

TERMS AND CONDITIONS

TERMS AND CONDITIONS COVERING FACILITIES PROVIDED AND SERVICES UNDERTAKEN BY THE COMMISSION IN THE PORT OF LANCASTER

1. Definitions

"the Commission"	means the Lancaster Port Commission acting as harbour authority for the Port of Lancaster.
"the Port"	means the Port of Lancaster as defined in Article 4(1) of the Lancaster Port Commission Harbour Revision Order 1967.
"Goods"	means any article, thing of any kind whatsoever including without prejudice to the generality of the foregoing containers, pallets or other packing in which goods are transported or are to be transported.
"Owner"	when used in relation to Goods means any person having or appearing to have the ownership or possession of the Goods and shall include any bailor, bailee, shipper, consignor, consignee, pledgee or any person acting as agent for such person.
"Owner"	when used in relation to any vessel includes the owner, any part owner, broker, agent, charterer, master or other person in charge of the vessel, mortgagee in possession or any other person or persons entitled for the time being to possession of the vessel.
"Vessel"	has the meaning set out in the Lancaster Port Commission Harbour Revision Order 1994.
"Harbour Master"	means the person appointed by the Commission to be in charge of operations at or in the Port and shall include his deputies and assistants and any other person authorised by the Commission to act in that capacity.
"Byelaws"	means byelaws made by the Commission from time to time under Section 83 of the Harbours, Docks and Piers Clauses Act 1847 or the Lancaster Port Commission Harbour Revision Order 1994 or such other authority as may from time to time replace those enactments and for the purposes therein provided.

2. All persons using the Port and all Vessels and Owners both of Vessels and of Goods shall obey the Byelaws which are deemed incorporated herein to the same extent as if specifically hereinafter set out.
3. All facilities and all services provided by the Commission other than pilotage services are provided subject to the Byelaws and subject to and on the terms of these conditions and delivery of Goods to the Port or where appropriate presentation of a Vessel at the Port shall constitute acceptance on the part of the relevant Owners of such conditions. No servant or agent of the Commission has any authority to waive compliance with the Byelaws or any of these terms and conditions.
4. The Commission acts as Harbour Authority for the Port of Lancaster in which capacity it provides dock and harbour facilities for Vessels and Owners using the Port. In the execution of its duties as such authority the Commission undertakes only to exercise all reasonable skill, care and diligence. Subject thereto the Commission shall carry out its operations as regards each particular Vessel and its cargo or for particular Goods in such manner as the Harbour Master shall in his absolute discretion consider to be appropriate.

TERMS AND CONDITIONS

5. Without prejudice to the generality of clause 4 above the responsibility of the Commission as regards the provision of berths at which Vessels may lie aground at low tide is limited to the exercise of due diligence to ensure that such berth is on arrival of a Vessel at the relevant berth in such condition as will permit a Vessel complying with the provisions of clause 6.1 below to lie safely aground without causing damage to her hull. The Commission does not give any absolute warranty that any such berth is free from obstruction nor that the configuration of the berth is suitable for use by any particular Vessel.
- 6.1 Owners guarantee that every Vessel using the Port shall be (i) in good sound condition, tight, staunch and in every way fit to load or discharge cargo and to lie safely aground at all times (ii) properly constructed to enable her to lie safely aground in fully laden condition or in ballast or at any stage of loading or discharge and (iii) free from any alterations affecting the structural integrity or strength of the Vessel.
- 6.2 Every Vessel using the Port shall be subject to the overall direction and control of the Harbour Master and the Owner shall procure that all directions given by the Harbour Master are promptly and efficiently carried out to the satisfaction of the Harbour Master.
- 6.3 The Owner shall fully and effectually indemnify the Commission against all loss, claims or damage arising in consequence of any failure on the part of the Owner to observe the conditions of this clause 6.
7. Landed Goods

Goods brought ashore from Vessels which for any reason cannot be delivered to Owners at the time of landing ex ship will be placed on the quays in a transit shed or elsewhere within the Port at the expense of and at the sole risk of the Owner. Authorization for the removal of landed Goods will not be granted unless previously authorised by the Harbour Master in writing or documents of title have been duly presented to the Harbour Master.
8. Goods for Shipment

Goods for Shipment will only be received within the Port by prior arrangement with the Harbour Master and then only in accordance with such conditions as he may prescribe.
9. The acceptance by the Commission 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 Vessel.
10. Any Goods remaining within the Port for more than fourteen days will be charged rent at such rate as the Commission shall from time to time prescribe which shall not be less than 20p per tonne per week. Current rates can be obtained on enquiry from the Harbour Master.
11. No Goods of a dangerous, hazardous or poisonous nature will be accepted within the Port except by prior written approval of the Harbour Master and in that event will be dealt with by the Owners strictly in accordance with the conditions prescribed by him, and in accordance with the statutory regulations governing the handling of such goods.
12. General Liability

TERMS AND CONDITIONS

The Commission will not be responsible for any loss, damage or delay sustained by Goods, Vessels, road and rail vehicles or any other description of property whilst within the Port or any other loss damage or delay sustained in consequence of any service performed by the Commission or any failing in or inadequacy of any of the facilities provided by the Commission save in any such case for injury or damage arising from the proven negligence of its servants or agents.

13. Without prejudice to the generality of clause 12 the Commission will accept no responsibility whatsoever for any loss, damage or delay caused to Goods, Vessels or vehicles or other descriptions of property arising as a result of;
- (i) Work carried out or services provided by persons not employed by the Commission or any acts or omission of such persons or workmen;
 - (ii) Operations involving the use of plant, gear or equipment not supplied by the Commission;
 - (iii) Defective or inadequate packaging of Goods;
 - (iv) Any failure on the part of the Owners to provide correct or proper information with regard to Goods or to provide correct or proper information concerning Vessels;
 - (v) Goods held in open storage or in transit areas or sheds otherwise than under special arrangements pursuant to which the Commission accepts responsibility as custodians of goods or warehousemen;
 - (vi) Any failure on the part of any person to carry out contractual obligations to the Commission and upon which the proper performance of any services may depend.
14. Subject to the provisions of clauses 12 and 13, the total liability of the Commission for any loss of or damage to Goods shall not exceed the value of the Goods or if less the sum of £10,000 and shall in any event be limited to a sum of £1200 per tonne (or pro rata for any part of a tonne) of the gross weight of the whole consignment. Where the claim is in respect of a part of a consignment liability shall be limited to that portion of the sum ascertained as above which the value of that part of the consignment bears to the value of the whole.
- 15.1 The Commission shall not be liable for any loss covering Goods unless notice of loss or damage and the general nature of such loss or damage has been given in writing to the Harbour Master before or at the time of removal of Goods from the Port. Such removal without notice having been given shall be prima facie evidence that Goods were undamaged at the time of such removal.
- 15.2 Any damage alleged to have been caused to Vessels whilst in the Port must be notified to the Harbour Master before the Vessel leaves the Port and in default the Commission will not accept any liability whatsoever.
16. Unless in any particular case previously agreed in writing (and in that event subject to the Owner paying any additional premium required by the Commission's liability insurers) the Commission will not accept any liability whatsoever for any consequential loss or damage claims for loss of profit or loss of opportunity howsoever in each said case arising and whether or not caused as a result of its own negligence.
17. Where the Commission is liable under these Terms and Conditions for loss or damage to any Vessel or other property of the Vessel Owner or for loss of or damage to any Goods on board any Vessel or for any other losses and damages arising in respect of any one incident or occurrence its liability shall not exceed whichever shall be the lesser of £100,000 and the limit of liability of the Commission calculated in accordance with the provisions of Section 191 of the Merchant Shipping Act 1995 or any statutory amendment or re-enactment thereof.

TERMS AND CONDITIONS

18. The employees, servants and agents of the Commission shall be entitled to the benefit of all provisions contained in these Terms and Conditions which exclude or restrict liability of any kind including in the case of doubt the benefit of any limitation of any liability to which the Commission is entitled under Section 191 of the Merchant Shipping Act 1995. The Commission when providing facilities and services to Port users does so on its own behalf and as agent for all its employees, servants and agents.
19. Each Vessel Owner and each Owner of Goods 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 arising from the use of or the presence of his Vessel or Goods (including Goods onboard any Vessel) in the Port and will indemnify the Commission against all proceedings, claims and expenses (including solicitors' costs on an indemnity basis) arising out of such use or presence or of any act, neglect or default of the Master of the Vessel or of the Owner of the Vessel or of the Goods Owner and their respective contractors, servants and agents or of inherent quality or defect of any Goods in the Port or on the Vessel as the case may be.
20. The Commission does not provide long term storage nor are any Goods placed on the quay or in transit sheds warranted to be safe or free from risk of pilferage. The Commission will not be responsible for any loss to Goods or cargo as a result of pilferage or theft. Owners of Goods must make their own arrangements with the Port Stevedores for safekeeping of their Goods and must make their own arrangements for insurance of Goods whilst in the Port.
21. The Commission shall have a lien on all Goods in respect of all rates, charges dues and other moneys payable to the Commission by the Owner of any Goods and in the event that any such charges remain outstanding for more than 28 days the Commission shall have the right to sell Goods for such price as it can obtain therefor and may use the proceeds of sale to defray the charges and expenses outstanding. Any balance remaining after deduction of realisation costs shall be repaid the Goods Owner or if the Goods Owner cannot be traced may be retained by the Commission for its own use.
22. The Commission shall have the right without notice to sell any Vessel in respect of which any rates charges dues fees or other monies are outstanding for more than two calendar months and to recover from the proceeds of sale the rates charges dues fees and other monies outstanding at the date of sale including any further charges authorised by a Harbour Revision Order together with the Commission's costs in arranging the sale. Any balance remaining after the monies and costs due to the Commission shall be repaid to the Owner of the Vessel or if he cannot be traced after reasonable enquiries retained by the Commission for its own use.
23. The foregoing conditions may be altered or varied at any time and from time to time in such respects and in such manner as the Commission shall consider appropriate.
24. Payment Terms, unless otherwise agreed and stated on the individual invoice, shall be 14 days from invoice date.