



## **MONTROSE PORT AUTHORITY**

### **GENERAL TERMS & CONDITIONS**

#### **1 Definitions and Interpretation**

<b>“Charges”</b>	means vessel, cargo and any other dues and charges levied by MPA as Harbour Authority for Montrose Port, in accordance with the published Rates & Dues and any other charges imposed by MPA from time to time;
<b>“User”</b>	means any person (a) who enters the Port Area; or (b) seeking to use any of the Services;
<b>“Equipment”</b>	means any plant, machinery, container, package, case, pallet, vehicle, trailer or other piece of equipment of any nature;
<b>“Goods”</b>	means cargo and goods of whatever nature;
<b>“Harbour Limits”</b>	means the harbour limits as defined in article 8 of The Montrose Harbour Revision Order 1999;
<b>“Harbour Master”</b>	means the Montrose Harbour Master, his deputy or any nominee of theirs;
<b>“Harbour Office”</b>	means the Harbour Office, South Quay, Ferryden, Montrose, DD10 9SL;
<b>“L.O.A.”</b>	means a Vessel’s length overall which shall be measured to the next highest full metre;
<b>“MPA”</b>	means Montrose Port Authority, constituted by the Montrose Port Authority Harbour Revision (Constitution) Order 2003 having a place of business at Harbour Office, South Quay, Ferryden, Montrose, DD10 9SL;
<b>“Port Area”</b>	means any area of land or water owned, leased or operated by MPA, including for the avoidance of doubt that area of water within the Harbour Limits;
<b>“Quay”</b>	means any quay, pier, jetty or any other place at which Vessels can load or discharge goods or embark or disembark passengers, and the waters surrounding the same, all within Harbour Limits;
<b>“Services”</b>	means any services that MPA provides to the User;
<b>“Terms”</b>	means these General Terms & Conditions;
<b>“Vessel”</b>	means any boat, ship, barge or other vessel of any description or any part thereof.

#### **2 Interpretation**

- 2.1 Words importing the neuter gender only include the masculine and feminine genders, words importing the masculine gender only include the feminine gender and vice versa.
- 2.2 Words importing the singular number only shall include the plural number and vice versa. Where there are two or more persons included in the expression "User" then obligations undertaken by the User shall be obligations undertaken by such persons jointly and severally and their respective executors and representatives whomsoever.
- 2.3 Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 2.4 Condition headings are for ease of reference and do not form part of or affect the interpretation of these Terms.
- 2.5 Any phrase introduced by the terms "including", "include", "in particular", or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms.
- 2.6 Any reference to "person" includes any natural person, company, body corporate or un-incorporate or other judicial person, partnership, firm, joint venture or trust.

### **3 Contract**

- 3.1 These Terms shall apply:
- (a) to all Services provided by MPA whether directly or indirectly and whether within the Port Area or elsewhere; and
  - (b) to all physical access by any Vessel, person or vehicle to or from the Port Area.
- 3.2 In the absence of express acceptance by the User of these Terms, acceptance shall be implied in the event of the entry or delivery of any Vessel, person, Goods or Equipment into or onto the Port Area or by oral application to MPA for entry to the Port Area or for any Services or the use of any facility by or on behalf of any User.
- 3.3 Subject to Condition 3.4, no terms or conditions whether express or implied which are at variance with these Terms shall apply unless they have been agreed in writing by MPA and the User.
- 3.4 MPA may issue separate terms and conditions governing the provision of specialist services. Such additional terms and conditions shall apply in respect of the specialist services and these Terms shall continue to apply to the extent they are not at odds with the specialist terms and conditions.

### **4 Provision of Services**

- 4.1 Subject to any other provisions of these Terms, MPA shall exercise reasonable skill and speed in carrying out the Services. No wider obligation, express or implied, is accepted.
- 4.2 MPA reserves the right to:
- (a) appoint sub-contractors to perform all or any part of the Services. Any sub-contractor shall have the benefit of these Terms and MPA shall have no greater obligation or liability in respect of any sub-contracted services than it would have had if the services had been provided directly;
  - (b) at any time before it commences the performance of any Services, serve written notice on the User declining to undertake the performance of such Services;
  - (c) suspend the provision of any Services in the event of any breach of these Terms by the User; and

- (d) require the removal of Goods and Equipment which remain uncollected from the Port Area by the User at the time of landing, failing which MPA will have the right to remove the same at the expense and sole risk of the User. The User will be liable for Charges for transit shed, Quay rental and any other storage incurred in this respect.

4.3 Subject to Condition 10, in the event MPA declines to perform the Services or suspends performance of the Services in accordance with Conditions 4.2(b) or 4.2(c), MPA shall not have any liability. In the case of MPA:

- (a) declining to perform any Services by written notice in accordance with Condition 4.2(b), for any reason other than its own inability to perform the Services; or
- (b) suspending provision of the Services in accordance with Condition 4.2(c) and declining to recommence the provision of the Services,

the User shall, at its own expense, remove any Goods or Equipment from the Port Area within 30 days of the date of said notice failing which MPA may so remove them at the expense and risk of the User, sell on the Goods or Equipment and reimburse the User the sale proceeds less sums due to MPA and the reasonable sale costs and expenses incurred by MPA.

4.4 MPA shall have absolute discretion in the allocation of berths, Quays, and storage space.

## **5 Payments**

5.1 The User shall be liable for all Charges in connection with any Vessel, Equipment or Goods and for any payments, fines, expenses, loss and damage suffered or incurred by MPA in connection therewith.

5.2 Prior to a Vessel entering the Port Area, the User shall provide MPA with:-

- (a) details of the L.O.A. and draft of the Vessel;
- (b) details of the gross tonnage of the Vessel;
- (c) details of the purpose of the port call and the gross tonnage of any cargo to be loaded or discharged; and
- (d) any other information requested by MPA or required to be disclosed to MPA in terms of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 prior to arrival.

5.3 A manifest providing a description and weight of all items loaded or discharged must be provided to MPA within 72 hours of the Vessel's departure. In the absence of such details, MPA reserves the right to invoice Vessels/agents/owners, as it shall deem appropriate, on an estimated basis.

5.4 Save as otherwise stated in the Terms, all sums payable are exclusive of value added tax and any other duty or tax, which shall (if and to the extent applicable) be payable by the User at the rate and in the manner from time to time prescribed by law.

5.5 Unless otherwise stated herein or previously agreed in writing by MPA, payment of all sums due by the User to MPA shall be made within 30 calendar days of receipt of the Services or request for payment, whichever shall occur earlier. Payment shall be made without deduction, withholding, abatement, set-off, or any counterclaim for any reason whatsoever, save as may be required by law. All payments shall be made in GB pounds sterling.

5.6 If the User fails to pay any sum due by it to MPA, the User shall be liable to pay interest to MPA on such sum from the due date, for the period from that due date to the date of payment (i) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable); or (ii) where the said Act is not applicable, at 2 per cent per annum above the base lending rate of The Royal Bank of Scotland plc.

- 5.7 Notwithstanding anything in these Terms, if the User fails to pay any amount payable by it to MPA by the due date, MPA shall have the right to suspend provision of any and all Services until such time as payment is made in full.
- 5.8 (a) Subject to all applicable laws and regulations, MPA shall have a general lien over any Vessel, Equipment or Goods and all documents relating thereto in respect of its Charges and in respect of any other indebtedness to MPA of the User or the owner of such Vessel, Equipment or Goods. MPA shall be entitled to refuse to deliver up the Vessel, Equipment or Goods until all such sums have been paid. Storage and other charges accruing shall continue to accrue during such period. If any sums remain unpaid for a period of 60 days MPA shall be entitled to take possession of any such Vessel, Equipment or Goods and to sell them and reimburse the User the sale proceeds less sums due to MPA and the reasonable sale costs and expenses incurred by MPA. MPA shall have no liability in this regard.
- (b) MPA reserves to itself absolute discretion as to the means and procedure to be followed in the storage and transportation of any Vessel, Equipment or Goods notwithstanding any express instructions given by the User in relation thereto.
- 5.9 If the User ceases to trade (either in whole, or as to any part or division involved in the performance of these Terms), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or (being an individual) the User shall become bankrupt or make any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, then MPA shall be entitled to immediately recover from the User or any other person liable for MPA's Charges (notwithstanding that the periods stated above or any period of credit extended to the User may not have expired) all sums then due to MPA (including any accrued interest and other Charges properly levied in accordance with these Terms) and all losses arising to MPA as a result of such circumstances arising.
- 5.10 Any bona fide query to be raised by the User on any invoice issued by MPA must be made in writing within 30 days of the date of the invoice or the User shall be deemed to have accepted the invoice.

## **6 Compliance**

- 6.1 All Vessels must berth in the Port Area, or anchor within the Harbour Limits, according to the directions of the Harbour Master or MPA Port Control.
- 6.2 The User, their employees and agents shall comply in all respects with all applicable laws and regulations, including MPA bye-laws, acts and orders for the use of the Port Area and with all directions and requirements of MPA's staff.
- 6.3 Other than as provided for in s.33 of the Harbours, Docks, and Piers Clauses Act 1847, MPA shall be entitled to refuse to permit any User to enter onto the Port Area and to refuse to accept any Vessel, Equipment or Goods on the Port Area. Where any User, Vessel, Equipment or Goods has been permitted to enter the Port Area, MPA may nevertheless require them to leave or be removed at any time at its entire discretion and in such event shall not be liable to pay any compensation in respect thereof but shall refund any Charges paid in advance in respect of Services not received less the value of any loss or damage caused by such User, Vessel, Equipment or Goods.

## **7 Hazardous Goods And Waste**

- 7.1 No waste material or goods of a dangerous, hazardous or poisonous nature will be handled by MPA except by prior agreement with the Harbour Master and then only in accordance with the conditions prescribed by him and all applicable laws, regulations, regulatory requirements and codes of practice.
- 7.2 The User shall ensure that any such dangerous, hazardous or poisonous materials or goods shall be properly marked with a warning as to their hazardous nature and the precautions to be taken in handling the same (in the event of the escape of anything injurious therefrom) as may be necessary to

ensure the safety and health of all persons likely to handle or come into contact with the same.

- 7.3 MPA shall be entitled to remove and dispose of any waste material or goods of a dangerous, hazardous or poisonous nature found within the Port Area that are not in compliance with Condition 7.2 and recover their reasonable costs in respect thereof from the User. MPA shall have no liability in respect thereof.

## **8 Import And Export Goods**

- 8.1 Without prejudice to Conditions 5.2 and 5.3 all Goods and/or Equipment brought to the Port Area must be accompanied by a Vessel manifest, as agreed with MPA, which manifest shall be delivered to MPA by the earlier of (i) (on specific request from MPA) the arrival of trucks/lorries conveying such Goods and/or Equipment at the Port Area; and (ii) within 72 hours of the Vessel's departure from the Port Area. Subject to alternative arrangements being agreed in writing with MPA, the Vessel manifest must specify marks and number of packages, description of goods, gross weight, any weight imbalances, cubic measurement, name of the Vessel, port to which the Goods or Equipment are to be shipped, port from which the Goods or Equipment have arrived, any special carriage or storage requirements of the Goods or Equipment and the name and address of the User or User's agent to whom Charges are to be rendered.
- 8.2 The User shall be responsible for all import duties, export duties, fines, charges and imposts relating to the Goods. The User shall indemnify MPA against any claims made against MPA by H.M. Revenue & Customs and any other costs, charges and expenses in respect of any Goods.

## **9 User's Warranties**

- 9.1 Each User warrants to MPA that it has the authority of all persons having any title to or interest in any Goods, Equipment or Vessel to accept these Terms on their behalf as well as on its own behalf as principal and has specifically notified these Terms to such persons. Finance companies, lessors and others having or claiming to have title to or an interest in such Goods, Equipment or Vessel are advised that unless MPA is notified in writing of their title or interest in any particular Goods, Equipment or Vessel prior to the commencement of any relationship between MPA and the User, these Terms shall be deemed to have been accepted with the authority of such persons. Such persons' rights over and in respect of the Goods, Equipment or Vessel shall be subordinated to the rights of MPA hereunder.
- 9.2 The User warrants that its employees (and those of any agents or contractors it may engage including without limitation, hauliers and stevedores) are properly trained and competent to carry out the tasks at any time assigned to them.
- 9.3 The User warrants that it shall obtain and maintain at its own expense, all necessary licences and authorisations and comply with all applicable laws, regulations, regulatory requirements and codes of practice relating to the carriage, handling, storage and movement of the Goods and/or Equipment.
- 9.4 The User warrants (unless otherwise notified in writing to MPA) that any Goods, Equipment or Vessel, which it delivers, directs to or causes to be upon the Port Area:
- (a) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Port Area;
  - (b) will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods, Equipment or Vessel or the Port Area or the water or air adjacent thereto;
  - (c) contains no unauthorised controlled drugs, contraband, pornographic or other illegal matter;
  - (d) are properly and sufficiently packed and marked in accordance with all applicable laws, regulations, regulatory requirements and codes of practice and accurately documented and labeled for all shipping, cargo handling, dispatch, customs and like purposes;
  - (e) are in a fit and proper condition to be handled.
- 9.5 The User warrants that it shall immediately inform the Harbour Master of any occurrence or incident which might affect the safe and efficient operation of the Port Area or other persons at the Port Area or

result in adverse environmental impact and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience, as may be required by MPA. Without prejudice to the foregoing, the User shall indemnify MPA in respect of any and all claims including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) whether directly or indirectly incurred by MPA as a result of the failure of the User to comply with the foregoing.

9.6 The User warrants that it shall not:

- (a) use any devices which transmit radio signals or attempt to block radio signals (including without limitation G.P.S.) whilst on the Port Area;
- (b) interfere with any systems, communication links and equipment or computer hardware and software whilst on the Port Area;
- (c) use or attempt to use any devices or software to gain access to unauthorised data and information;

without the prior written consent of MPA except that the User may use marine band and radar radio frequencies and wi-fi.

9.7 The User shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars relating to Goods and Equipment furnished to MPA for customs and any other purposes. MPA shall not be responsible for checking the accuracy of any documentation handled by it. The User shall indemnify MPA against all loss, damages, expenses, claims and fines arising from any inaccuracy or omission in such particulars or from any such declaration made by MPA.

## **10 Liability**

10.1 Nothing in these Terms shall exclude or in any way limit MPA's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

10.2 MPA shall, in no circumstances have any liability (including by way of indemnity) in respect of any of the following losses or damage howsoever caused (whether such losses or damage were foreseen, foreseeable, known or otherwise): (a) any, indirect, incidental, special or consequential loss or damage; (b) loss of actual or anticipated income or profits; (c) loss of goodwill; (d) loss of business; (e) loss of revenue or of the use of money; (f) loss of contracts; (g) loss of anticipated savings; and (h) loss which could have been avoided by the User through reasonable conduct or by the User taking reasonable precautions.

10.3 Save as otherwise contracted with MPA, MPA will not be responsible for the safe custody of any Goods or Equipment landed or deposited upon any Quay, nor will they accept any liability for any loss (whether partial or total) or for any damage however arising which may happen to such Goods or Equipment other than loss or damage caused by negligent acts of MPA.

10.4 MPA shall have no liability for any loss, damage, cost, expense or delay caused or arising as a consequence of: (a) acts, events or omissions beyond its reasonable control; (b) force majeure (including adverse weather, storm, tempest, lightning, earthquake, tidal waves and flood); (c) strikes, lock-out or other industrial disputes (whether involving the workforce of MPA or any other party); (d) failure of a utility service or transport network; (e) war, riot or civil commotion; (f) malicious damage; (g) wear and tear, leakage or latent defect of Goods or Equipment; (h) compliance with any law or governmental order, rule, regulation or direction; (i) accident; (j) breakdown of plant or machinery (including computer hardware, computer software, telephone, radio satellite or other communication system, alarm or C.C.T.V.); (k) loss/deletion of data; (l) fire (including steps to extinguish fire) or smoke; (m) temperature variation, vermin, mould, insects or corrosion; (n) any Vessel of the User being in an unsuitable condition for the Service; (o) acts or default of third parties including suppliers or sub-contractors; and (p) the failure of the User to comply with these Terms.

10.5 Subject to Condition 10.1, the total liability of MPA for any loss, damage, claim, cost and/or expense in respect of any one event or occurrence shall in no case be more than £10,000,000 and shall be the

lowest of the following as applicable:

**Vessel:**

- (a) the value of that part or parts of the Vessel to which the claim relates at the time of the damage or loss;
- (b) the reasonable cost of repairs (as agreed between surveyors appointed by MPA and the owner).

**Equipment:**

- (a) the reasonable 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: £10,000 per any unit of Equipment.

**Goods:**

- (a) the value of the Goods affected 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 (to be calculated by weight in the absence of specific values for the damaged part);
- (b) the reasonable cost of repairs;
- (c) in any other case the sum of £1,300 per tonne (pro rata for any part of a tonne) (or any higher general limit of liability figure per tonne in the Road Haulage Association's standard Conditions of Carriage as amended from time to time) unless the nature and value of the Goods had been declared to MPA and MPA has agreed a higher limit of liability with the User (as evidenced in writing) prior to such Goods arriving at the Port Area.

10.6 Notwithstanding this Condition 10, MPA shall have the right, in any circumstance, to elect to rely on (in the alternative) any relevant statutory provision providing for limitation and/or exclusion of liability including, but not restricted to, the provisions of the Merchant Shipping Acts.

10.7 It is a condition precedent to the liability of MPA that MPA is notified in writing in respect of:

- (a) any damage alleged to have been caused to a Vessel and to permit inspection thereof prior to sailing or the commencement of repairs;
- (b) any damage alleged to have been caused to Equipment prior to such Equipment leaving the Port Area.

Failure to meet with these requirements shall absolve MPA of any liability whatsoever. In any event MPA shall be entitled (and the User and owner hereby grant permission) to inspect any such Goods or Equipment prior to their disposal or destruction by the owner. The User and/or owner shall not bring any claim in respect of any single incident below the *de minimis* limit of £200.

10.8 Notwithstanding the provisions of Condition 10.7, MPA shall in any event be discharged of all liability whatsoever howsoever arising unless proceedings are brought within 12 months from the date of the event or occurrence alleged to have given rise to a cause of action against MPA.

10.9 MPA shall have the following powers in respect of Goods and Equipment abandoned on the Port Area:

- (a) the power immediately to remove Goods and Equipment in the case of a hazard or other emergency (and to dispose of such Goods and Equipment where necessary) without prior notice;
- (b) the power generally to remove, store, dispose of or sell Goods and Equipment on reasonable notice to the User (the length of such notice to be determined by MPA on a case by case

basis). If the identity of the User or the User's contact details are not known to MPA then MPA can remove, store, dispose of or sell the Goods and Equipment after leaving written notice on the Goods and Equipment for a reasonable period of time (the length of such period to be determined by MPA on a case by case basis);

and in each case to charge for the reasonable costs incurred in respect of the removal, storage and disposal of the Goods or Equipment.

10.10 The User is under a duty to mitigate its losses, including for example, in obtaining salvage.

## **11 Indemnity**

11.1 The User will indemnify MPA in respect of any claim for loss, damage or injury of any person or property occasioned by the wrongful act, neglect or default of the User.

11.2 The User shall be liable for and shall indemnify MPA against any and all damage, fines, claims, including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by MPA, its employees, servants, agents or sub-contractors howsoever caused, which arise out of or in connection directly or indirectly with:

- (a) the failure of the User to comply with any of these Terms or taking any step which MPA shall consider to have been reasonably required to remedy the same or to comply with the requirements of any authority;
- (b) any act, omission or instruction, misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty of the User, the owner or any other person interested in the Goods, Equipment or Vessel.

11.3 Any sums payable hereunder shall be chargeable to and payable by the User in addition to and subject to the same provisions as the Charges.

## **12 Insurance**

The User shall be fully insured against all risks (including, without prejudice to the generality of the foregoing, fire, damage, salvage, public liability and theft, whether due to the negligence of others or not), for a sum of not less than £10,000,000 at all times that they shall remain on the Port Area. The User shall be responsible for insuring the Goods and/or Equipment for any loss or damage, which they may sustain within the Port Area. The User shall provide evidence of such insurance to the Harbour Master on request.

## **13 Miscellaneous Provisions**

13.1 If and in so far as any part or provision of the Terms is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Terms and the remaining provisions of the Terms shall continue in full force and effect.

13.2 The failure of either party to exercise or enforce any right conferred on that party by the Terms shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

13.3 These Terms and in particular the limitations on liability are intended to inure for the benefit of both MPA and its employees, agents and contractors to which end MPA contracts on these Terms on its own behalf and as agent for and trustee for the benefit of its employees and agents.

13.4 All legal relationships and agreements between MPA and its User shall be governed in all respects by Scots law and the User hereby submits to the exclusive jurisdiction of the Scottish courts in connection therewith.