

PORT OF WATERFORD

CONTAINER TERMINAL DIVISION

TRADING CONDITIONS

1 Interpretation

1.1 In these conditions,

“**Company**” means Port of Waterford Company, or any division, subsidiary or holding company of Port of Waterford which may adopt these conditions, as the case may be;

“**Container Terminal**” means the land and premises used by the Company at the Container Terminal, Belview Port, Waterford, from which the Company provides the services hereinafter referred to;

“**Customer**” means the person for whom any business is undertaken by the Company or to whom any services are provided by the Company.

“**Dangerous Goods**” means goods which may or might, however remotely, be likely in the opinion of the Company to cause damage, deterioration or diminution in value to other goods, persons or property;

“**SDR**” means special drawing rights.

“**Stevedore**” means a person engaged in loading and unloading of unitised, general and project cargo, subject to these conditions and any other contract, agreement or arrangement which may be entered into by the Company and the Customer.

“**Valuables**” shall include bullion, coins, precious stones, jewellery, antiques, pictures, bank notes, securities, instruments and other valuable documents and goods.

1.2 The terms “**subsidiary**” and “**holding company**” shall bear the meanings ascribed thereto in Section 155 of the Companies Act, 1963.

1.3 The headings and captions shall not affect the construction of the within conditions.

1.4 Any reference in Clause 23(iv) to adverse or unusual weather conditions shall include gusts of wind of a kind which would not usually be encountered at Belview Port.

2 Services

The Company is a stevedore and acts solely as such in performing its services for the Customer.

3 Application of Conditions

3.1 These Conditions shall apply to all business undertaken by the Company including any advice, information or service provided whether gratuitously or not. All orders (written or otherwise) for services shall be deemed to be an offer by the Customer to accept services pursuant to these conditions. All other terms and conditions, which the customer may purport to apply under any order, confirmation of order or similar document are hereby expressly excluded. No servant or agent of the Company has any authority to vary these conditions, unless such variation is agreed in writing and signed by a duly authorised representative on behalf of the Company. In the event of any conflict between these Conditions and any conditions in any document submitted by the Customer to the Company including any contract, arrangement or agreement entered into or to be entered into between the Company and the Customer, the provisions of these conditions shall prevail.

3.2 These conditions comprise the contract between the Company and the Customer and supersede any or all representations, warranties, course of dealing or arrangements, whether written or oral, heretofore made or entered into between the Company and the Customer relating to the provision of stevedoring and other services.

4 Application of Conditions to Owners of Goods

The Customer warrants that he is either the owner or authorised agent of the owner of the goods to which any of these Conditions relate, and further warrants that he is authorised to accept and is accepting these Conditions not only for himself, but also as agent for and on behalf of the owner of the goods and all other persons who are or may hereafter become interested in or otherwise involved in the goods (all such persons being hereinafter called "the Owner").

5 Release and waiver of Conditions

Any provision of these conditions may be in whole or in part released, varied, compounded or compromised by the Company in its absolute discretion as regards the Customer under such liability without in any way prejudicing or affecting its right against any other party under the same or a like liability whether joint or several or otherwise. A waiver by the Company of any breach by the Customer of any of the terms, provisions or conditions of these conditions or the acquiescence of the Company in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid will not constitute a general waiver of such term, provision or condition or of any subsequent act contrary thereto. Any waiver shall be invalid unless it is in writing and signed by a duly authorised representative of the Company.

6 Declarations Concerning Goods

The Company shall not be obliged to make any declaration for the purpose of any statute or contract as to the nature or value of any goods or as to any special interest in the delivery of such goods unless required by law or expressly instructed by the Customer.

7 Insurance

The Company shall be under no obligation to insure the goods unless expressly instructed by the Customer in writing. The Company shall not be obliged to effect a separate policy of insurance on any consignment, but may in its absolute discretion insure any consignment within an open or general policy. Any insurance effected by the Company is subject to such exceptions and conditions of the policies as the Company considers in its absolute discretion, to be reasonable in the circumstances or usual having regard to custom and usage in maritime trade. Any claim on any policy in respect of the goods of the Customer shall be made and any negotiations with or proceedings against such insurer shall be conducted by the Customer and not by the Company, notwithstanding that the premium charge by the Company to the

Customer upon the policy may not be the same rate as that charged to or paid by the Customer. Without prejudice to generality of the foregoing, the Company may at its sole discretion elect to make such claim or enter into such negotiations or proceedings with such insurer itself and the Customer hereby indemnifies the Company against all and any costs, claims and expenses which may arise in respect of any such claim.

8 Payment Terms

- 8.1 The price payable by the Customer shall be the Company's quoted purchase price. The price is exclusive of Value Added Tax, which shall be due at the prevailing rate on the date of the Company's invoice.
- 8.2 All sums shall be paid to the Company immediately when due 30 days after the end of the month of issue of an invoice in respect thereof, without deduction or set-off and payment shall not be withheld or deferred on account of any claim, counter claim or set off of any nature and whether arising under or in relation to these conditions or any other contract agreement or arrangement.
- 8.3 Interest on overdue invoices shall accrue from the date when payment becomes due, from day to day until the date of payment, at the double AA rate per annum of AIB Bank PLC from time to time or such some other rate in substitution and shall accrue at such rate after as well as before any judgment.

9 Bye-Laws and Regulations

The Customer's attention is drawn to the Port of Waterford Company Bye-Laws and Pilotage Regulations (together the "Regulations"), as may be amended or superseded from time to time. A copy of the Regulations in force at the date of issue of these conditions is attached. The Customer shall observe and comply with the Regulations in all respects. The Company shall not be liable for any failure of the Customer to observe and comply with the Regulations.

10 Benefit of Conditions

No servant or agent of the Company or independent sub contractor engaged by the Company to carry out any of its obligations under any contract arrangement or agreement between the Company and the Customer shall in any circumstances whatsoever be under any greater liability to the Customer than is or may be the Company for any loss, damage or delay or the consequences of such loss, damage or delay whatsoever and however caused, and shall be entitled to the benefit of every exemption, limitation, condition and liberty herein contained in favour of the Company. For the purpose of enforcing this provision the Company shall be deemed to act as trustee for and on behalf of all such persons who may enforce any contract made by the Company, as if they were parties thereto.

11 Proceedings Against Third Parties

In the event of any claim or dispute arising under any contract arrangement or agreement entered into by the Customer with the Company the Customer shall not claim or otherwise proceed against any person, firm or corporation other than the Company in respect of any services provided hereunder. If the Customer does so, he shall fully indemnify the Company against all consequences of his so doing including, without limitation to the generality of the foregoing, any liability the Company may incur to its servants, agents or sub contractors and if any action is brought against a servant, agent or sub contractor of the Company such person shall be entitled to avail himself of the defences and limitations on liability which the Company is entitled to invoke under any such contract arrangement or agreement.

12 Non-compliance with I.M.D.G. Standards

The Company shall have the right at any time and without notice to reject, refuse to accept, handle or otherwise deal with Dangerous Goods, where the Company considers in its absolute discretion that the goods, packaging and documentation do not meet I.M.D.G. codes (as amended from time to time) or where the nature of the danger has not been notified to the Company by the Customer. In any such circumstances, the Company shall have the right to

require the Customer to remove or otherwise deal with such Dangerous Goods at the Customer's expense failing which the Company may at its discretion remove or otherwise deal with such Dangerous Goods (including the destruction thereof) at the Customer's entire risk and expense.

13 Customer's Warranties

- 13.1 So as to enable the Company to carry out efficiently the services provided hereunder the Customer warrants and undertakes that:
- (a) all particulars relating to containers and cargo furnished by the Customer are accurate to the best of its knowledge, (having made due and proper enquiry into the subject matter thereof);
 - (b) all cargo was properly packed, labelled and already stowed in containers and is properly stowed and secured therein;
 - (c) all containers and cargo are fit for their intended purposes and are in a fit, safe and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed by the Company;
 - (d) all containers and cargo comply with all applicable laws, orders, regulations and other requirements of government, customs, municipal, transport or health and safety or other authorities whatsoever;
 - (e) all containers and cargo comply with all standards applicable to the transportation of goods including ADR and IMDG, as amended from time to time; and
 - (f) it does not enter into this contract or any agreement or arrangement which may be entered into by the Company and the Customer as a consumer within the meaning of the Sale of Goods Acts 1893 and 1980 the European Communities, (Unfair Terms and Consumer Contracts) Regulations, 1995 and the Consumer Credit Act, 1995.
- 13.2 The Customer shall indemnify the Company in respect of the consequences of the breach of any of the above warranties.
- 13.3 The Customer shall be liable for any loss of or damage to the Company's property and its employees, agents, and subcontractors, and shall indemnify the Company against all liability, however arising for loss of or damage to property or death or personal injury or fines levied against the Company arising out of or caused or contributed to by the handling by the Company of a container within any of the following circumstances (whether or not the Company was aware at the time of such handling of the relevant circumstances):
- (a) a container the gross weight of which exceeds the maximum gross weight appropriate for a container of its description;
 - (b) a container loaded in such a manner or being in a state whereby its centre of gravity is off centre to such an extent that damage is sustained to a crane or other equipment; and
 - (c) a container of a declared weight which is shown by a subsequent weight check to exceed the permitted pay load of a vehicle assigned to carry the container; and
 - (d) a container which does not comply with the requirements of any organisation or authority which performs a certification or classification function including the failure to comply with any requirement to inspect the contents or appearance of a container ;or
 - (e) the failure by the customer to notify the company of the delivery of Dangerous Goods pursuant to Clause 15.2

14 Damaged Containers

If containers are damaged by negligence on the part of the Company or its servants the Company will use all reasonable endeavours to render the contents safe and secure from damage or pilferage and to render such containers safe for removal from the berth.

15 Dangerous Goods

15.1 Subject to the provisions of Clause 12 and Clause 15.2 the Company shall handle and store Dangerous Goods from the date when such goods are brought into The Container Terminal to the date they are finally delivered therefrom subject to compliance by the Customer with the conditions and regulations contained in the IMDG Code and all applicable law and the Customer shall be liable for loss or damage to the Company's property and its employees agents and sub-contractors caused in whole or in part by such Dangerous Goods and shall indemnify the Company against all liability, howsoever arising, including liability, to third parties for loss of or damage to property or personal injury arising out of, caused or contributed to by the failure to comply with the above mentioned conditions, regulations and applicable law.

15.2 The Company shall not be obliged to accept any dangerous goods within Classes 1 and 7 of the IMDG category of Dangerous Goods unless it has received prior notification thereof and has agreed to accept delivery thereof.

16 Exclusion of Company's Liability

The Company shall not be liable for any loss, damage, liability, costs or expenses suffered or incurred by the Customer by reason of one of more of the following:

- (a) insufficient depth of water at the Container Terminal quay berths or in the approaches to them; or
- (b) the unsafe condition of the Container Terminal quay berths or the approaches to them; or
- (c) the inadequacy, unfitness or defective condition of any buoys, moorings, lines, bollards or other equipment of whatsoever nature supplied or made; or
- (d) the failure by the Customer to notify the Company of the delivery of Dangerous goods pursuant to Clause 15.2.

17 Responsibility for Ship and Related Matters

The Customer shall remain at all times responsible for the safe navigation and proper management of the ship including, without prejudice to the generality of the foregoing, stowage, trim and stability and the operation of berthing and unberthing.

18 Consequential Loss

The Company shall not be liable for any loss, damage, delay, loss of market, indirect or consequential loss, misdelivery, costs, expenses, accidents and/or injury of whatsoever nature or kind or howsoever sustained or occasioned and whether to property or persons save as specified in Clause 19.

19 Limitation of Company's Liability

If it is established that loss, damage, death or injury of the type specified in sub paragraphs (a) to (d) below was caused by the negligence of the Company, then and in that event only, the Company shall be liable therefor, but in no case shall the Company be liable in an amount exceeding the financial limits set out in those subparagraphs respectively:

- (a) In respect of any physical loss or damage to containers or ancillary equipment, the Company shall be liable up to the market value of such lost or damaged containers or such ancillary equipment or in respect of the reasonable costs of repair, whichever is the lesser, provided always that:

- (i) the liability of the Company under this sub paragraph shall not exceed in the aggregate the sum of Euro 38,000 in respect of any one accident or occurrence or series of accidents or occurrences arising from one event and;
 - (ii) the Company shall have the option to effect repairs to any such damaged containers.
- (b) In respect of physical loss or damage to cargo, the Company shall be liable up to the market value of such lost or damaged cargo provided always that:
 - (i) the liability of the Company in respect of unitised cargoes under this sub paragraph shall not exceed the amount paid by the Customer in respect of such loss or damage pursuant to any contract of carriage and in any event such amount shall not exceed 8.33 SDR per kilogram of the weight of the goods lost or damaged and;
 - (ii) the liability of the Company in respect of unitised cargoes under this sub paragraph shall not exceed in the aggregate the sum of Euro 320,000 in respect of any one accident or occurrence or series of accidents or occurrences arising from one event and;
- (c) In respect of physical loss or damage to a ship, the Company shall be liable up to the market value of such ship or in respect of the reasonable costs of repair, whichever is the lesser, provided always that:-
 - (i) the liability of the Company under this sub paragraph shall not exceed in the aggregate the sum of Euro 1,270,000 in respect of any one accident or occurrence or series of accidents or occurrences arising from one event;
 - (ii) such amount of Euro 1,270,000 shall be inclusive of any liability of the Company pursuant to the provisions of any other sub paragraphs of this Clause 198 arising out any one accident or occurrence, or series of accidents or occurrences arising from one event.
- (d) In respect of death or injury of persons in the service of or engaged by the Customer the Company shall be liable for an amount which shall not exceed in the aggregate Euro 1,270,000 in respect of any one accident or occurrence or series of accidents or occurrences arising from one event.

20 Notification of Claims

Notice of any claim in respect of loss or damage for which the Company may be liable pursuant to the foregoing shall be given to the Company in writing within 30 days of the loss or damage occurring or if such loss or damage is not then apparent within 30 days of such loss or damage becoming apparent. If no such notice be given the claim shall be deemed to waived and absolutely barred.

21 Time Limitations

Notwithstanding the provisions of Clause 19 the Company shall be relieved of any and all liability pursuant to the foregoing if proceedings are not commenced and served upon the Company within one year of the loss or damage occurring or if such loss or damage is not then apparent, within one year of such loss or damage becoming apparent.

22 Exclusion of Implied Terms

Save as otherwise contained in these conditions, or as otherwise provided by law, all warranties and conditions, whether implied by statute or otherwise, are excluded from this contract and any agreement or arrangement which may be entered into by the Company and the Customer.

23 Force majeure

Notwithstanding anything hereinbefore contained the Company shall not be liable in respect of any failure to perform in whole or in part or any delay in performing any services herein or in respect of any loss, or damage to containers, ancillary equipment or cargo or in respect of any other liability under, arising out of, or consequent upon any of the following (even when caused by or contributed to by the negligence of the Company):

- (i) breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to, the Terminal, it being agreed that the Company is under no obligation to have available an alternative power supply;
- (ii) strikes, riots, civil commotions, lock-outs, stoppages, and/or restrains of labour of whatsoever nature or kind, whether partial or general and whether or not involving the employees of the Company;
- (iii) war, civil war, hostilities and/or the acts of terrorism;
- (iv) adverse or unusual conditions of sea and/or weather, earthquakes, flood and/or fire;
- (v) acts, orders, regulations and/or requirements of any Governmental/ Municipal or other authorities whatsoever or any person or body purporting to act on their behalf;
- (vi) the coming into force of any statute regulation law, or governmental decree which shall materially affect on the performance by the Company of its obligations hereunder.

24 Termination

24.1 If:

- (a) the Customer makes default in the punctual payment of any sums due to the Company or shall fail to observe or perform any of the conditions herein and such default or failure shall continue unremedied for a period of 10 days after written notice thereof by the Company; or
- (b) the Customer shall suffer any distress or execution to be levied against it or make any compromise or any arrangement with its creditors or being a company, shall go into liquidation; or
- (c) the Customer has a Receiver, Examiner, or other similar officer appointed to it,

without prejudice to its other rights, the within contract shall be deemed to have been terminated (without any notice or other act on the part of the Company and notwithstanding that the Company may have waived some previous default or matter of the same or a like nature). The determination of the within contract under this Clause shall not affect the right of the Company to recover from the Customer any monies due to the Company under the within contract or damages for breach thereof.

- 24.2 If the Company shall suffer any distress or execution to be levied against it or make any compromise or any arrangement with its creditors or go into liquidation or if it has a Receiver, Examiner or other similar officer appointed to it or if it ceases to be entitled to occupy The Container Terminal it shall upon service of not less than 7 days notice on the Customers be entitled to terminate the within contract. The determination of the within contract under this clause shall not affect the right of the Company to recover from the Customer any monies due to the Company under the within contract.

25 Governing law and Jurisdiction

Unless expressly agreed otherwise between the Company and the Customer, these Conditions and any contract agreement or arrangement to which they apply shall be governed by the laws of Ireland and within the parties agree to submit to the exclusive jurisdiction of the Irish Courts.

RIDER A

CLAUSE 26:

26. Application Of Trading Conditions To Customers Having Access To And Use Of Reefer Frame Equipment

26.1 “**Container Compound**” means that area dedicated to unitised cargo operations at Belview Port, Waterford.

“**Refrigerated Unit Monitoring Service**” means, *inter alia*, the monitoring of refrigerated container units whilst such units are connected to the Reefer Frame Equipment within the Container Compound.

“**Monitoring Company**” means a company authorised in writing in advance by the Company to provide the Refrigerated Unit Monitoring Service upon such conditions as the Company may impose at its sole discretion.

“**Reefer Frame Equipment**” means the equipment known as the reefer frame (including its electrical components and any additional reefer plugs located at the Container Compound capable of providing an electricity supply to temperature sensitive cargo) located at the Container Compound.

26.2 Subject to the within Trading Conditions 1 to 26 inclusive, the Company shall, in the performance of its functions as a Stevedore, perform an additional service of connecting and disconnecting the refrigerated container units to the Reefer Frame Equipment’s electricity supply (“the Additional Service”).

26.3 In consideration of the provision of the Additional Service, the Customer shall pay an additional fee to be determined by the Company.

26.4 Subject and without prejudice to clause 26.5 below, in order to avail of the Additional Service, the Customer shall apply for and obtain the prior written agreement of the Company.

26.5 The Company shall not provide and shall not be required to provide a Refrigerated Unit Monitoring Service. The Container Refrigerated Unit Monitoring Service shall be performed on behalf of the Customer by the Monitoring Company.

26.6 Access to the Container Compound shall be strictly restricted to the nominated personnel of the Monitoring Company.

26.7 Without prejudice to clause 23, the Company shall not be liable for any failure to perform the Additional Service in whole or in part or for any delay in performing the Additional Service or in respect of any loss, damage, delay, loss of market, indirect or consequential loss, mis-delivery, costs, expenses, accidents and/or injury of whatsoever nature or kind and whether to property or persons arising from any breakdown of, accident to, failure or interruption or reduction in the mains electricity supply to the Reefer Frame Equipment, it being agreed and accepted by the Customer that the Company is under no obligation to procure an alternative power supply.

26.8 All written agreements, consents or approvals of the Company providing for in this clause 26 shall be signed by a duly authorised representative on behalf of the Company.

26.9 Termination

(1) If in the reasonable opinion of the Company, the Reefer Frame Equipment ceases to be operable, the Company may terminate providing the Additional Service on giving 14 days notice.

(2) Either the Company or the Customer may terminate following 21 days writing notice.