



# Harwich Dock Company Ltd.

*Registered Office:*  
The Naval House  
Kings Quay Street  
Harwich  
Essex CO 12 3JJ

## **GENERAL TRADING TERMS AND CONDITIONS**

**Effective date: April 2005**

1. Save as otherwise specifically provided, the following Terms and Conditions shall apply;
  - i) to all services performed by the Harwich Dock Company Ltd within the port area and, so far as applicable, to all services performed by the Harwich Dock Company Ltd outside the port area.
  - ii) These Terms and Conditions shall apply to all legal relationships between The Harwich Dock Company Ltd and any Customer whether in respect of contract, bailment or licence.

### **DEFINITIONS**

2. In these Terms and Conditions:-
  - i) "HDC" means The Harwich Dock Company Ltd and any associate or subsidiary thereof;
  - ii) "charges" includes all charges, quay rent, fees, cargo handling charges, tolls and dues of every description for the time being payable to HDC;
  - iii) "port area" means the port and the port premises as defined in The Harwich Dock Co Ltd Harbour Empowerment Order 1988 (and any statutory modification or substitution thereof);
  - iv) "Docks Manager" means any manager duly appointed from time to time by HDC to be in charge of a department division or operation at or on the port area and shall include their deputies and assistants;
  - v) "Customer" includes any person, corporation, firm or body of persons whether incorporated or unincorporated who :
    - a) visits the port area;
    - b) are the Owners of goods delivered, brought into or come howsoever to be upon the port area;
    - c) are the Owners Master or crew of or a Passenger on a vessel which enters the port area;
    - d) by themselves, their servants or agents avail themselves or seek to avail themselves of any facility or service provided by HDC;
  - vi) "goods" means cargo, of any description including livestock whatsoever together with any vehicle, trailer, machine or container, package, case, pallet or other thing which conveys, carries, contains, protects or supports cargo or is designed or made so to do ("equipment");
  - vii) "Owner":

- a) when used in relation to goods includes the owner, container owner, trailer owner, agent, consignor, shipper, consolidator, consignee or other person in charge of the goods and their respective agents in relation thereto;
  - b) and when used with reference to any ship includes the registered owner, agent, charterer (time voyage or demise), line operator, manager, master or other person in charge of the ship;
  - c) And when used with reference to any road or rail vehicles includes the owner, agent, driver or other person in charge of the vehicle. In circumstances where there are two or more "Owners", as herein defined the liability of such Owners shall be joint and several.
- viii) "service" means any operation or service performed or provided by HDC in connection with a ship and in particular with the berthing, unberthing, moving and servicing of any ship, the shipping and unshipping of goods, the sorting, weighing, marking, checking, recording, cooping, storing and general handling and movement of goods by road, rail or otherwise and the embarking, disembarking and movement of crews and passengers;
  - ix) "ship" means any vessel or barge or any part thereof in respect of which HDC provides, or is to provide a service;
  - x) where the context permits, words in the singular shall include the plural and vice versa;
  - xi) in the event that any liability or duty arising hereunder attaches to more than one "customer" such liability or duty shall be regarded as being joint and several in nature;
  - xii) "FCPS" means the computer system used by Shipping Lines, Agents, Forwarders, Hauliers and HDC for customs clearance and inventory control of Imports and Exports, and any electronic data system that may succeed it. For the purpose of these Terms and Conditions FCPS also includes any additional electronic database or interactive services accessed via such computer system from time to time.
  - xiii) "ISPS Code" means International Ship & Port Facility Security Code as laid down by UK law and SOLAS (IMO) as adopted in December 2004.

## **APPLICATION OF CONDITIONS**

3. The acceptance by the Customer of these Terms and Conditions may be expressed but even if not made expressly, acceptance will be implied from the entry by the Customer into any legal relationship with HDC since these Terms and Conditions are the only terms on which HDC are willing to enter such relationships. In particular, such acceptance shall be deemed to have been made in the event of the entry of delivery of any ship, person or goods into or onto the port area and/or the submission of any shipping or unit load note or other similar documentation or the making of any other written or electronic notification via FCPS or oral application to HDC for entry to the port area for any service or the use of any facility by or on behalf of any Customer.
4. No Terms or Conditions whenever or however expressed or implied which are at variance with these Terms and Conditions or which purport to exclude or restrict any right of which HDC would have had the benefit in contract tort or by statute or which provides for any party other than HDC to be indemnified against the consequences of negligence or a breach of duty contract or statute by

5. the party, its servants, agents or contractors shall apply unless expressly incorporated in any contract or other legal relationship between HDC and any other party.
6. These Terms and Conditions are in addition to and not in substitution of the rights and powers of HDC conferred by The Harwich Dock Company Harbour Empowerment Order 1988 (and any statutory modification or substitution thereof) and may be varied in writing from time to time. Furthermore the Customer, its servants, agents, goods and ships are subject to HDC's Byelaws for the time being in force.
7. HDC reserves the right to :
  - i) appoint sub-contractors;
  - ii) at any time before it commences the performance of any work or service to serve written notice upon the Customer declining to undertake such performance and giving such reasons for so declining;
  - iii) To suspend the provision of the service in the event of any breach of these Terms and Conditions by the Customer.

*PROVIDED THAT no liability shall attach to HDC in consequence thereof and, in the case of HDC, declining to perform any work or service to the goods for any reason other than its own ability to perform the work or service, the Customer shall, at its own expense, remove those goods from HDC's premises within 30 days of the said notice failing which HDC may do so at the expense of the Customer.*

8. HDC in accordance with its statutory powers has absolute discretion in the allocation of berths, quay plant, machinery, labour and storage space.
9. The acceptance by HDC of goods for shipment does not imply that such goods will be shipped. The acceptance or refusal of goods for shipment is the responsibility of the Owner of the ship concerned.
10. Any plant, equipment, vehicle or machine not being "goods" as herein defined allowed by HDC within the port area is so allowed by licence only and no bailment is made to HDC in respect thereof.

## **WARRANTY**

11.
  - i) Each Customer who avails himself of any service provided by HDC in respect of any goods or ship warrants to HDC that he has the authority of all persons having any title to or interest in such goods or ship to accept these Terms and Conditions on their behalf and has specifically notified these Terms and Conditions to such persons. Finance companies, lessors and others having or claiming to have title or an interest in goods or a ship are advised that unless HDC are notified in writing of their title or interest in any particular goods prior to the commencement of legal relations between HDC and the Customer in respect thereof, these Terms and Conditions will be deemed to have been accepted with the authority of such party

whose rights over and in respect of the goods or the Customer shall be postponed to the rights of HDC hereunder.

- ii) Each Customer warrants that the rights, defences and limits available to the customer either by statute or by contractual terms are extended to HDC (as servant, agent or independent contractor including stevedores).

**12.** The Customer warrants unless otherwise specified in writing to the Docks Manager that any goods or ship which he delivers, directs to or causes to be upon the port area:

- i) are not dangerous or flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on the port area;
- ii) are not toxic or liable to give off any injurious dust, gas, fumes, liquid or radiation;
- iii) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the port area;
- iv) are not over-heated or liable to become so while on the port area;
- v) will not contaminate or cause danger, injury, pollution or damage to any person or any other goods or plant on the port area or the water or air adjacent thereto;
- vi) require for their safekeeping no special protection (other than as may be agreed in writing between HDC and the Customer) arising from vulnerability to heat, cold, moisture, salt, pilfering or proximity to other goods or from inflammability but will remain safe if left standing in the open on the port area or in covered accommodation if agreed with HDC;
- vii) contain no unauthorised controlled drugs, contraband, pornographic or other illegal matter;
- viii) are properly and sufficiently packed in accordance with all Regulations and Rules prevailing from time to time;
- ix) are properly and sufficiently marked, accurately documented and labelled for all shipping, cargo handling, despatch, customs and like purposes;
- x) are properly marked with any warning as to the hazardous nature of any contents and the precautions to be taken in handling the same and (in the event of the escape of anything injurious there from) as may be necessary to ensuring the safety and health of all persons likely to handle or come into contact with the goods;
- xi) fit for their intended purpose and are in a fit and proper condition to be handled or otherwise dealt with by HDC its equipment and employees;
- xii) Are properly insured by the Customer.

## **HAZARDOUS GOODS & WASTE**

**13.** No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by HDC except by permission of the Docks Manager (particularly the Dangerous Goods officer acting in that capacity) and then only in accordance with the conditions prescribed by him and in accordance with any statutory regulations prevailing from time to time governing the handling of such goods and in particular the Dangerous Substances in Harbour Area Regulations 1987. The policy of HDC for handling such hazardous cargo can be provided upon request.

14. In the event of any seepage, spillage, discharge adverse environmental impact or any dangerous, hazardous or poisonous substances or any contaminant or pollutant the Customer shall immediately inform the Docks Manager and take whatever steps are appropriate to limit the extent of such spillage or discharge and shall indemnify HDC in respect of all costs including legal costs on an indemnity basis incurred by HDC and which arise from the incident including any steps taken by HDC under its statutory powers.

## **DOCUMENTATION**

15. All manifests, delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, goods handling instructions and orders for any service provided by HDC must be lodged with the Docks Manager or by FCPS not less than 24 hours or such shorter time as may be agreed in writing by HDC before the services are required to be performed. Any order given verbally must be confirmed in writing within 24 hours.
16. HDC will exercise all reasonable despatch in executing orders for its services but no responsibility whatsoever will be accepted by them for any failure on their part or delay which may arise in the execution of such orders.
17. Goods which for any reason cannot be delivered at the time of landing ex-ship will be placed on the quays, in a transit shed or elsewhere within the port area at the expense of and the sole risk of the Customer. The published transit shed and quay rental structure will be charged where appropriate.
18. Authorisation for the removal of imported goods will not be granted unless documents of title have been duly presented to the Docks Manager or unless the Owner of the ship has notified the Docks Manager in writing or by FCPS that the goods may be released to nominated persons. The Customer will be entirely responsible for all HM Customs and Immigration formalities.
19. Full compliance with the prevailing ISPS Code security level for all vessels, crew and passengers prior to arrival and post arrival.

## **EXPORT GOODS**

20. Goods for shipment will only be received within the port area by prior arrangement with the Docks Manager and then only in accordance with such conditions as he may prescribe.
21. All goods brought to the port area by road for shipment must be accompanied by a Standard Shipping Note or unit load note or Dangerous Goods Note or vehicle condition report agreed with the Docks Manager, or the similar detailed information transmitted by FCPS.
22. In respect of goods forwarded to the Dock Estate by rail, a Standard Shipping Note or unit load note or Dangerous Goods Note must be lodged with the Docks Manager or the similar detailed information transmitted by FCPS not later than the arrival of rail wagons conveying such goods. Prior notification must be given to the Docks Manager to allow any necessary wayleave or other arrangements to be made with Railfreight Distribution or any other operator of rail services.

23. Subject to alternative arrangements being agreed in writing with HDC a Standard Shipping Note, unit load note, Dangerous Goods Note or vehicle condition report must specify marks and number of packages, description of goods, gross weight, cubic measurement, name of the ship, port to which the goods are to be shipped, and the name and address of the customer or company to whom charges are to be rendered.
24. A Standard Shipping Note or unit load note or Dangerous Goods Note in respect of goods of a dangerous, hazardous or poisonous nature must be clearly endorsed to that effect, or the FCPS 'pre exec' information must include the IMDG Class and the UN number and page number, and the goods must be labelled in accordance with the prescribed statutory regulation.

## **LIABILITY**

25. HDC shall be exempt from all liability whatsoever for deficiency, loss, damage or mis delivery of or to goods or to a ship however or whenever caused except upon proof by the Customer (otherwise than by evidence only of such deficiency, loss, damage or mis delivery) that the deficiency, loss, damage or mis delivery was caused by the negligent or unlawful act or omission of HDC or its directly employed servants.
26. HDC shall be under no liability whatsoever (whether for negligence or otherwise) for loss or mis delivery of or damage to a ship or the goods or any deficiency therein if the same arises out of or is caused by any of the following :
- i) Act of God, storm, tempest or flood;
  - ii) fire (including steps taken for the extinguishment thereof), explosion, smoke;
  - iii) strikes, combinations, lock-outs, go-slows or other industrial action (whether lawful or not) by any person or anything done in the course of furtherance of a trade dispute;
  - iv) improper, insufficient, indistinct or erroneous marking or addressing of goods;
  - v) improper or insufficient packaging of goods;
  - vi) any inherent vice or quality of the goods;
  - vii) any act of HDC, its servants or agents reasonably necessary for the safety or preservation of persons, the Dock Estate, a vessel and/or any goods thereat or thereon;
  - viii) theft or wilful damage unless proved by the Customer to have been committed by the servants of HDC;
  - ix) vermin, insects, fungal attack, rot or corrosion;
  - x) heat or cold;
  - xi) any act deliberately or otherwise occasioned by third parties present on the Dock Estate with or without the permission of HDC;
  - xii) any act directly or indirectly occasioned by happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), Civil War, rebellion, revolution, insurrection or military or usurped power;
  - xiii) any act of any person or persons acting on behalf of any organisation with activities directed towards the overthrow by force of any de jure or de facto government;

- xiv) shortage of berthing space, labour, plant deficiency, fuel or power or secure covered storage accommodation;
- xv) insufficient depth of water at any berth or the approaches thereto or the unsafe condition of any berth;
- xvi) late receipt of HM 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 HM Customs entries or obtaining clearance of the goods, or omission of information from or a mis-statement in any order to HDC relating to the goods;
- xvii) impact by aircraft or objects dropped or falling there from;
- xviii) the operation of FCPS;
- xix) the total or partial failure of any electronic services or systems offered at any time by HDC including the total or partial failure of any communication links with those services or systems;
- xx) Voluntary use of a grounding berth.

**27.** HDC shall be under no liability whatsoever (whether for negligence or otherwise) for any delay (including delay to a ship) or the consequences thereof or in any event for the loss of any market profit or other consequential or indirect loss.

**28.** If HDC shall be liable in tort (including negligence) for bodily injury or death to any person or for damage to any property and if any Customer shall also be liable on whatever grounds in respect of the same damage, then as between HDC and that Customer that Customer shall be solely liable for such damage and shall indemnify HDC against any sum for which HDC shall be liable (whether as damages, costs, interest or otherwise) in respect thereof.

**29.** Subject always to any statutory provisions and the limitations and exclusions of liability contained herein, the total liability of HDC for any loss, damage, claim, cost and/or expense in respect of any one event or occurrence shall in no case be more than £3,000,000 and shall be the lowest of the following as applicable :

**Ship:**

- a) The value of that part or parts of the ship to which the claim relates at the time of the damage or loss;
- b) The cost of repairs (as agreed between surveyors appointed by HDC and the Owner).

**Equipment:**

- a) the cost of repairs;
- b) the value of the equipment to which the claim relates at the time of the damage or loss;
- c) The sum of £2,000 per unit.

Cargo:

- a) In the case of loss or damage to cargo arising out of the performance of the/a contract of carriage, the defences and limits available to the carrier under the said contract of carriage;
- b) the value of the cargo to which the claim relates; and if any claims in respect of a part consignment, then the value only of the part consignment as a proportion of the whole (consignment);
- c) the cost of repairs;
- d) In any other case the sum of £1,300 per tonne (or pro rata for any part of a tonne).

**29.** It is a condition precedent to the liability of HDC that HDC be notified in writing :

- a) of any damage alleged to have been caused to a Ship and to permit inspection thereof prior to sailing;
- b) within 30 days (in the case of import cargo) or 60 days (in the case of export cargo) of the delivery of the goods by HDC or their removal from the port area, of any alleged mis delivery or loss of or damage to the goods or any deficiency therein together with particulars of the nature and the amount of any claim to be made;
- c) Of any damage alleged to have been caused to equipment prior to such goods leaving the port area.

*In any event HDC shall be entitled to inspect any such goods prior to their disposal or destruction by the Owner.*

*Notwithstanding the provisions of sub-paragraph (b) above HDC shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the customer or which HDC has undertaken to provide unless suit be brought and written notice thereof given to HDC within 12 months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.*

**30.** After shipment or other removal of goods from HDC's premises any equipment remaining empty or substantially empty and unused shall be removed by the Customer within 30 days of such shipment or other removal of the goods or their becoming empty or substantially empty (as the case may be). If the Customer fails to remove the equipment within that period or such further period as HDC may in writing agree to allow, HDC may for its own sole benefit dispose of such equipment (whether by sale, gift, destruction or otherwise) and shall not be liable, answerable or accountable to the Customer or any person interested in such goods for so doing or for the proceeds of any such disposal.

**31.** These Terms and Conditions and in particular the limitations on liability herein provided for are intended to inure for the benefit of both HDC and its employees, servants or agents to which end HDC contracts on these terms on its own behalf and as agents for the trustee for the benefit of its employees, servants and agents.

**32.**

- i) HDC shall have a general, as well as a particular lien on all goods and documents relating to goods in its possession, custody or control for all and any sums due to HDC at any time from the Customer or any other person interested in the goods whether in relation to the same goods or otherwise. HDC shall be entitled to sell or dispose of such goods or documents as Agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums upon 14 days notice in writing to the Customer.
- ii) In the event that any goods detained under sub-paragraph (i) of this section are perishable and in the view of the Docks Manager it is impracticable to give the notice required by sub-paragraph (a) because the goods will, or may, deteriorate in value during the delay occasioned by the giving of the notice, HDC may sell the goods without giving the said notice, but shall as soon as practicable inform the person to whom the notice would have been given of the action being taken.
- iii) Upon accounting to the Customer for any balance remaining after payment of any sum due to HDC or its agents (including all costs) pursuant to sub-paragraphs (i) and (ii) HDC shall be discharged of any liability whatsoever in respect of the goods or documents.

**33.** The statutory powers of HDC relating to the detention of a Ship shall extend, in the event that they do not at present do so, to all monies due to HDC arising out of the call of the Ship including quay rent incurred by containers discharged from or awaiting loading onto the Ship.

**34.** If HDC handles any goods whose gross weight is incorrectly stated or if HDC handles a container or trailer whose gross weight exceeds the maximum gross weight appropriate for a container or trailer of its description (whether or not HDC knows at the time of such handling that the gross weight exceeds the appropriate gross weight) such handling by HDC shall be at the sole risk of the person tendering the container or trailer. In particular, HDC shall be exempt from all liability whatsoever for deficiency, loss, damage or mis delivery of or to the goods or to the container or trailer or its contents or for delay arising out of, caused or contributed to by the handling by HDC of the goods or the container or trailer and the person tendering the goods or the container or trailer shall be responsible for and shall indemnify HDC against all injury, loss or damage however or whenever caused and against all claims made against HDC for which it may be or become liable in respect of injury to persons or loss or damage to property arising out of or caused or contributed to by the handling by HDC of the container or trailer. Should, as a result of such overloading, there be any failure of a load bearing part of any lifting appliance, ramp, pontoon, link span or of a freight container or trailer, this is a reportable dangerous occurrence and may incur legal action. For the avoidance of doubt, the expression "the person tendering the goods or trailer or the container" includes in particular (but without prejudice to the generality of that expression) :

- a) in the case of an imported container or trailer or goods, the owner of the carrying ship;
- b) in the case of a container or trailer for export, the exporter, and;

- c) In the case of a container or trailer for groupage services, the owner.

## **INDEMNITY**

- 35. The Customer shall indemnify HDC in respect of any expense whatsoever (including fines and legal charges on an indemnity basis) incurred by HDC due to the failure of the Customer to comply with any of the Terms and Conditions herein set out or taking any step which HDC shall consider to have been reasonably required to remedy the same or to comply with the lawful requirements of any authority. Any sum payable hereunder shall be chargeable to and payable by the Customer concerned in addition to and subject to the same provisions as the charges aforesaid.

## **PAYMENT OF CHARGES**

- 36. Unless otherwise agreed in writing all charges shall be paid:
  - a) as to Ships – payable on demand before sailing;
  - b) As to all other charges – payable on demand.

## **INTEREST**

- 37. Interest at the rate of 4% per annum above National Westminster Bank plc base rate shall be payable upon all sums payable by the Customer which shall have become due and owing and shall accrue on a daily basis until payment.

## **HEALTH AND SAFETY**

- 38. For the avoidance of doubt these Terms and Conditions are in addition to all Statutes or Regulations concerned with the shipment of goods through the port area and the Customer's attention is in particular drawn to the Health and Safety at Work Act 1974, all relevant regulations and orders made under this Act and other relevant health, safety and welfare legislation applicable to the movement of cargo, whether considered dangerous or not.
- 39. These Terms and Conditions 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.

## **SEVERABILITY**

- 40. If any of the provisions of these Terms and Conditions is found by an Arbitrator or Court of competent jurisdiction to be void or unenforceable, such provision shall be deemed to be deleted from these Terms and Conditions and the remaining provisions of these Terms and Conditions shall continue in full force and effect.