

General Trading Regulations (2011 Edition)

1. DEFINITIONS

1.1 In these Regulations the following words or phrases shall have the following meanings:

- (i) the “Company” means Forth Ports Limited (registered number 134741) and its servants and agents whomsoever including its subsidiary companies (as defined in Section 736 of the Companies Act 1985).
- (ii) “Breach of Duty” means the breach (a) of obligation, arising from the express or implied terms of the Contract, to take reasonable care or exercise reasonable skill in the performance of the Contract (b) of any common law duty to take reasonable care or exercise reasonable skill (c) of the duty of care which as an occupier of premises is reasonable in all the circumstances to see that a person entering on to such premises will not suffer injury or damage (d) of any statutory duty to take reasonable care.
- (iii) “Charges” means the charges which are the subject of the Contract and shall include but not be limited to the fares, tolls, rates and dues of every description as specified from time to time in the Port Charge Booklet published, imposed or levied by the Company or as otherwise published by the Company.
- (iv) “the Contract” means the contract of which these Regulations form part.
- (v) “the Customer” means the Person contracting with the Company.
- (vi) “Facilities” means the facilities which are the subject of the Contract and shall include but not be limited to the provision by the Company of manpower, experience, advice, administration, management services, means of communications, power, plant, machinery and equipment of any description (including without prejudice the generality vessels, vehicles, cranes, grabs, lifts, conveyors and fork lift trucks) land, storage areas, or buildings or containers of any description. No facilities are provided to allow sheeting of lorries.
- (vii) “Goods” means the goods which are the subject of the Contract (which may or may not be in the ownership of the Customer) and shall include, but not be limited to cargo, wares, merchandise, any vehicle handled as cargo, any fish, livestock and animals of all descriptions, any oils, liquid and bases and any other materials, property or any thing whatsoever including any part thereof, any package or container whatsoever in which goods are or may be packed or conveyed and for the purposes of these Regulations, container includes any container designed to form part of a vehicle or of a trailer to a vehicle or any standard shipping container empty or loaded, including flats, reefers and tank containers.
- (viii) “Master” in relation to a Vessel means any person having or taking the command, charge or management of the Vessel.
- (ix) “Owner” in relation to a Vessel shall include the owner, agent, master, charterer, consignee or other Person in charge of the Vessel, and in relation to Goods includes the owner, agent, consignor, shipper, consignee or other person in charge of or holding title to the Goods and their respective agents in relation thereto.
- (x) “Particular Regulations” means the regulations other than these Regulations made from time to time by the Company for the use of the parts of the Port Premises (and for the Services and Facilities related thereto) presently known as the Imperial Grain Complex, Leith (“the Grain Regulations”) and the subjects (and for the Dry Dock facilities and all other services and facilities related thereto) presently known as the Alexandra Dry Dock, the Edinburgh Dry Dock and the Imperial Dry Dock Leith (“the Dry Dock Regulations”).
- (xi) “Person” shall include any individual, firm, body of persons, or company whether unincorporated or incorporated.
- (xii) “Port Byelaws” means any byelaws, regulations, rules, directions made by the Company.
- (xiii) “Port Charges Booklet” means the booklet published from time to time by the Company setting out the Charges and the Conditions (“the Port Charges Conditions”) relative to the Charges and in the event of conflict between the Port Charges Conditions and these Regulations the Port Charges Conditions shall prevail.
- (xiv) “Port Manager” means the person appointed by the Company to manage the Port Premises.
- (xv) “Port Premises” means and includes the docks, landing places, roadways and other works and conveyances and the lands, buildings and heritage and property of whatever nature of or at any time acquired, vested in, belonging to, administered by or occupied by the Company.
- (xvi) “Purpose” in relation to the acceptance of Goods by the Company shall include but not be limited to the purpose of provision of Services and of provision of Facilities relating or ancillary to the Services.
- (xvii) “Services” means the services which are the subject of the Contract and shall include, but not be limited to services provided by the Company in connection with the receipt, sorting, loading, discharging, handling, weighing, warehousing, storage or delivery of Goods.
- (xviii) “Vessel” shall include but not be limited to every description of vessel, however propelled or moved and include a hovercraft, hydrofoil vessel and anything (whether in or under water) constructed or used to carry Persons or Goods by way and a seaplane on or in the water.
- (xix) Words in the singular shall include the plural and *vice versa* and a reference to any gender shall include a reference to all other genders.
- (xx) A reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and to any order, regulation or instrument or other subordinate legislation made under the statute in question.
- (xxi) Any duty, obligation or liability imposed or capable of being imposed in terms of these Regulations or otherwise upon more than one Person shall be joint and several upon all such Persons.

2. EXTENT OF THE CONTRACT

- 2.1 These Regulations shall be the sole conditions of the Contract and shall apply to the supply of the Facilities or Services by the Company to the exclusion of any other conditions, whether put forward by the Customer or not and of any representations outside these Regulations, unless specifically agreed in writing by an authorised officer of the Company. These Regulations shall be without prejudice to any statutory or other rights, powers, remedies or discretion or the like which the Company may have and in the event of there being any conflict between these Regulations and any provision of the Forth Ports Authority Order Confirmation Act 1969 ("the 1969 Act") or the Port Byelaws or any Particular Regulations which form part of the Contract then the 1969 Act, the Port Byelaws or the Particular Regulations shall prevail.
- 2.2 Without prejudice to clause 2.1 above all Persons, Vehicles and Goods entering Port Premises and all Persons entering into a contract with the Company are subject to the Port Byelaws and the Port Charges Conditions.
- 2.3 The Company reserves the right at any time to amend these Regulations.
- 2.4 The Company only accepts a Vessel or Goods for any purpose subject to these Regulations and delivery of Goods to the Company or arrival of a Vessel in the Port Premises shall be deemed to be acceptance of the Regulations.

3. OWNERSHIP

- 3.1 The Customer warrants that it is either the Owner of the Goods and/or the Vessel or is unconditionally authorised by the owner of the Goods and/or the Vessel to accept these Regulations on behalf of the Owner and shall indemnify the Company against any loss or damage, including consequential loss, which the Company may incur or suffer as a result of or arising from a breach of this clause by the Customer.
- 3.2 The Customer may, subject to the prior written consent of the Company, give written authority for the Goods or any part thereof to be transferred by the Company to the account of another party but subject to the Customer ensuring before the effective date of the transfer that such other party notifies the Company in writing that it is to become the Customer and is subject to these Regulations. The Customer will guarantee payment by such other party of the cost of any transfer and of charges accruing during a period not exceeding fourteen days after transfer. The charges to such other party shall not necessarily be the same rate as the charges to the Customer.

4. CONDITION PRESENTATION AND TREATMENT OF GOODS AND/OR VESSELS

- 4.1 All Goods are received by the Company on the basis that the Customer warrants that the Goods are as described to the Company and in particular as to nature, weight, quantity, identity, condition and dimensions and in a condition and at a temperature in compliance with all relevant statutory requirements and the Company may reject any Goods that fail to meet such description or for any other reason.
- 4.2 Goods when presented to the Company shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to any person, to the property of the Company or to any other goods, by whatever reason and packed and clearly and legibly labelled in a way that enables them to be clearly separated from other similar goods and which shows product codes, qualities and type of Goods.
- 4.3 Goods when presented shall be accompanied by written information specifying any special precautions necessitated by the nature or condition of the Goods and/or any statutory duties specific to the Goods with which the Company may need to comply. The Customer will be charged with any expenses incurred by the Company in complying with any statutory duties or special precautions imposed on the Company in relation to the Goods unless such duties and precautions form part of the agreed charge to be applied by the Company.
- 4.4 The Company may examine the Goods when they are presented and/or at any time thereafter by any reasonable means to allow the Company to comply with statutory or other obligations subject to prior notification being given to the Customer, except in the case of emergency.
- 4.5 Goods, which in the opinion of the Company are not in accordance with clause 4.2 above may be removed at any time by the Company at the Customer's expense without notice or the Goods may be retained by the Company for an additional charge or the Company may re-store, invert, repack or restow the Goods and charge accordingly. The Company may, providing it is acting reasonably, at its option and at the Customer's expense and without liability on the Company, arrange for destruction or other disposal of such Goods.
- 4.6 Subject to obtaining the Customer's prior written consent the Company may transfer any Goods at its own expense between or within the Port Premises.
- 4.7 In the absence of specific instructions in writing, the Company may treat and/or store the Goods in such a way as in its opinion is most likely to protect them but without responsibility for the suitability of the treatment selected, provided the Company has acted reasonably in the circumstances.
- 4.8 Except where a longer period of storage has been agreed the Company may at any time give twenty eight days' written notice to the Customer requiring him to remove the Goods (including every package or container landed empty or becoming empty after being landed) or in the case of perishable or otherwise sensitive (in the reasonable opinion of the Company) Goods three days' written notice. If the Goods are not so removed on the expiry of the relevant notice period the Company shall be entitled to sell the Goods immediately, without further notice and deduct from the proceeds all outstanding charges interests thereon and the costs of disposal or dispose of them as the Company thinks fit, acting reasonably.
- 4.9 Subject to clauses 4.5 and 4.8 above and clause 6 below the Goods will only be released upon receipt of written authorisation from the Customer.
- 4.10 Persons requiring any Vessel carrying bulk cargoes (which expression shall include but not be limited to all cargo requiring to be discharged by grabbing cranes or the like or by similar appliances or means) to be discharged, must disclose in writing to the Port Manager full details to the satisfaction of the Port Manager of the situation of all obstructions existing in the hold of the Vessel prior to the commencement of discharge. Such Persons shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with the failure to make such a disclosure or if such a disclosure is made, as a result of inadequacy or inaccuracy of such disclosure; declaring however that this exemption shall not apply in so far as any Breach of Duty by the Company causes death or personal injury.
- 4.11 The Master of any Vessel must immediately upon berthing of the Vessel advise the Port Manager of any Dangerous Space in his ship. For the purposes of these terms and conditions "Dangerous Space" means any space not continuously or adequately ventilated in respect of which it is reasonably foreseeable that the atmosphere might contain toxic or flammable gases or be deficient in oxygen to the extent that it may endanger the life or health of any person entering that space and shall include any space which has been fumigated.
- 4.12 The Company shall not be required to use any Vessel's equipment (which expression shall include but not be limited to derricks, cranes and lifting tackle) in the absence of the requisite valid test certificate or which in the reasonable opinion of the Company is unsafe or unsuitable for any other reason. Any additional Charges incurred by the Company in this regard shall be to the account of the Customer.

- 4.13 The Customer confirms by acceptance hereof that the Port Premises are acceptable to the Customer and fit for the purpose for which they are intended.
- 4.14 Notwithstanding the foregoing, further special regulations shall apply to the transit of hazardous Goods through the Port Premises, and also to any bullion, coin, jewellery, gems, glass, china, works of art, documents, securities, bank notes, stamps and other valuable Goods and the Company will only accept such Goods subject to these Regulations and such other special regulations that the Company and/or HM Customs and Excise may apply. Application should be made to the Company for details of such special regulations.

5. CHARGES

- 5.1 Charges shall be in accordance with the Port Charge booklet.
- 5.2 Charges shall be paid immediately against the invoice issued by the Company or if required by the Company prior to the removal of Goods and/or Vessel. Interest at 5% over the Bank of Scotland base rate calculated on a daily basis shall be payable on overdue accounts.
- 5.3 All Charges shall be paid in full without any set off and notwithstanding any claim or counter-claim by the Customer against the Company howsoever arising.
- 5.4 Charges are in respect of Goods and/or Vessels presented in accordance with these Regulations or for Services to be performed by the Company.
- 5.5 All Charges are exclusive of VAT and all other statutory impositions unless otherwise stated.
- 5.6 Charges may be subject to adjustment at any time for extraordinary items and/or significant increases or decreases in volume and/or significant changes in the delivery profile or storage characteristics. The Company may also vary Charges at any time upon giving reasonable prior notice to the Customer.
- 5.7 The Company shall have the right to recover charges for Services and/or Facilities which have been booked and subsequently cancelled.
- 5.8 The Company may require a deposit or other financial security in respect of any Services and/or Facilities to be provided having regard to the likely amount of charges.

6. LIEN

- 6.1 The Company shall have a general lien on Goods and/or Vessels for payment of all amounts due from the Customer on any account.
- 6.2 The Company may exercise its lien at any time by giving written notice to the Customer such notice to specify the amount of the debt due by the Customer to the Company or particulars from which the Customer may calculate such amount. If the debt for which the lien has been exercised has not been settled the Company may sell or otherwise dispose of the Goods or any part of them at the Customer's entire risk and expense by the best method reasonably available and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts due to the Company from the Customer on any account.

7. INSURANCE

- 7.1 The Company does not insure Goods or Vessels and the Customer is advised to make arrangements to obtain insurance cover for Goods and/or Vessels against all risks to the full insurance value.

8. CLAIMS AND LIABILITY FOR LOSS AND DAMAGE

- 8.1 The Company is only responsible for any loss of or damage to Goods if the same has arisen wholly and directly from the act, neglect or default of the Company or its employees or agents, provided also that the liability of the Company shall in no case exceed the lower of (one) Eight Hundred Pounds (£800) Sterling per tonne (or pro rata for any part of a tonne) or (two) Twenty thousand pounds (£20,000) Sterling and then only where such loss or damage exceeds One hundred pounds (£100) Sterling.
- 8.2 The Company shall have no liability to the Customer for any loss or damage caused by a breach of any of the Customer's warranties and undertakings but only to the extent that such loss or damage has been contributed to by a breach of such warranties and undertakings.
- 8.3 The Company shall not be liable for any loss or damage to the extent that the same is caused or contributed to by the condition of Goods and/or Vessels on presentation to the Company in breach of these regulations. The Customer shall indemnify the Company from and against all claims, costs and expenses incurred in this respect.
- 8.4 The Company shall in no circumstance be liable for any indirect, consequential or economic loss or damage of any kind whatsoever, in relation to any or all of the Services provided by the Company to the Customer including, without prejudice to the foregoing generality, loss of contract, loss of profits, loss of production and whether such liability is based or purported to be based upon any negligence or other act or omission on the part of the Company in relation to any or all of the Services and/or Facilities provided by the Company to the Customer.
- 8.5 The Company shall be exempt from all liability for deficiency, loss, damage or delay to Vessel, Cargo or Goods including deficiency, loss, damage or delay caused by any Breach of Duty by the Company where acceptance of correct stowage and/or securing of such Cargo or Goods has been agreed by the Master of the Vessel and in particular when the Goods have been loaded in accordance with all relevant regulations.
- 8.6 The Owner shall be responsible for compliance with all statutory duties incumbent upon the Owner and the Owner shall indemnify the Company from all loss or damage including consequential loss that the Company may incur or suffer as a result of or arising from the Owner's failure to perform such duties or any part thereof.
- 8.7 Where the Company suffers or incurs any damage to Port Premises or incurs any loss or expense, either directly or indirectly, owing to the absence, insufficiency, or unsuitability of packing, or contamination or decay of food or other perishable Goods or their infestation by insects, rats or vermin or damage from insecticides or other such chemical sprays or due to the dangerous, toxic or obnoxious nature of Goods, or in complying with the requirements of the provisions of the Prevention of Damages by Pests Act 1949 and the Weights and Measures Act 1963 or any other legislation of a similar nature which may impose obligations on the Company arising out of Goods brought into the Port Premises, then any Person being the Owner of or any other Person interested in the Goods shall be jointly and severally liable to pay the Company's reasonable Charges and all other costs in respect of the expense so incurred.

- 8.8 (a) Any deficiency, loss, damage, mis-delivery or delay of Goods for which the Company may be responsible and whether or not caused by any Breach of Duty by the Company must be notified in writing to the Company within seven (7) days (in the case of import Goods) or twenty-one (21) days (in the case of export Goods) of the delivery of the Goods by/to the Company or their removal from the Port Premises. The notice must specify clearly the Goods which are the subject of the claim, the amount of any such claim and the reason why the Company is being held responsible.
- (b) If Regulation 8.8 (a) is not complied with the Company shall be exempt from all liability whatsoever, including liability for any Breach of Duty by the Company for any such deficiency, loss, damage, misdelivery or delay howsoever and whensoever caused; and
- (c) This exclusion of liability does not apply insofar as a Breach of Duty causes death or personal injury.
- 8.9 The Customer shall indemnify and keep indemnified the Company from and against all costs, claims, actions, demands, liabilities, damages and expenses awarded against or incurred or paid as a result or in connection with (i) breach of any warranty given by the Customer under the Contract, (ii) any breach of any other obligation under the Contract and (iii) any act or omission of the Customer or its employees, agents or sub-contractors in performing the Contract.
- 8.10 The Company does not provide facilities for the sheeting of Customers transport. The Customer shall be responsible for the provision of safe access of persons involved in sheeting operations and shall indemnify the Company from all loss or damage which the Company may incur or suffer as a result of or arising from these activities. The Customer is encouraged to ensure that suitable equipment is available as may be required.

9. FORCE MAJEURE

9.1 The Company shall not at any time whether before or after acceptance of any Vessel or Goods be obliged to provide any Services or Facilities or perform any other obligation under the Contract and such failure shall not constitute a breach of Contract by the Company, if any such obligation is or is in the reasonable opinion of the Company, likely to be rendered impossible or substantially more difficult as a result of any cause, event or occurrence which the Company was either unable to prevent or could not reasonably be expected to prevent having due regard to the interests of the Company including but without prejudice to the foregoing generality, as a result of any of the following causes, events or occurrences:-

- (a) Act of God, storm, tempest or flood.
- (b) Fire, explosion or impact by aircraft.
- (c) The failure of any crane or other appliance.
- (d) The failure of the Entrance Lock mechanism serving impounded dock systems.
- (e) Strikes, combinations, lockouts, go-slows, stoppages or other industrial action or dispute by any Person, whether official or unofficial.
- (f) Scarcity of labour, plant, machinery, materials or equipment of any description, storage areas, or any other Facilities.
- (g) The failure or delay on the part of any third party or contractor to provide any Services or Facilities required of them.
- (h) Civil commotion.
- (i) Restrictions imposed by Her Majesty's Government or by any Person acting under statutory powers.
- (j) Acts of Foreign Governments or Her Majesty's enemies.
- (k) Theft or wilful damage, howsoever caused.
- (l) The Goods are dangerous, toxic, obnoxious, infested, rotten or liable to contaminate other Goods or premises.
- (m) Inherent vice or quality of the Goods.
- (n) Vermin or insects (including moths, worms or weevils).
- (o) Insufficient, indistinct or erroneous marking or addressing of the Goods.
- (p) Any act, omission, delay, default or negligence of the Company, its servants, agents, or any other person for whom the Company may be responsible for at law, which is considered necessary for the safety or preservation of any Person's premises or Goods.
- (q) The absence, insufficiency or unsuitability of packing of Goods.
- (r) Late receipt of Customs entries or landing orders, or other documents, 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 the Goods or omission of information from, or a mis-statement in, any statement or order to the Company relating to the Goods.

10. NOTICES

10.1 Any notices or statement of account given by the Company to the Customer shall be duly given if delivered to or sent by registered or recorded delivery letter to the last known address of the Customer and such notice or account shall if posted be deemed to have been received forty eight hours after posting.

11. SECURITY

11.1 The Company reserves the right to search the Vessels and Persons delivering and uplifting Goods to and from Port Premises and to take any steps the Company considers necessary in the interests of security.

12. GENERAL

- 12.1 Every provision of these Regulations as is set out in a separate Clause or part thereof shall be construed as a separate and independent provision severable from all or any other provision.
- 12.2 In the event of any one or more of the provisions contained in these Regulations being illegal, invalid or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected thereby.
- 12.3 No failure or delay by the Company to exercise any right or power under the Contract shall operate as a waiver thereof nor shall any partial exercise preclude any further or other exercise.
- 12.4 The parties to the Contract agree that the incorporation of these Regulations in the Contract is fair and reasonable having regard to the commercial nature of the Contract.
- 12.5 The Contract shall be construed in accordance with the law of Scotland and the parties thereto agree to submit to the non-exclusive jurisdiction of the Scottish Courts.
- 12.6 The parties to the Contract consent to registration hereof and of any certificate, statement or the like given or made under or by virtue of the Contract for preservation and execution.