

# ASSOCIATED BRITISH PORTS

## STANDARD TERMS AND CONDITIONS OF TRADE

### IMPORTANT ADVICE

THESE TERMS AND CONDITIONS CONTAIN PROVISIONS BY WAY OF INDEMNITY AND ALSO EXCLUSION AND LIMITATION OF LIABILITY IN FAVOUR OF ABP WHICH UNDERTAKES NO OBLIGATION TO EFFECT INSURANCE (AND MAKES NO CHARGE FOR INSURANCE) IN RESPECT TO THE CUSTOMERS, THEIR SERVANTS, GOODS OR LIABILITIES. CUSTOMERS ARE THEREFORE ADVISED TO EFFECT INSURANCE THEMSELVES.

WHERE INCONSISTENT WITH THESE TERMS AND CONDITIONS PREVIOUSLY APPLYING OR UNDERSTOOD TO APPLY THESE TERMS AND CONDITIONS WILL PREVAIL.

### 1. Definitions

In these terms and condition, unless therein otherwise expressly provided, or unless the context shall otherwise require, the following expressions shall have the meanings hereby assigned to them.

‘ABP’ shall mean Associated British Ports

‘Customer’ shall mean any person, corporation, firm or body of persons whether incorporated or unincorporated who visits the premises of ABP and/or who delivers or brings goods or plant onto or whose goods or plant come howsoever to be on those premises and/or who by themselves their servants or agents avail themselves or any facility or service provided by ABP.

‘Goods’ shall mean cargo of any description whatsoever together with any plant (as defined hereunder) package, case, container or other thing which conveys, carries, contains, protects or supports cargo or is designed or made to do so.

Hover Vehicle means a vehicle, however propelled, designed to be supported on a cushion of air.

Hydrofoil Vessel means a vessel, however propelled, designed to be supported on foils.

‘Plant’ shall mean any vehicle, trailer (whether or not carrying or incorporating any tank or container), machine or container.

Vessel includes any ship, boat, raft or craft of any class or description however navigated or propelled and a hover vehicle and a hydrofoil. - -

Where the context permits words in the singular shall include the plural and words in the plural shall include the singular.

### 2. Applications of Terms and Conditions

These terms and conditions shall apply to all legal relationships between ABP and any customer whether in respect of contract, bailment or licence (whether to enter or remain or otherwise). These terms cannot be varied otherwise than in writing signed by an authorised officer of ABP. In particular such acceptance will be deemed to have been made in the event of the entry or delivery of any person, goods or plant onto or upon the premises of ABP and/or the submission of any Shipping or Unit Load Note or the making of any other written or oral application to ABP for entry to the premises of ABP or for any service of the use of any facility by or on behalf of any customer.

### 3. Warranty of Authority by Customer

The customer expressly warrant to ABP that he is either the owner or the authorised agent of the owner of the goods the subject matter of the transaction and of any plant brought onto ABP's premises 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 interested in the goods.

#### **4. Orders in Writing**

ABP will only store or perform or provide any service or accommodation in connection with the goods or plant on receiving orders in writing to do so from the customer, either at the time each service is required or in accordance with any contractual arrangement to provide such services over a period of time. ABP will, on application, supply forms of request to persons using its premises for the various services undertaken by or facilities provided by ABP. All orders by telephone must be immediately confirmed in writing and ABP will not, in any case, be responsible for its servants' failure to comply, or for any errors by its servants in complying with such orders where they are communicated by telephone and are not promptly so confirmed. Orders for shipment of goods and for delivery of imported goods can be acted upon only after receipt of written authority from the ship's owners or agents, and proof of compliance with all customs and other official formalities.

#### **5. Quantity and Description of Goods**

- (a) The customer shall ensure that ABP is given an account of the contents and quantities of each vessel discharging or loading goods in the docks before the discharge commences or immediately after the loading has been completed.
- (b) The customer shall ensure that ABP is given a full description and particulars of the goods including hazards sufficient to identify them prior to (or on) delivery.
- (c) ABP shall be permitted by the customer to give any particulars furnished under (a) and (b) above to whomsoever ABP deems necessary. The customer shall be bound by and deemed to warrant the accuracy of all descriptions, values and other particulars furnished to ABP and undertakes to indemnify ABP against all losses, damages, expenses and fines arising from the inaccuracy in or omission from the above particulars even if such inaccuracy or omissions is not due to any negligence.

#### **6. Conditions of Goods and Plant**

The customer warrants that any goods or plant which he delivers to or causes to be upon ABP premises.

- (a) Will not contaminate or cause danger, injury, pollution or damage to any person or any other goods or plant or ABP's premises or the water and air adjacent thereto.
- (b) Are not infested, verminous, rotten or subject to fungal attack or are liable to become so while at ABP's premises.
- (c) Are not overheated or liable to become so while at ABP's premises.
- (d) Require for their safekeeping no special protection (other than as may be agreed in writing between ABP and customer) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their inflammability.
- (e) Contain no controlled drugs (unless the customer is licensed or otherwise lawfully authorised in respect thereof), contraband, pornographic or other illegal material.
- (f) Are properly and sufficiently packed to ensure the safety of the goods and to allow mechanical handling without damage or danger.

- (g) Are properly and sufficiently marked, documented and labelled for all shipping, cargo handling, dispatch, customs and like purposes.
- (h) Are properly marked with warnings as to the hazardous nature of any contents and the precautions to be taken in handling the same and with such warnings as may be necessary for ensuring the safety and health of all persons likely to handle or come into contact with the goods or their contents in the event of the escape of anything injurious therefrom.

Where ABP incurs any expense due to the customer's breach of any of the warranties set out in this condition or in taking any step which ABP shall consider to have been reasonably required to remedy the same or to comply with the lawful requirements of HM Customs and Excise, the Police, the Health and Safety Executive, the Public Health Authority or any similar body, its officers and agents in respect of the goods, the same shall be chargeable to and payable by the customer concerned.

Whereby they reasonably suspect that a breach of any warrant under this clause has been, or might be, committed ABP is entitled to refuse to accept any goods or plant into its premises, and if goods or plant have been accepted ABP may none the less reject them and require their removal; and in that event the customer shall be entitled to no recompense but shall be liable for any dues and charges incurred up to the time of such rejection and the cost of any damage caused by such goods or plant.

#### **7. Prompt Shipping and Removal of Goods**

All goods deposited upon any of the quays or wharfs, or in any of the sheds or premises of ABP shall be shipped or removed therefrom with all due diligence and at latest within 7 days from the time of final discharge of the vessel for incoming traffic or 7 days from the time of their being first brought or deposited thereon for outgoing traffic and any goods remaining beyond that time shall incur rent charges and may be removed and dealt with by ABP in accordance with Condition 11 and, where appropriate, Conditions 16, 17, 18 and 19.

#### **8. Destruction or Disposal of Harmful Goods**

Where any goods are, or while in the custody of ABP 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, ABP 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 goods harmless. Where the condition applies the customer shall indemnify ABP against all loss, damage, costs and expenses arising out of or in connection with the fact or matter by reason whereof this paragraph applies.

#### **9. Dangerous Goods**

Goods of an inflammable, explosive, dangerous or offensive nature shall not be brought into or dealt with at ABP's premises unless and until a declaration by the owner or depositor in writing shall have been given to the Port Manager of their nature, quality and quantity, and the Port Manager's consent shall have been first obtained, and then only upon such terms and conditions as may have been arranged, and or may be prescribed in the bye-laws of ABP, or by or under statute.

#### **10. Explosives**

Without prejudice to Condition 9, where ABP undertakes to handle explosives (defined as substances and articles listed under Class 1 of the International Maritime Dangerous Goods Code as published by the International Maritime Organisation) or consents to the handling of explosives on its premises by others, the customer shall, subject to the undernoted limit, bear and pay for any damage and injury which may be caused to any property belonging to ABP and for any expense to which ABP may be put

by reason of or in consequence of a fire or explosion involving the explosives. Further, the customer shall, subject to the said limit, indemnify and keep indemnified ABP from and against all actions, claims, demands, costs, losses, charges, damages and expenses which may be brought or made upon ABP or which ABP may pay, bear, incur or sustain in respect of any consequence of or in connection with the handling of the explosives. The customer shall be required to provide a letter of confirmation from their insurance company that the said indemnity is underwritten by a policy of insurance, quoting the policy number and the period of insurance.

The limit under the foregoing paragraph shall be £3,000,000 or such higher sum as may be notified in respect of any one accident or series of accidents arising out of one occurrence. This indemnity shall apply whether or not any accident or occurrence is caused by the negligence or default of ABP or its servants.

#### **11. ABP's Discretion over Handling Methods**

Subject to specific written instruction given to ABP by the customer and accepted by ABP in writing, ABP reserves to itself complete freedom in respect of the means and procedure to be employed in the receipt, collection, utilisation, stuffing, stripping, storage, packing, carrying, handling, tallying, loading, discharging or delivery of goods.

If in ABP's opinion the interests of the customers so require, ABP may deviate from the customer's instructions (whether or not accepted by ABP) in any respect and any expenses reasonably incurred thereby shall be for the customer's account.

#### **12. Arrival of Vessels and Vehicles**

ABP will not be bound to admit vehicles to its premises or to allow vessels to berth thereat except by prior arrangement with the customer.

#### **13. Sequence of Handling Vessels and Vehicles**

Vessels moored and vehicles arriving at the ABP's premises will be dealt with in the order determined by ABP at its sole discretion.

ABP shall not be liable to pay or refund demurrage or any other compensation for the loss of use of vessels or vehicles or for their not being ready in time, not 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 ABP's premises.

The customer shall ensure that the vessels and vehicles arrive and are handled and depart in conformity with the requirements and regulations of ABP, its dock and harbour masters and other officials as well as the lawful requirements of HM Customs and Excise, the Police, the Health and Safety Executive, the Public Health Authority or similar body.

#### **14. Hours of Work**

ABP shall not be bound to do any work outside the normal hours details of which can be provided upon request, and which may be varied from time to time, unless otherwise agreed in writing by ABP, and shall be entitled to make additional charge for any work done outside such hours at the customer's request.

#### **15. Payment of Charges**

The rates of ABP's charges shall be those published in the Port Office as those prevailing at the time that the facilities or services of ABP are actually utilised by the customer and ABP may from time to time revise these rates by publishing any such revision in the Port Office.

ABP's standard terms of payment are as follows:-

Ships Dues	payable on demand before sailing or on receipt of invoice (whichever is the earlier)
Goods and passenger dues	payable on demand unless special credit facilities have been agreed

Upon application by customers to ABP and the signing of them of the prescribed request, ABP in its discretion, may allow them a credit account subject to any special conditions which may from time to time be applicable. Invoices charged to approved credit accounts shall be paid without deduction within 28 days of the invoice date, excepting that ship dues are payable in advance or on demand. Payment thereof shall not in any case be delayed pending the settlement of any questions as to the accuracy of any particular item or items of the account or the allowance of any counter claim or set-off by the customer.

ABP reserve the right to charge interest at the rate of 8% p.a. above the base rate of the Bank of England on all accounts overdue and such interest shall accrue on a daily basis until payment is received.

ABP may, subject to any statutory requirements to the contrary, at any time demand payment by standing order or prepayment of the whole or part of its charges.

No undertaking by ABP to collect from a consignee or any other person any sum payable to the customer and no demand by ABP on any such person, shall constitute a waiver or release by ABP of any rights against the customer.

No vessel will normally be permitted to leave the docks until all dues and charges have been paid and a pass has been obtained from the Port Manager, which must be lodged with the Harbour Master prior to the departure of the vessel.

ABP may refuse to deliver or release goods until all charges incurred in relation thereto have been paid but pending such delivery or release any charges accruing on a daily basis or other periodic basis shall continue to accrue.

#### **16. General Lien with Power of Sale**

ABP may exercise, upon all goods and plant in its possession a lien, not only for any charges and expenses due thereon, but also for all monies owing by the owners to ABP on any account, and in the event of any such charges, expenses and monies not being paid within 10 days of the notice of the exercise of any such lien, ABP may sell the goods and apply the proceeds towards the satisfaction of all such charges, expenses and monies on whatsoever account owing and also all charges and expenses arising during the exercise of any such lien. If the customer has sold or shall sell the goods the subject of the lien ABP may, at their option, accept the proceeds of such sale or some interest or charge in or over such sale or some interest or charge in or over such sale or some interest or charge in or over such proceeds in substitution of their lien as a condition for releasing the goods.

#### **17. Disposal of Perishable Goods**

Where ABP is in possession of perishable goods of any nature which are not taken up immediately upon arrival or which are liable for any reason to perish before shipment or delivery which, in the opinion of ABP, are insufficiently addressed or marked or are otherwise so unidentifiable that ABP cannot determine on what vessel they should be made available for collection, ABP may sell or otherwise dispose of such cargo without any notice to the customer, sender, owner or consignee of the goods

All charges and expenses arising in connection with the sale or disposal of the goods shall be payable by the customer, and, in the 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 ABP under these conditions, shall discharge all liability of ABP to any person, firm or corporation in respect of the goods.

#### **18. Disposal of Undeliverable Goods**

ABP shall be entitled to sell or otherwise dispose of all non-perishable goods which in the opinion of ABP, are insufficiently or incorrectly addressed or marked or are otherwise so unidentifiable that ABP 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 (if known) or the publication of such notice in the Port Office.

All charges and expenses arising in connection with the storage sale or disposal of the goods shall be payable 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 ABP under these conditions, shall discharge all liability of ABP to any person, firm or corporation in respect of the goods.

#### **19. Disposal of Empty Cases, Packing etc.**

After shipment or removal of goods from ABP's premises any package, case, pallet, container or other thing which conveys or supports cargo, remaining empty or substantially empty and unused shall be removed by the customer within 28 days of such shipment or other removal of the goods or their becoming empty (as the case may be).

If the customer fails to remove these items within that period or such further period as ABP may in writing agree to allow, ABP may for their sole benefit dispose of them (whether by sale, gift, destruction or otherwise) and shall not be liable, answerable or accountable to the customer or any person interested in such items for so doing or for the proceeds of any such disposal.

#### **20. Liability – Proof of Negligence**

ABP shall be liable for loss or misdelivery of or damage to goods or any deficiency therein, but only if, it be proved by the customer (otherwise than by evidence only of such loss, misdelivery, damage or deficiency of or to the goods or plant when in ABP's possession or power) to have been caused by the negligence of ABP or their directly employed servants.

#### **21. Force Majeure**

(A) ABP shall not be liable for any breach of obligation to the extent that performance thereof is delayed, hindered or prevented for force majeure.

(B) Force majeure means any circumstances or conditions beyond ABP's control or which it is not reasonably practicable for ABP to control or alleviate.

(C) Without prejudice to the generality of sub-condition (B) above and without being thereby limited, force majeure includes any one or more of the following:-

1. Act of God, storm, tempest or flood.
2. Fire (including steps taken for the extinguishing thereof), explosion, smoke, ionising radiation, radioactive contamination.
3. Impact by aircraft or objects dropped or falling from them.
4. Strikes, combinations, lockouts, go-slows or other industrial action by any person or anything done in the furtherance of a trade dispute.

5. Scarcity of labour, plant, machinery, fuel or power.
6. War revolution, riot or civil commotion.
7. Restrictions imposed directly or indirectly by HM Government or any person, corporation or body acting under statutory powers.
8. Theft or wilful damage unless proved by the customer to have been committed by the servants of ABP.
9. Inherent vice of the goods.
10. Vermin, insects, fungal attack, rot or corrosion.
11. Heat or cold including heat within the goods themselves and unintended exposure to natural or artificial light.
12. Improper or insufficient packing, marking, documentation or labelling.
13. Any act of ABP its servants or agents which, though deliberate, are reasonably necessary for the safety or preservation of persons, the premises and any goods thereat.
14. Late receipt of Customs entries or delivery or landing orders, disputes in respect of documents or declarations made for entry purposes by or on behalf of any person, delay in passing Customs entries or obtaining clearance of any goods or omission of information form or a mis-statement in any order to ABP relating to the goods.

## **22. Limitation of Liability – Consequential Loss**

ABP shall be under no liability whatsoever (whether for negligence or otherwise) for goods plant or vessels being delayed or for loss of any market thereof or for any other consequential loss.

## **23. Liability – Monetary Limit**

The liability under Condition 20 thereof shall be limited to the cost of the goods or plant lost, misdelivered or damaged or the market value thereof of the cost of replacing or repairing the same or £1,300 per tonne of the gross weight of the goods or plant concerned, whichever shall be the least.

## **24. Liability – Time for Claims**

It is a condition precedent to the liability of ABP under Condition 20 hereof that ABP be notified in writing, in the case of damage, deficient or partial loss, before the goods are removed from ABP's premises and, in the case of total loss of misdelivery, within 30 days in the case of import goods or 60 days in the case of export goods of the delivery of the goods by ABP or their removal from ABP's premises, with particulars of the nature and amount of any claim not made in accordance with the terms of this Condition shall be deemed to be waived, extinguished or absolutely barred.

## **25. Liability Limits Available to Third Parties**

By delivering the goods to ABP, the customer shall be deemed to confer severally upon the employees and agents of ABP, and upon its or their independent contractors, and upon all other persons whether or not stevedores who may be required to render services to the goods, the benefit or all warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defences, amenities and rights herein provided for the benefit of ABP, upon any such person as aforesaid proving any services whether or not of a stevedoring nature in relation to the goods. This Condition also constitutes a separate contract made by ABP on its own behalf and as agent for all persons who are its servants or agents from time to time or any person whether or not as stevedore providing services as aforesaid in relation to the goods.

**26. Bye-Laws**

The rights and powers of ABP under these Terms and Conditions are in addition to and not in substitution of the rights and powers of ABP conferred by their current Bye-Laws.

**27. English Law and Jurisdiction**

Any legal relationship between ABP and the customer shall be governed by and interpreted in accordance with English Law and the customer submits to the jurisdiction of the High Court of Justice In England but ABP may enforce any contract between ABP and the customer in any court of competent jurisdiction.

**28. Giving of Notice**

Any notice required to be given hereunder shall unless otherwise specified 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 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.

**29. Headings**

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