



TERMS AND CONDITIONS

**APPLICABLE TO A LICENCE FOR THE USE OF BERTHS AT PORTS OPERATED BY
MEMBERS OF PEEL PORTS GROUP**

February 2021

Liverpool

1. Definitions

In these Terms and Conditions the following words shall have the meanings respectively set against them:-

- “the Applicant” the Applicant whose name and address are set out in the Application.
- “the Application” the application form signed by the Applicant to which these Terms and Conditions apply.
- “the Berth” the berth and adjoining quay as specified in the Application.
- “the Booking Period” the booking period referred to in the Application.
- “the Cargo” the cargo described in the Application to be loaded on or discharged from a vessel at the Berth.
- “the Company” the member of the Peel Ports Group as listed in Clause 39.
- “the Cranes” any rail mounted quay crane owned by the Company and used by the Applicant at the Berth pursuant to the Application.
- “the Port” means either:
- (a) the Port of Liverpool as defined in The Mersey Docks and Harbour Act 1971 or any statutory modification or any re-enactment thereof; or
 - (b) the Harbour and Port of Manchester as defined in The Manchester Ship Canal Act 1885 or any statutory modification or re-enactment thereof
 - (c) Heysham Harbour as defined in the Sealink (Transfer of Heysham Harbour) Harbour Revision Order 1991 or any statutory modification or any re-enactment thereof; or
 - (d) the River Clyde between Albert Bridge, Glasgow and a line drawn across the River Clyde from the eastern end of the Castle of Newark on the south bank to the mouth of the Cardross Burn on the north bank, or the Port and Harbours of Greenock and Port Glasgow or Hunterston; or any statutory modification or any re-enactment thereof; or
 - (e) Great Yarmouth Port as defined in the Great Yarmouth Port Authority Acts 1866 to 1990, as amended by the Broads Authority Act 2009 or any statutory modification or any re-enactment thereof; or
 - (f) Medway Port as defined in the Medway Ports Re-Organisation Scheme 1968; and the Medway Ports Authority Harbour Revision Order 1989 or any re-enactment thereof.
- including the Berths and all works, lands and property of every description whatsoever and the buildings, structures and erections thereon at the Port.
- “Data Protection Legislation” means all applicable data protection and privacy legislation, regulations and guidance including, without limitation the Data Protection Act 2018, the GDPR (Regulation (EU) 2016/679) (as amended or re-enacted from time to time and including any replacement or subordinate legislation). Terms in this agreement shall, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.
- “the Vessel” the vessel specified in the Application.

2. The Applicant shall have licence to use the Berth for the period of time and for the purposes specified in the Application (“Licence”). The Applicant warrants that it has the authority of the

owner of any Vessel calling at the Berth, or any Cargo handled at the Berth, to agree to these Terms and Conditions.

3. The Applicant shall ensure that at all times these Terms and Conditions are adhered to by the Applicant, its employees, agents and independent contractors.
4. An application for the use of the Berth should be lodged with the Company preferably 14 days before and in any event not less than 24 hours (excluding Saturday, Sundays, Bank and other National Holidays) before the Berth is required by the Applicant. The Company does not guarantee the availability of the Berth nor the Cranes nor any equipment that may be situated thereat.
5. The berthing of Vessels alongside the Berth shall be at the sole discretion of the Company's Harbour Master or other authorised officer. The Berth shall not be used for the laying up or repair of any Vessel.
6. In the event that Cargo working in relation to the Vessel has not been completed prior to the expiry of the Booking Period, the Vessel shall if requested by the Company's Harbour Master or other authorised officer be removed from the Berth to another berth at the Port at the cost of the Applicant, to lay-by or with the agreement of the Company to work Cargo. Such removal shall be free of all costs and expense whatsoever to the Company, including in relation to any delay, demurrage or other costs that might be incurred in connection with or as a result of such removal and the Applicant shall hold harmless and indemnify the Company in respect of any claim arising out of or resulting from such removal.
7. The Company does not provide any labour in connection with the use of the Berth or the Cranes situated at the Berth.
8. The rates for the hire of the Berth, and where such have been requested the Cranes, are payable whether the Berth or Cranes are used or not. An Applicant will not be permitted to retain the use of the Berth or the Cranes beyond the Booking Period except with the permission of the Company which may be granted subject to conditions.
9. In respect of their hire of the Berth, the Applicant shall pay to the Company a charge (details of which are available on request from the Company).
10. In the event that the Applicant requests the services of the Cranes in the Application, the Applicant shall pay to the Company charges (details of which are available on request from the Company) in respect of the hire of each of the Cranes. The Applicant's use of such Cranes shall be in accordance with and subject to the Company's "Terms & Conditions Relating to the Hire of a Mobile Crane or Other Plant / Equipment from Members of Peel Ports Group", in force from time to time.
11. Charges shall be invoiced by the Company following completion of the discharging and/or loading of the relevant Cargo from/to the Vessel and shall be payable to the Company on demand unless otherwise agreed by the Company in writing and without reduction or deferment on account of any claim counterclaim or set off.
12. All payments referred to herein are exclusive of value added tax and where such tax or any other tax substituted for it is payable the same shall be paid by the Applicant to the Company.
13. Interest calculated on a day to day basis shall be payable on all charges payable hereunder remaining unpaid after their due date.
14. The Applicant has had an opportunity to carry out its own due diligence exercise in relation to the Berth and has asked the Company all the questions it considers to be relevant for the purposes of establishing whether the Berth is suitable for the Vessels calling there and for the intended Cargo handling or other authorised activities thereat.

15. The Applicant shall be responsible for compliance with and will indemnify the Company against any claims (including all costs in connection therewith) for breach of the Health and Safety at Work etc. Act 1974 (or any modification or re-enactment thereof) ("HSWA 1974"), the Management of Health and Safety at Work Regulations 1999 ("MHSWR 1999") and all regulations and codes of practice pursuant or ancillary thereto as though they were the occupiers of the Berth and/or employers of personnel engaged in working there, and the provisions of Safety in Docks: Approved Code of Practice ("ACOP L148") (or any modification or replacement of those provisions) insofar as concerns work safety and emergency procedures, as though they were the persons having the general management and control thereof, and in accordance with the Company's "Code of Safe Practice for Tenants, Licensees and Others having control of Cargo Operations within the Ports Operated by Members of the Peel Ports Group" as applicable from time to time, PROVIDED that nothing in this Clause shall extend (i) to any breach of HSWA 1974, MHSWR 1999, ACOP L148, or the Code of Safe Practice for Tenants etc. occurring only while the Berth is not being used by the Applicant their servants agents or independent contractors or (ii) to a defect in the structural condition of the realty comprised in the Berth which existed at the date of the use of, or which the Applicant has given the Company notice reasonably sufficient to enable the Company to take steps to remedy the breach.
16. All persons employed by or on behalf of the Applicant on stevedoring operations at the Berth shall be properly trained and experienced for the work on which they are engaged. The Applicant will produce to the Company, on demand, training records and proof of experience for those persons employed on stevedoring operations at the Berth.
17. The Applicant shall, at their own expense, be responsible for undertaking such Risk Assessments as may be required from time to time, in accordance with the MHSWR 1999, and/or by the Health and Safety Executive in respect of the operations carried out at the Berth. The Applicant will produce to the Company, on demand, copies of such Risk Assessments.
18. The Applicant shall be responsible for taking out insurance with a reputable insurer in respect of third party and Employers Liability in relation to its use of the Berth in an amount that will afford adequate cover against the risks concerned. The Applicant will produce to the Company, on demand, evidence of such insurance and the receipts for premiums paid thereon. The Applicant also warrants that any Vessel using the Berth shall be insured for Protection & Indemnity ("P&I") and Hull & Machinery (H&M) risks, or equivalent composite marine insurance covering third party marine liabilities.
19. The Berth shall be used only for the discharging and delivering/or receiving and loading of the Cargo from and/or to the Vessel whilst berthed alongside the Berth. All cargo discharged from or to be loaded on the Vessel shall be removed from the Berth or loaded on the Vessel as appropriate prior to the end of the working day on which such Cargo was discharged or was to be loaded.
20. The Applicant shall not cause or permit the Cranes to be loaded beyond the safe working load marked thereon.
21. The Applicant shall not cause or permit the Berth or any part thereof to be loaded in excess of the following maximum Limits: Up to 3m from the quay edge = zero tonnes, between 3m and 5m from the quay edge = 3 tonnes per square metre, over 5m from the quay edge = 5 tonnes per square metre; or such other maximum loads as the Company specify.
22. The Applicant shall have the right at all times and for the purpose of proceeding to and from the Berth in connection with their use of the Berth, with or without vehicles, to pass or repass over and along such route(s) as the Company shall from time to time determine PROVIDED ALWAYS THAT the said route(s) shall be kept clear of obstruction at all times and the Applicant and others authorised by the Applicant shall unless necessary in connection with the use of the Berth under

no circumstances and at no time place or deposit or permit to be placed or deposited on the said route(s) any vehicle item article or material.

23. The Applicant shall not deposit nor permit or suffer to be deposited or done at the Berth anything which the Company, the Port health / environment authorities or any other civil authorities may consider dangerous or a nuisance.
24. The Applicant shall comply in all respects with all relevant standards and conditions imposed by the local and national regulatory bodies including but not limited to the Environment Agency and the Scottish Environment Protection Agency or any successor or equivalent body thereto in respect of the operations carried out at the Berth by or on behalf of the Applicant.
25. The Applicant shall strictly observe the procedures laid down from time to time by the Company regarding the handling of dusty cargoes in the Ports. Copies of the Company's current "Code of Practice for the Handling of Dusty Cargoes" are available from the Company upon request.
26. The Applicant shall employ properly qualified and experienced staff to perform and monitor dust control and environmental protection measures undertaken by the Applicant in respect of their use of the Berth.
27. The Applicant shall keep the Berth clean and free at all times from obstructions or substances likely to cause injury or damage to persons or property. Prior to the end of the Booking Period, the Applicant shall at its own expense clean the Berth to standard that is acceptable to the Company. If in the opinion of the Company, the Applicant fails to carry out any of the requirements of this Clause, the Company may undertake the necessary work at the expense of the Applicant.
28. The Applicant shall take all reasonable precautions to prevent materials, substances, articles or other deposits from falling into or entering the Company's dock system, and in any such event the Applicant shall be responsible for removing the same from the said dock system at the Applicant's expense. The Applicant shall be liable for, and agrees to indemnify, defend and hold harmless the Company against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or threatened pollution damage and the cost of clean-up or control thereof arising from acts or omissions of the Applicant, its employees, agents or subcontractors which cause or allow discharge, spills or leaks from any Vessel or equipment, or otherwise of any materials concerning the Applicant's activities, into the water space or otherwise at or around the Berth.
29. The Company its servants agents and other persons authorised by it shall have the right at any time or times:-
 - i. to pass and repass over and along the Berth or any part thereof for all purposes in connection with its rights and duties as the Harbour Authority for the Port;
 - ii. to enter the Berth and the transit shed (if any) situate thereat to view the cargo passing through and the condition of the Berth;
 - iii. to inspect and maintain the Berth and the fire fighting and life-saving equipment thereat;
 - iv. to enter for any other purpose;

and the Applicant shall afford all reasonable facilities to give effect to the said rights.

30. The Applicant be responsible for and shall indemnify the Company in relation to all and any loss, liability, expense, costs and claims whatsoever arising out damage or deterioration (beyond normal wear and tear) to the Berth, the Cranes or any other property, chattels, equipment or infrastructure thereat arising out of the Applicant's use of and activities at the Berth. The amount of the Applicant's liability for any such damage (whether repaired or unrepaired) shall be determined in accordance with the estimated or actual costs of professional repairs or reinstatement (as per the Company's or its contractor's estimates/invoices), which shall be conclusive of amount.

31. The Applicant shall indemnify the Company against any claims for Customs Duties or other taxes on goods landed or deposited at the Berth and for any other claims or fines against the Company from other local and national regulatory authorities or agencies in connection with the Applicant's use of the Berth.
32. All goods/Cargo at the Berth are the sole responsibility of the Applicant in every respect.
33. The Company shall not be responsible for, but shall be indemnified by the Applicant against any claim, including any costs relating thereto, arising out of the use or occupation of the Berth by the Applicant or of any act neglect or default of the Applicant, its contractors or agents or their respective servants, and against any costs and expenses (including legal costs on a full indemnity basis) incurred by the Company in connection with any claim for loss (including consequential loss) injury (including death) or damage alleged to be attributable to the condition of the Berth and/or the Cranes or to any act, neglect or default of any employee of the Company engaged for the time being in connection with the use of the Berth, and/or the Company's Cranes and equipment, or to any delay arising from any failure or breakdown of the Cranes or in supplying the Berth and/or Cranes and/or the Company Crane drivers at the time appointed. The provisions of this Clause shall not apply to any claim:-
- i) for damage done to the Cranes or other property of the Company, attributable to the structural condition of the Berth and/or the Cranes, or to any act, neglect or default of any employees of the Company engaged for the time being in connection therewith where such condition, act, neglect or default is the sole cause of the said damage, or
 - ii) for loss, injury (including death) or damage (except loss, injury or damage caused by delay) where the sole cause of such loss, injury or damage is a defect in or the unfitness of the Cranes themselves.
34. The use of the Berth and/or Crane by the Applicant may in an emergency or other special circumstances be terminated by the Company and no liability whatsoever shall attach to the Company in respect thereof.
35. The Applicant shall obey all the Bye-laws, Regulations and lawful Directions from time to time of the Company.
36. The Company shall not be liable for any delay loss or damage whatsoever caused directly or indirectly by:-
- i. Act of God, war, riots or adverse weather conditions;
 - ii. strikes lock outs or industrial actions or disputes whether within or outside the Company's direct control;
 - iii. any other cause whatsoever reasonably outside the Company's direct or indirect control preventing delaying or hindering the fulfilment of any of its obligations hereunder;
 - iv. any malfunction of or fault in the Cranes.
37. The Company's 's liability for any claims whatsoever arising under or in connection with this Licence shall be limited (insofar as it is permissible to do so as a matter of law) in all circumstances to the sum of £2500 for all claims in the aggregate arising out of the period of the Licence. The Company's 's servants, agents and subcontractors shall have the benefit of this limitation of liability. Unless claims are notified to the Company within 3 (three) months and proceedings issued within six (6) months of the event(s) giving rise to a claim, such claims shall be irrevocably barred.
38. The Company may collect and process information relating to the Applicant in accordance with the privacy notice which is available on the Peel Ports Group website. Each party agrees to comply with their respective obligations under the Data Protection Legislation.
39. Members of the Peel Ports Group which are subject to these Terms and Conditions are:

- i. **Liverpool:** The Mersey Docks and Harbour Company Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company No. 07438262.
- ii. **Liverpool:** The Mersey Docks and Harbour Company (RSCT) Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company No. 11853106.
- iii. **Liverpool:** The Mersey Docks and Harbour Company (L2) Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company No. 11853083.
- iv. **Manchester:** The Manchester Ship Canal Company Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company Number No. 07438096
- v. **Heysham:** Heysham Port Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company Number No. 02447563
- vi. **Clydeport:** Clydeport Operations Limited, 16 Robertson Street, Glasgow, G2 8DS. Company No. SC134759
- vii. **Sheerness:** Port of Sheerness Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company No. 02639118
- viii. **Great Yarmouth:** Great Yarmouth Port Company Limited, Maritime Centre, Port of Liverpool, L21 1LA. Company No. 05971330

or such other Peel Ports Group companies as may be notified in writing to the Applicant from time to time.

- 40 These Terms and Conditions are governed by English law and any disputes arising between the Applicant and the Company in relation to the subject matter herein shall be submitted to the exclusive jurisdiction of the English courts.

January 2021

PEEL PORTS GROUP

CODE OF SAFE PRACTICE FOR TENANTS, LICENSEES AND OTHERS HAVING CONTROL OF CARGO OPERATIONS WITHIN PORTS OPERATED BY MEMBERS OF THE PEEL PORTS GROUP

It is the responsibility of the tenant/licensee or other operator under Sections 2, 3, and 4(3) of the Health and Safety at Work Act 1974, as the person in overall control of operations, to ensure the safety of his employees, his contractors and others who might be affected by his undertakings. In so doing, such tenants, licensees and other operators must ensure, inter alia, that:-

1. their employees, and any contract labour they employ, have attended a safety induction course approved by the Company;
2. persons attending an approved safety induction course shall sign a registration document as proof of their attendance and carry a passport badge at all times;
3. their employees, and any contract labour they employ, who act as plant drivers are in possession of a current and valid driving licence relating to the plant they drive;
4. they conduct, and produce on demand to any responsible official of the Company, written risk assessments of their operations which may cause harm to any employee, visitor or passer-by;
5. their employees, and any contract labour they employ, are supplied with and wear protective clothing. Such clothing shall be supplied by their respective employer;
6. all operations which they, their employees, agents or independent contractors carry out on the Dock Estate shall be performed strictly in accordance with all relevant statutory requirements governing health and safety, including inter alia the Management of Health and Safety at Work Regulations 1999;
7. they comply with all relevant provisions relating to dock operations, warehousing, transport and meat/fresh produce preparation/packing operations;

in so far as such matters relate to their cargo handling operations within the Port of Liverpool.

DECLARATION ON BEHALF OF THE TENANT/LICENSEE/OPERATOR

I have read this Code of Safe Practice and agree to comply fully with its contents.

Signed:

Name (block capitals):

Position:

Company:

Date: