foregoing.

"**Customer**" means any person or Company who uses the Port for any Service provided by the Operator.

"**Days**" means calendar day.

"**Force Majeure event**" means an event or circumstance beyond the reasonable control of the a Party including, but not limited to, any act of God, act of public enemies, war, warlike acts, terrorism, restraint of governments, riots, strikes, lockouts or other labour or industrial disputes, failure of a utility service, insurrections, civil commotion, civil disobedience, floods, fire, restrictions due to quarantines, sanctions or radioactivity, epidemics, storms, tempest, typhoon, tsunami or any other event or circumstance beyond the reasonable control of the Party . Notwithstanding the aforesaid the following shall be considered as Force Majeure within the meaning of this Agreement: (i) restrictions on imports imposed by the port authorities or any other authority, organ or instrumentality of the country in which the terminal is located; (ii) confiscation, expropriation or nationalisation of terminal assets; (iii) commandeering or requisition of terminal assets; (iv) any law or governmental order, rule, regulation or direction.

"**Goods**" means any goods, commodities, livestock, articles and things of every description

(including any containers, crates or packaging within which such Goods may be contained), but excluding stores and bunkers.

"**NPA**" means Nigerian Port Authority.

"**Operator**" means Port Terminal Operators Nigeria Limited.

"**Port**" means Terminal A at the Port of Port Harcourt.

"**Rates**" means financial consideration for the Services as specified in Appendices A and B, or as published from time to time, and made available.

"**Services**" means any service or operation of whatever nature performed or provided by the Operator, including import and export of Goods.

"**Ship**" means the Ship governed by this Agreement which is either owned, chartered, operated or leased by the Customer.

"**Shipowner**" means the owner of any vessel to which these Terms and Conditions relate and any part owner charterer master or other person in charge of the vessel disponent owner consignee or mortgagee in possession and "owner of a ship" is to be construed accordingly.

"**S.O.P**" means NPA's Approved Standard Operating Procedure for Operations at Seaports.

"**Terminal**" means Terminal A at the Port of Port Harcourt.

"**Vessel**" means any ship owned, managed, operated, chartered or hired on any basis, or under the control or direction of the Customer that is the subject of this Terms and Conditions.

1.1. Unless the context otherwise requires:

Any reference to the plural includes the singular and vice versa.

1.1.1. Any reference to a person includes natural persons, corporate bodies, partnerships, firms, unincorporated bodies and legal persons.

1.1.2. Any reference to any document, or this Agreement, shall include any permitted variation, amendment, supplement, substitution or assignment of such document.

1.1.3. The headings in this Terms and Conditions are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement.



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2. General Conditions

- 2.1. The Terms and Conditions shall apply to all contracts with the Operator.
- 2.2. The Operator may vary or amend these Terms and Conditions from time to time in such manner and in such respect as the Operator may consider desirable.
- 2.3. Special conditions may be made by the Operator from time to time relating to specific Goods or Cargoes, Vessels, Services or events. Any such special conditions shall be in writing and are supplemental to and apply in conjunction with these Terms and Conditions.
- 2.4. The Use of the Terminal and/or Services by the Customer and/or Shipowner shall be deemed to constitute notice of and agreement with these Terms and Conditions, provided that prior to such use, the Operator shall take all reasonable steps to ensure that the Customer and/or Shipowner, as appropriate, is aware of these Terms and Conditions.

3. Vessel Approval

- 3.1. It shall be the responsibility of the master of the vessel or his authorized agent to obtain approval from the Operator for the arrival, departure or movement of the Vessel.
- 3.2. The arrival, berthing and departure procedure shall be in line with the S.O.P for Operations of Seaport.
- 3.3. It is the responsibility of the Customer or its Shipping Agent to provide the requisite information and submit necessary documents at the relevant offices at the Port, before the arrival and departure of the Vessel.

4. Charges/Rates

- 4.1. The Rates for Services performed or provided by the Operator shall be payable by the Customer in accordance with the Schedule of Rates in Appendices A and B, or any Rates as revised from time to time by the Nigerian Shippers' Council.
- 4.2. The Customer shall pay the Charges and Rates promptly and in full as soon as it falls due.
- 4.3. The Operator's Schedule of Rates refer to services performed or provided during the Operator's normal working hours. If the Operator performs or provides services outside its normal working hours, or if by reason of an emergency or the nature and condition of any Goods, the construction, condition and readiness of any

vessel, the availability of crew, or for any reason the Operator performs or provides Services that, in its opinion, are beyond or in a different manner to those for which the Schedule of Rates refers, the Customer shall pay the Operator an additional charge to cover the increased or additional cost thereby incurred by the Operator.

- 4.4. The Customer shall pay all statutory Charges including berthing Charges, Nigerian Port Authority's Charges, or any other Charges, before arriving at the Port or discharging the Goods.
- 4.5. The Rates quoted by the Operator in Appendices A and B are exclusive of Value Added Tax (VAT).
- 4.6. The Rates are subject to revision by the Operator without formal notice at any time.
- 4.7. The Operator reserves the right to send invoice to the Customer for the advanced payment of the Rates.

5. Payment Terms

- 5.1. The Charges/Rates shall be payable by the Customer (or where agreed) on demand, unless otherwise agreed by the Operator in writing.
- 5.2. The Charges/Rates shall be paid in full without reduction or deferment on account of any claim, counterclaim or set off.
- 5.3. Notwithstanding the aforementioned clause, the Operator may if it thinks fit, require any Customer or Shipowner liable or likely to become liable to pay any Charges or Rates to provide the Operator with security for any such Charges or Rates or the estimated amount thereof in a form satisfactory to the Operator before the commencement of such Services and failing receipt of which such Services will not be commenced.

6. Cancellation

In the event either the Operator or the Customer terminates the Agreement at any time, the Operator at its sole discretion shall be entitled to invoice the Customer with the full agreed charge or any lesser amount, which charge or amount shall be due and payable on the date of the termination of the Agreement.

7. Liens on Goods and Vessels

- 7.1. The Operator shall be entitled to refuse to allow Cargo discharged from a vessel to leave the Terminal until:
 - 7.1.1. all Charges and Rates whether in relation to that Cargo (wherever performed) or to other Cargo of



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the Customer have been paid or secured to the satisfaction of the Operator, and

7.1.2. security to the satisfaction of the Operator has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Customer in relation to that Cargo (whether or not such claims arise in relation to that Cargo or any other Cargo of the Customer).

7.2. The Operator shall be entitled to refuse to allow a vessel to leave the Terminal until:

7.2.1. all Charges and Rates claimed by the Operator payable by the Shipowner whether in relation to that vessel (whenever performed) or to other vessels of the Shipowner have been paid or secured to the satisfaction of the Operator, and

7.2.2. security to the satisfaction of the Operator has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Shipowner (whether or not such claims arise in relation to that or another vessel).

7.3. The Operator shall have the absolute right to suspend the provision of any Services for the Customer or Shipowner until all amounts payable to the Operator by such Customer or Shipowner, as appropriate, have been paid in full. Where such a right is exercised, Charges (including interest) shall continue to accrue until payment in full is made.

8. Warranties

8.1. The Customer warrants that:

(a) it has full power, authority and capacity to enter into, execute, deliver, and carry out or perform its obligations under this Agreement and has taken the requisite steps for this purpose.

(b) the entry into and performance of the Terms and Conditions of this Agreement does not and shall not contravene or conflict with its memorandum and articles of association, constitution, any law, statute, regulation or other instrument binding on it or any of its asset or any agreement or document to which it is a Party or is binding on it or any of its assets.

(c) it has the requisite capacity and authority to enter into this Agreement and to consummate the transaction hereby and the execution and delivery of Agreement and the consummation of the transaction contemplated hereby has been duly authorized by all necessary action on its part (or its board of directors, as

applicable) and no other action or proceeding is necessary to authorize the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby.

(d) it is in compliance with necessary certificates, licenses, permits, consents or other authorizations required in the course of its business.

(e) any shipped Cargo complies with all applicable laws and international standards, including but not limited in respect to safety, stability, worthiness, fitness for purpose and security.

(f) the accuracy of any information relating to the containers, including but not limited to the length, weight, dimensions, marking, seals, number and count.

(g) it has in force at all times Marine P & I, and Marine Hull and Machinery cover of a vessel.

9. Indemnity

9.1 The Customer, in respect of the Goods as the case may be, shall be responsible for and provide against all risks and contingencies, including death or personal injury of any person or damage to any property whatsoever howsoever arising from the use of or presence of his vessel or Goods at the Terminal, and will indemnify the Operator against all claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any act neglect or default of the master of the vessel or the Customer as the case may be, their respective contractors agents or servants (other than the Operator) or of any inherent quality or defect of any vessel, or of any Goods at the Terminal or on the Vessel.

9.2 The Customer shall pay to the Operator full compensation for all damage done to the Terminal or suffered by the Operator and other property of the Operator and arising as aforesaid.

10. Force Majeure

10.1 The affected Party shall use all reasonable efforts to mitigate and overcome the effects of the occurrence of an Event of Force Majeure in order to maintain or resume performance. Provided that no Party shall be required under this provision to settle any strike, lockout, or other labour or industrial dispute under terms it considers as being unfavourable to itself.



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- 10.2 The affected Party shall keep the non-affected Party fully informed of developments, including its performance of mitigating actions and remedies, and the results thereof.
- 11. Reservation of Rights**
- 11.1 The Operator reserves the right to refuse to accept Goods for any reason and/or to provide Services, subject to any agreement between the parties.
- 11.2 In the event where the Operator exercises this right to refuse to accept Goods for any reason and/or to provide services, notice will be given and reasons will be so stated therein.
- 11.3 The Operator in exercising these rights shall not be liable howsoever for any losses suffered by the Customer.
- 12. Governing Law**
- This Terms and Conditions shall be governed by and construed in accordance with the Laws of the Federal Republic of Nigeria.
- 13. Dispute Resolution**
- 13.1 If a dispute or difference arises as to the validity, interpretation, effects or rights and obligations of the Parties under this Agreement, the Parties shall use their best endeavor to reach an amicable settlement of dispute.
- 13.2 If any such dispute is not settled between the Parties within thirty (30) Business Days, the Parties agree to submit such dispute to Arbitration. The parties hereby agree that the dispute shall be settled by a sole arbitrator in accordance with the provisions of the valid and prevailing Arbitration and Conciliation Act, or any applicable statute for the time being in force.
- 13.3 Where the Parties are unable to agree on a choice of arbitrator, any Party may apply to the Chairman of the Chartered Institute of Arbitrators, Nigeria and the decision of the Chairman shall be final and binding on the Parties.
- 13.4 The place and seat of the arbitration shall be Lagos, Nigeria and the language of the arbitral proceedings shall be English.
- 14. Risk and Insurance**
- 14.1 All Goods at or on the Terminal are the sole responsibility of the Customer in every respect and shall at all times remain at the entire risk of the Customer.
- 14.2 The Customer shall make necessary insurance arrangement in respect of the risk above.
- 14.3 The Customer shall provide evidence, to the reasonable satisfaction of the Operator, of the relevant insurance.
- 15. Liability Limitation**
- 15.1 The Operator's maximum aggregate liability for any loss or damage to Goods, or equipment in the custody or control of the Operator to the extent caused by fault or negligence on the part of Operator's employees while engaging in the delivery, receiving, watching, or storing of such Goods or equipment as part of the Services shall be limited to USD 50,000.00 (Fifty Thousand US Dollars).
- provided that in no circumstances shall the liability exceed the value the Customer pays to the Operator for the provision of the Service.
- 15.2. The maximum aggregate liability of the Operator in case of:
- (a) losses and/or damages under clause 15 .1 which arise out of a single incident or series of connected incidents, notwithstanding whether such losses and/or damages are sustained by more than one person, shall in no circumstances exceed the sum of USD50,000.00 (Fifty Thousand US Dollars).
- (b) where, in respect of a single or series of connected incidents, the losses and/or damages are sustained by more than one person, the overall liability cap shall be applied to all claims brought by each person on a pro-rata basis (i.e. based on the proportion each person's claims bear to the total amount claimed by all such persons).
- 16. Confidentiality**
- 16.1 During the Term of this Agreement, each Party shall make all reasonable and diligent efforts to keep confidential and not disclose or use for the benefit of any third party the other Party's Confidential Information.
- 16.2 Each Party shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that the receiving Party applies to safeguard its own Confidential Information (but not less than reasonable care) and that the information shall be stored and handled in such a way as to prevent any unauthorized disclosure thereof.
- 16.3. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the Confidential Information may be disclosed by the receiving Party to its employees, affiliates,



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directors, managers and professional advisors on a need-to-know basis; provided that the receiving Party takes whatever steps necessary to procure that such employees, affiliates, directors, managers and professional advisors agree to abide by the terms of this Agreement to prevent the unauthorized disclosure of the Confidential Information to third parties. For purposes of this clause, the receiving Party's professional advisers and employees, directors or managers shall be deemed to be acting in the event of a breach, as that Party's duly authorized agents.

16.4. This confidentiality obligation shall survive termination of this Agreement and shall remain in force for a period of two (2) years following the termination of this Agreement.

16.5 The confidential obligations in this clause shall not apply to Confidential Information which:

- (a) is lawfully in the possession of a Party prior to disclosure by the other Party;
- (b) was lawfully obtained by a Party from or third parties who is/are in breach of any non-disclosure obligation to the Party furnishing such confidential Information;
- (c) was in the public domain prior to the effective date hereof or after said effective, becomes generally available as information in the public domain through no fault of the receiving Party or
- (d) is disclosed by the receiving Party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances the Party shall, where legally permissible, advise the other Party in writing prior to such disclosure to enable the disclosing Party to take whatever steps it deems necessary to protect its interests in this regard; provided further that the receiving Party will disclose only that portion of the information which it is legally required to disclose and the receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the most reasonable extent possible in the circumstances.

17. Documents to be Furnished by the Customers

17.1 Where requested to so do by the Operator, the Customer, master or owner of every vessel, shipping agent discharging or loading Cargo must supply to the Operator the following documents confirming the quantity of Cargo discharged or

loaded in the Terminal and the days upon which discharging or loading took place:

- (a) Manifest (indicating the weight of Cargo and details of the shippers, consignees and freight payers); and
- (b) Statement of Facts

17.2 Where the quantity of Cargo discharged does not match that shown on the relevant bill of lading, then a certified discrepancy report (including details of supporting surveys or relevant supporting documents) must be provided.

17.3 These documents must be supplied by the Customer, master or owner, or the appointed agent, to the Operator within two working days of the day upon which the vessel completes discharging or loading as appropriate.

17.4 The Customer shall also provide relevant insurance documents, proof of payment or any other document so requested by the Operator, prior to the arrival and departure of the Vessel.

18. Termination

18.1. This Agreement shall terminate immediately upon the happening of the following events:

- (a) Written agreement signed by the authorized representatives of the Parties.
- (b) Where either Party breaches any term or condition of this Agreement and fails to cure the breach to the satisfaction of a Party within fourteen (14) days or such other number of days as may be indicated in a written notice to cure such defect.
- (c) Thirty (30) days' notice in writing of intention to terminate.
- (d) Where the other Party is adjudicated as bankrupt, becomes insolvent, suffers permanent or temporary court-appointed receivership of substantially all its property and undertakings, makes a general assignment for the benefit of creditors, or suffers the filing of a voluntary or involuntary bankruptcy petition that is not dismissed within a reasonable time after this Agreement is executed by the Parties.

18.2 Effect of Termination

18.2.1 Upon the date of termination of this Agreement for whatever reason, all access and authorizations granted under this Agreement shall rescind immediately.



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18.2.2 Notwithstanding the termination of this Agreement, the Customer shall continue thereafter to be liable for:

- (a) any breach by the Customer of its obligations prior to the date of such termination; and
- (b) any amounts that, as of the date of termination, are accrued and payable by Customer to the Operator.

18.2.3 All outstanding payments due to the Operator by the Customer under this Agreement shall become due and payable immediately.

18.2.4 Any provision of this Agreement which is stipulated to survive the termination of this Agreement shall continue in accordance with the relevant clause(s).

Cargo Handling and Port Operations

19. Customer's Obligations

19.1 The Customer shall have the following obligations:

19.2 Declaration of Description

19.2.1 The Customer shall ensure that the Goods sent to the Operator are accompanied with the necessary documents.

19.2.2 The Customer shall accurately declare the description of the Goods including the weight of the Goods.

19.2.3 The Operator reserves its right to confirm the authenticity of the declaration made by the Customer.

19.2.4 The Customer warrants the accuracy of the information and declaration made in respect of any Goods supplied to the Operator, for any purpose and the Customer shall also indemnify the Operator against all claims, expenses or penalty that the Operator may suffer or incur as a result of the omission or inaccuracy therein.

19.3. Protection of the Goods

19.3.1 Customers should take reasonable measures to protect their Goods from loss or damage and shall ensure that at all times its Goods are packed in a proper manner with particular care being taken to protect fragile Goods.

19.4 Marking of the Goods

19.4.1 The Customer shall mark its Goods, identifying marks or numbers, for easy identification.

19.5. Clearance of the Goods

19.5.1 It shall be the Customer's responsibility to make available documents for the clearing of the Goods.

19.6. Orders for Delivery/Sampling of Goods

19.6.1 Every order for the delivery or sampling of Goods shall be submitted by or on behalf of the Customer at the Operator's offices at 11/13 Industry Road, by NPA Roundabout, Port Harcourt, which must detail:

- (a) Vessel's name;
- (b) the port of loading and bill of lading number;
- (c) marks, quantity and description of the Goods;
- (d) the person to whom Charges are to be rendered.

19.6.2 The Customer shall make available all manifest, shipping note, consignment notes, packing list, document of title and any other necessary document, and the said relevant documents shall be submitted to the Operator before the Cargo handling services is provided.

20. Operator's Obligations

20.1 Acceptance of Goods

20.1.1 The Customer shall ensure that the vessel receiving Goods for shipment shall accept his Goods, when tendered for loading from the quay.

20.1.2 Receipt of Goods by the Operator for and on behalf of the Shipowner for Shipment does not imply that such Goods will be shipped. The acceptance or refusal of Goods for shipment is the responsibility of the Shipowner concerned, for whom the Operator accepts as agent.

20.2 Provision and Use of Gear

20.2.1. The Shipowner shall permit the Operator the full use of all lighting, cranes, gantries, winches, derricks, runners and tackle on the vessel and shall supply full power therefor and for lighting at all times without charge. The Shipowner shall also provide all necessary standing and running gear, hatch and winch tents, gear, dunnage and any other necessary equipment.

20.2.2. All the equipment and gear shall be maintained in good working order by the Shipowner.

20.2.3. The shipowner shall indemnify the Operator against any claim in relation to any accident howsoever arising out of or caused or contributed



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- to by any defect in the equipment or gear referred to in Clause 20.2.1
- 20.2.4 Where the equipment and gear referred to in Clause 20.2.1 is not available to the Operator or is not well maintained, the Operator, at its discretion and subject to availability, supply the necessary equipment and gear at the expense of the Shipowner in accordance with the Operator's standard Rates current from time to time.
21. **Removal of Goods from the Terminal**
- 21.1 The Customer shall ensure that all Goods delivered to the Operator by the Customer for export shall be received by the Shipowner within a period of two days from such date of delivery. If for any reason whatsoever the Goods are not so received by the Shipowner within the said period, then on the expiration of the said period the Operator may remove the Goods into warehouse at the Customer's expense.
- 21.2 All imported Goods shall be removed by the appropriate Customer from the Operator's premises within a period of two days from the date on which the Goods were received from a Vessel. If for any reason whatsoever the Goods are not so removed by the Customer, the Operator may move the Goods into warehouse at the Customer's expense.
22. **Hazardous Goods**
- 22.1 No Goods of a dangerous, hazardous, poisonous, flammable, explosive, noxious, toxic, offensive, corrosive, radioactive, damaging, tainted, infectious or contaminated nature or other Dangerous Substances will be handled by the Operator except with the consent of the Operator and in accordance with relevant statutes governing the handling of such Goods.
- 22.2 All extra costs, Charges and expenses incurred by the Operator in handling Goods of the nature stated in clause 22.1 shall be repaid by the Shipowner of the vessel on which they were brought into the Terminal or were to be consigned.
- 22.3 The Customer shall be responsible for and shall indemnify the Operator against all injury, loss or damage howsoever and against all claims whatsoever made against the Operator for which they may be or become liable in respect of death or injury to persons or loss of or damage to property or delay arising out of, caused or contributed to by:
- 22.3.1 a failure to comply with the conditions, directions and regulations referred to in Clause 22.1; or
- 22.3.2 live animals exported, or intended to be exported, or imported by the Customer.
23. **Performance of Cargo Handling**
- 23.1 Subject to these Terms and Conditions, the Operator shall provide supervision labour plant and equipment as available for the discharging, loading, receiving and delivering of Goods at the Port and operations ancillary thereto, as requested by the Customer and agreed by the Operator.
- 23.2 The Operator shall be entitled not to commence cargo handling services until a suitable berth, quay, suitable plant and equipment are available and sufficient port operations workers and other employees are available to perform Cargo Handling Services on the vessel. After the commencement of Cargo Handling Services, it will be continued as and to the extent that the necessary plant and port operations workers and other employees are reasonably available in all the circumstances from time to time.
- 23.3. No liability shall be attached to the Operator as a consequence of not commencing or continuing Cargo Handling Services for the reasons specified in Clause 23.2.
- 23.4. The Operator shall perform or provide such Cargo Handling Services as the Operator in its reasonable discretion considers appropriate and expedient for each vessel and its Cargo or for particular Goods unless instructed to the contrary in writing by the Customer.
- 23.5 Without prejudice to the generality of the foregoing when a Cargo is exceptionally difficult to work due to unsoundness of the Cargo, bad or collapsed stowage, damage to the Cargo or the vessel or other matter creating exceptionally difficult working conditions, then the Operator may in its absolute discretion elect whether or not to perform or provide or continue to perform Cargo Handling Services and if it should so elect and informs the Shipowner for that vessel thereof then the Operator shall not be liable for any loss or damage whatsoever howsoever caused (including where caused by the negligence of the Operator, its servants, agents or independent contractors) to the Goods or the vessel, including any claim for loss of use or profit or the loss of a particular market, and the said Shipowner shall indemnify the Operator against all proceedings claims and expenses arising out of or consequent to any such election by the Operator, including all proceedings claims and expenses relating to the handling of the Goods on the quay or in a shed. The Operator, by reason of its specialized knowledge, shall be the sole arbiter as to whether a Cargo is exceptionally difficult to work or not.



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- 23.6 The Operator shall have the right, having made an election, to subsequently reverse that election in the light of circumstances then prevailing and no liability shall attach to it thereby.
- 23.7 All extra costs, Charges, and expenses incurred by the Operator hereby shall be repaid by the Shipowner of the vessel on which the Cargo was or was to be consigned.
- 23.8 The Charges for Cargo handling services specified by the Operator from time to time cover the provision of such of the Services as are specified by the Operator in relation thereto (other than the provision of plant, gear and equipment except as expressly stated) where the Cargo is general Cargo under normal conditions on a normal vessel such that a reasonable rate of receiving loading discharging or delivering in relation to that particular vessel or Cargo is achievable.
- 23.9 Where Cargo is not sound Cargo able to be worked under normal conditions on a normal vessel or, at the discretion of the Operator, for any other reason such that a reasonable rate of receiving loading or discharging delivering is not achievable, and in such regard the Operator by reason of its specialized knowledge shall be the sole arbiter, then the Rates per ton specified from time to time by the Operator shall not be applicable but shall be substituted by the Operator's standard Charges for labour plant gear and equipment and, in addition, all extra costs Charges and expenses incurred by the Operator shall be repaid by the Shipowner of the vessel on which the Cargo was or was to be consigned.
- 23.10 Notwithstanding the provisions above, if any Statute or Statutory Instrument shall become compulsorily applicable to the Cargo handling services performed hereunder, the Shipowner will reimburse the Operator any extra cost occasioned thereby for the duration that such Statute or Statutory Instrument shall apply or until such time as the extra costs shall be incorporated in the Operator's Charges for such Cargo handling services.
- 23.11 Any appointment made with the owner of a vehicle or with the Customer or their respective employees servants or agents for the receipt from vehicle of Goods for shipment, or for the delivery of Goods to vehicle, at any particular time or within a particular interval of time shall (notwithstanding any representation made by any servant or agent of the Operator) be construed merely as the anticipated time when the Goods may be received or delivered and shall not oblige the Operator to accept such Goods (nor refrain from accepting other Goods) at that time nor determine the order in which vehicles may unload or load.
- 23.12 No liability shall attach to the Operator in consequent of any failure to permit the loading or unloading of any vehicle at or within a particular time or interval of time, including the time or interval of time referred to in this Agreement notwithstanding any representation made by any servant or agent of the Operator, and the Customer shall release and indemnify the Operator from and against such liability.
- 23.13 The Operator shall be entitled to refuse to receive a Goods from or deliver a Goods to any vehicle at the Terminal if:
- 23.13.1. the Operator has not been presented with the correct information and documentation in respect of such Goods, or
- 23.13.2. such Goods is not sealed, or
- 23.13.3. in respect of a hazardous Goods, such Goods is not fully and correctly labelled.