



## **Terminal Tariff for Carolina Marine Terminal LLC**

**Issued by:** Carolina Marine Terminal LLC

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## **ITEM 1**      **PURPOSE, SCOPE, AND APPLICABILITY**

The rules, regulations, conditions, commodity rates and/or charges set forth in this Tariff apply to Terminal Services provided by Carolina Marine Terminal LLC rendered in the United States of America and to each User of the Terminal Facilities. Each User shall be liable for noncompliance with the terms of this Tariff by such User's partners, officers, directors, agents, employees, invitees, representatives, contractors and/or subcontractors.

For additional terms, rates, and charges, please contact Carolina Marine Terminal LLC at the physical and/or email addresses set forth below.

**Carolina Marine Terminal LLC**  
3330 River Road  
Wilmington, North Carolina 28412  
Email: [info@carolinamarineterminal.com](mailto:info@carolinamarineterminal.com)

## **ITEM 2**      **DEFINITIONS**

***"Affiliate"*** means, with respect to any Person, any other Person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. The term "control" (including its derivatives and similar terms) of a Person means possessing the power to direct or cause the direction of the management and policies of such Person, whether through ownership, by contract, or otherwise. A Person is deemed to be an Affiliate of another specified Person if such Person possesses (whether through beneficial ownership of voting securities or other similar interests, by contract, agreement or otherwise), directly or indirectly, the power to vote fifty percent (50%) or more of the voting securities or other similar interests of the specified Person.

***"Annex"*** means the Annex(es) attached to this Tariff, if any.

***"Applicable Law"*** means all applicable (a) United States federal, state, local, and municipal laws (including environmental laws), statutes, directives, codes, and ordinances and (b) rules, regulations, municipal by-laws, judicial, arbitral, administrative, ministerial, departmental, or regulatory judgments, orders, decisions, rulings or awards, consent orders, consent decrees, and policies of any Governmental Authority.

***"Attorney Fees and Costs"*** means all legal costs and expenses, attorney fees, expert witness fees, paralegal fees, court reporter fees, filing fees, copying charges, and charges relating to document production incurred by the Terminal Operator in relation to the investigation, prosecution, and/or defense of any loss, damage, expense, claim, liability, indemnity, suit, fine, and/or penalty, including attorney fees and costs incurred for appellate and/or bankruptcy proceedings.

***"Business Day"*** means a day, other than a Saturday or Sunday, on which the banks in New Hanover County, North Carolina, are open for the transaction of normal banking business.

***"Cargo"*** means any and all product and/or goods that are the subject of any services provided by the Terminal Operator hereunder, along with any personal property, supplies, and equipment related to such goods, including all packing, packaging, crates, cradles, pallets, tanks, platforms, flatbeds, trailers, containers, other equipment, and other items, materials, and supplies associated therewith.

***"Cargo Handling"*** means the service of physically moving Cargo between any point of rest and any place on the Terminal Facilities, other than the end of a Vessel's tackle, along with any other services provided by the Terminal Operator to any Cargo while located at the Terminal Facilities.

**“Cargo Interest”** means any Person having interest in the Cargo including the owner of the Cargo, the shipper, the consignor, the consignee, the receiver, or any of its agents, servants and/or employees.

**“CFR”** means the Code of Federal Regulations, published by the Office of the Federal Register of the United States.

**“Checking”** means the service of counting and checking Cargo against appropriate documents for the account of the Cargo, the Vessel, or any other Person requesting same.

**“Competing Writing”** has the meaning set forth in Item 3.

**“Default”** means the User’s failure to perform or breach of any of the terms, conditions, or obligations set forth in this Tariff, the Rate Quote, or any other evidence of an agreement for terms of the Terminal Services.

**“Dockage”** means the charge assessed against a Vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a Vessel so berthed.

**“Force Majeure”** has the meaning set forth in Item 14.

**“Free Time”** means the time period immediately prior to the loading of Cargo onto a Vessel, or subsequent to the discharge of such Cargo from a Vessel, during which Cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of Wharf Demurrage or Terminal Storage charges, as specified in the Tariff, if any.

**“Governmental Authority”** means any federal, state, or local government, governmental authority, governmental department, ministry, office, commission, agency, court, board, instrumentality of any government, or judicial, legislative, or administrative body, federal, state, or local, having jurisdiction over the Terminal Operator, any User, any Vessel, or any portion of the Terminal Facilities or Terminal Services.

**“Hazardous Materials”** means any Cargo that has any hazardous, dangerous, explosive, flammable, poisonous, infectious, noxious, spontaneously combustible, radioactive, corrosive, or oxidizing character or effect whatsoever, including without limitation any material or substance listed on the U.S. Hazardous Material Table (49 CFR § 172.101), as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*, as amended, or otherwise identified by any federal or state hazardous materials law as being a marine or other pollutant, an explosive, a dangerous or hazardous material, or a hazardous waste.

**“Heavy Lift”** means the service of providing heavy lift cranes and equipment for lifting Cargo.

**“Holidays”** means each of (a) New Year’s Day, (b) Martin Luther King Day, (c) Memorial Day, (d) Independence Day, (e) Labor Day, (f) Thanksgiving Day (Thanksgiving Day (US), 7:00 a.m., until 7:00 a.m. of the following day), (g) Christmas Eve Day, and (h) Christmas Day (December 24, 3:00 p.m., until December 26, 7:00 a.m.). In the event one of the above Holidays falls on Sunday, the following Monday will also be observed as a holiday. In the event a Holiday falls on Saturday, the Friday before will also be observed as holiday.

**“Loading/Unloading”** means the service of loading Cargo onto or unloading Cargo from railroad cars, trucks, lighters, Vessels or any other means of conveyance of Cargo on, to or from the Terminal Facilities.

**“Losses”** means any and all claims, liabilities, liens, demands, causes of action, suits, actions at law and

equity, judgments, settlements, losses, damages, penalties, fines, Attorney Fees and Costs, and/or other costs and expenses of every kind and character, including but not limited to claims, losses, and/or causes of action for consequential damages, personal injury, or wrongful death, breach of contract, property damage, damage to or loss of Cargo, pollution/natural resource damage, loss of income and earnings, and/or civil or criminal fines.

“**Master**” or “**Vessel’s Master**” means the Person who controls and sails the Vessel by taking responsibility and/or the Person authorized to represent the Vessel on behalf of the User.

“**Motor Carrier**” means any Person hired by the User to provide motor vehicle transportation for compensation, or any of its agents, contractors, subcontractors, drivers, owner/operators, servants, and/or employees.

“**Permits**” means all consents, authorizations, licenses, waivers, permits, certificates of authority, approvals, agreements (including any leases, easements, servitudes, or other instruments granting an interest in real property) and other similar documents from, by, or with a Governmental Authority.

“**Person**” means any individual, corporation, general or limited partnership, limited liability company, joint stock company, joint venture, estate, trust, business trust, association, unincorporated organization, sole proprietorship, agency, trustee, Governmental Authority, or any other form of entity not specifically listed herein.

“**Prime Rate**” means an interest rate per annum equal to the per annum “Prime Rate” as published in the “Money Rate” section of *The Wall Street Journal*. Interest shall be calculated on a daily basis and shall assume a three hundred sixty-five (365) day year. Interest calculations hereunder shall reflect changes in such Prime Rate as of the date on which such change is published in *The Wall Street Journal*.

“**Railroad**” means any railroad servicing the Terminal Facilities.

“**Rate**” means one or more rates charged by the Terminal Operator for providing certain Terminal Services.

“**Rate Quote**” means an offer from the Terminal Operator to provide Terminal Services to a User at a specified Rate.

“**Special Service Charge**” has the meaning set forth in Item 5.

“**Stevedoring Rate**” has the meaning set forth in Item 5.

“**Stevedoring Services**” has the meaning set forth in Item 5.

“**Tariff**” means this publication, including any Annexes and any other rate information made available by the Terminal Operator upon request, and contains the actual rates, charges, classification, regulations, terms, conditions, and practices of the Terminal Operator.

“**Terminal Facilities**” or “**Facilities**” means the terminal facility owned and/or operated by the Terminal Operator and any one or more buildings, appurtenances, or structures (and services connected therewith) located at or used in connection with such terminal facility, including but not limited to docks, berths, piers, aprons, wharves, warehouses, sheds, equipment, covered and/or open storage space, storage plants, grain elevators and/or cargo loading and/or unloading structures, landings, and receiving stations, in each case, used for the loading, unloading, transmission, care, and/or convenience of Cargo, the interchange of same between land and ocean carriers or between two ocean carriers, or to otherwise service any User. This term

is not limited to waterfront or port facilities and includes off-dock container freight stations at inland locations and any other facility from which inbound waterborne Cargo may be tendered to the consignee or outbound Cargo may be received from shippers for Vessel or container loading.

**“Terminal Operator”** means Carolina Marine Terminal LLC.

**“Terminal Party”** means (a) the Terminal Operator and its Affiliates and (b) the respective equity holders, officers, directors, employees, representatives, agents, contractors, subcontractors, customers, and successors and permitted assigns of any entity described in clause (a) of this definition (in each case, excluding any User Party).

**“Terminal Services”** or **“Services”** means Checking, Cargo Handling, Heavy Lift, Loading, Unloading, Stevedoring Services, Terminal Storage, Usage, Wharfage, and Wharf Demurrage, or other such services identified in this Tariff, as appropriate, and which the Terminal Operator agrees to provide to a User pursuant to a Rate Quote or any other document or agreement. Any additional services which are offered shall be listed and charges therefor shall be shown in the Annexes, the applicable Rate Quote, and/or other rate information made available by the Terminal Operator upon request.

**“Terminal Storage”** or **“Storage”** means the service of providing warehouse space or other Terminal Facilities for the storage of Cargo, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage, and other available methods of storage.

**“TTC”** has the meaning set forth in Item 8.

**“Usage”** means the use of the Terminal Facilities by any Vessel Interests, rail carrier, lighter operator, trucker, motor carrier, consignee, the User, or any User Party when it performs its own car, lighter, or truck loading or unloading, or the use of said Terminal Facilities for any other gainful purpose for which a charge is not otherwise specified.

**“User”** means the Person ordering, receiving, or utilizing the Terminal Services from the Terminal Operator; the Cargo Interest; the Railroad; the Motor Carrier; the Vessel Interests; any other party having any interest in the Cargo and/or receiving, directly or indirectly, any benefit from the Terminal Services rendered by the Terminal Operator; any Vessel, vehicle, conveyance of any kind, and the owners and operators thereof, and/or any Person and/or entity that requests, is provided with, and/or receives any benefit from any Terminal Services of any kind or description.

**“User Parties”** means (a) User and its Affiliates and (b) the respective equity holders, officers, directors, employees, representatives, agents, contractors, subcontractors, customers, the Railroad, the Motor Carrier, the Vessel Interests, and successors and permitted assigns of any entity described in clause (a) of this definition (in each case, excluding any Terminal Party).

**“Vessel(s)”** means any ship, boat, barge, or watercraft of any kind or description carrying or assisting in the carrying of Cargo to or from the Terminal Facilities or the loading or unloading of Cargo at the Terminal Facilities.

**“Vessel Interest(s)”** means the registered owners, beneficial owners, ocean carrier, water carrier, common carrier, and charterers (whether demise, bareboat, time, slot, voyage or otherwise) of a Vessel.

**“Wharf Demurrage”** means a charge assessed against Cargo remaining in or on Terminal Facilities after the expiration of Free Time, if any, unless arrangements have been made for storage.

**“Wharfage”** means a charge assessed against the Cargo or Vessel on all Cargo passing or conveyed over, onto, or under wharves or between Vessels (to or from barge, lighter, or water), when berthed at a wharf or when moored in a slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

### **ITEM 3**      **TERMINAL SERVICES**

A.      **Terminal Services; Commencement of Terminal Services.** The Terminal Operator will provide the Terminal Services to which the Terminal Operator and the User agree in a Rate Quote or otherwise in writing. Unless provided otherwise in the Rate Quote, the Terminal Services shall commence at the end of the Vessel’s tackle in respect of inbound Cargo or upon receipt of Cargo in the case of outbound Cargo. Unless otherwise agreed to in writing by the Terminal Operator, the normal and customary Terminal Services to be performed by the Terminal Operator are: (i) the sorting and delivery of Cargo by bills of lading as described in the Vessel’s manifest; (ii) the responsibility of custodianship of all Cargo; and (iii) the obligation to deliver all Cargo in the same condition as received, in each case, subject to the terms and conditions of this Tariff and the applicable Rate Quote. Nothing contained herein shall be construed as requiring the Terminal Operator to perform any service not specifically provided for herein and agreed to in a Rate Quote or otherwise in writing. If the Terminal Operator agrees to perform services not specifically identified in this Tariff, the charge for any such service shall be mutually agreed upon and all other terms and conditions specified in this Tariff and the applicable Rate Quote shall apply.

B.      **Terminal Operator Performance Standard.** The Terminal Operator shall perform the Terminal Services with due diligence but does not guaranty any particular speed or starting or completion dates or times. The Terminal Operator shall have liberty with respect to the selection of equipment, procedures, and methods utilized for its performance, except to the extent the Terminal Operator and the User agree otherwise in writing. The Terminal Operator reserves the right to control and perform all weighing, sampling, measuring, loading, handling, and discharging of goods at the Terminal Facilities but shall not be obligated to receive, handle, or deliver goods unless and until all proper documentation has been received by the Terminal Operator. The Terminal Operator may, at its option and without notice, refuse, reject, move within, and/or remove from the Terminal Facilities any goods or Cargo which it believes may present a risk to Persons, property, or the environment, at the Terminal Operator’s sole discretion and the User’s sole risk and expense.

C.      **Hours of Operation.** The Terminal Operator will provide the Terminal Services during the Terminal Facilities’ normal Business Days and hours, which are 7:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. Eastern Prevailing Time, Monday through Friday, other than Holidays. Upon reasonable notification and request by the User, the Terminal Operator may, in its sole discretion, elect to provide Terminal Services on Holidays and at times other than normal business hours. The User will compensate the Terminal Operator for such Terminal Services at the premium hour rate specified in the Rate Quote, the Annexes, and/or other rate information made available by the Terminal Operator upon request, plus all reasonable costs, if any, over and above those normally incurred by the Terminal Operator as a result of such Terminal Services.

D.      **Personnel.** The Terminal Operator will provide and make available, as necessary, all workforce labor to provide the Terminal Services pursuant to this Tariff and the Rate Quote. All such Persons will be and remain the sole employees or contractors of the Terminal Operator and be subject to the Terminal Operator’s exclusive authority, supervision, direction, and control.

E.      **Independent Contractor; No Agency.** In the performance of the Terminal Services, the Terminal Operator shall act as an independent contractor, with the right and authority to direct, control, and oversee all services and other day-to-day work being performed by the Terminal Operator or any Terminal

Party. The User shall have no right or authority to supervise, give instructions to, or exercise control over any such Persons, and such Persons at all times shall, if employees of the Terminal Operator or any Terminal Party, be under the direct and sole supervision and control of the Terminal Operator or such Terminal Party. Any suggestions that may be given by the User shall be given only to the supervisor or to the other person in charge of such Person's employees. Nothing in this Tariff shall be deemed or construed to authorize any partnership, joint venture, or relationship of master and servant or principal and agent between the User or any User Party and the Terminal Operator or any Terminal Party.

F. **Equipment Furnished by the User.** To the extent the User provides any equipment to facilitate the Terminal Services, (i) the User shall be responsible for maintaining such equipment, (ii) the User shall provide any training that may be required to ensure that such equipment is properly and safely operated by employees or representatives of the Terminal Operator, and (iii) the Terminal Operator shall not be responsible for any loss of or damage to such equipment except to the extent caused by the negligent acts or omissions of the Terminal Operator.

G. **Transportation of Cargo.** Notwithstanding anything to the contrary in this Tariff, the User is responsible for transporting, or arranging for the transportation of, the Cargo to or from Terminal Facilities. The User will coordinate with the Terminal Operator with respect to the scheduling and other aspects of how Cargo will be delivered to or picked up from the Terminal Facilities. The User will supply all reasonably requested documentation for Vessels, trucks, and railcars that will arrive or are designated to arrive at the Terminal Facilities.

H. **No Additional Terms.** Any bill of lading, receipt, shipping document, other writing, or evidence of loading or unloading issued in connection with the Terminal Operator's provision of the Terminal Services pursuant to this Tariff (each, a "**Competing Writing**") will be considered acknowledgement of receipt or delivery only, it being the intention of the Terminal Operator and the User that this Tariff and the applicable Rate Quote contains all of the terms and conditions agreed upon by the Terminal Operator and the User for the performance of the Terminal Services. The terms and conditions of this Tariff and the Rate Quote will supersede any terms and conditions contained in any Competing Writing.

#### **ITEM 4** **TERMINAL FACILITIES; ACCESS AND USE**

A. **Non-Exclusive.** All access to and/or use of the Terminal Facilities and/or Terminal Services by the User is non-exclusive and for the limited purpose requested by the User and agreed by the Terminal Operator. The User understands and agrees that activities by the Terminal Operator and other Persons will be on-going at the Terminal Facilities, and that such activities may be dangerous to those participating and to other Persons. The User and each User Party agrees to not interfere with any operations being conducted at the Terminal Facilities and to not create any danger or safety hazard whatsoever at the Terminal Facilities. Unless otherwise specifically agreed by the Terminal Operator in advance, all access and use of the Terminal Facilities shall be restricted to normal working hours on Business Days. The Terminal Operator reserves the right to revoke access and/or use privileges from any User Party or other Person that the Terminal Operator determines, in the exercise of its sole discretion, to be disruptive, intemperate, unsafe, or who violates any law or this Tariff or disobeys any Terminal Operator directive or rule.

B. **Compliance with Applicable Law; Permits.** The User and each User Party shall conform and comply with Applicable Law and shall be responsible for any violation of the same. The User shall obtain and maintain all Permits required to access and/or use the Terminal Facilities, deliver Cargo to the Terminal Facilities, transport Cargo from the Terminal Facilities, and/or otherwise receive the benefit of the Terminal Services.



C. **Emergency Contact Information.** Upon request, the User will provide the Terminal Operator with contact information for a Person who is a User Party and who is accessible 24 hours per day and seven days per week in the event of an emergency.

D. **Safety.** The User shall be responsible for assuring that each User Party learns and obeys the Terminal Operator's safety and other rules, whether posted, given in writing, set forth herein and/or advised verbally, and that all such Persons otherwise wear hard hats, safety vests, and other personal protective equipment as required by the Terminal Operator. The User shall ensure that each Cargo, raw material, Vessel, railcar, and vehicle delivered to or arriving at the Terminal Facilities is in safe condition. If the Terminal Operator reasonably determines that any Cargo, raw material, Vessel, railcar, or vehicle delivered to or arriving at the Terminal Facilities is not safe, then the Terminal Operator may reject the delivery of such Cargo, raw material, Vessel, railcar, or vehicle and require that such Cargo, raw material, Vessel, railcar, or vehicle immediately depart or be removed from the Terminal Facilities at the User's sole cost and expense.

E. **Personal Protective Equipment.** The User acknowledges that the Terminal Operator has minimum personal protective equipment requirements for any Person present at the Terminal Facilities. All Persons present at the Terminal Facilities must wear long pants, long or short sleeved shirts, an ANSI approved hardhat, safety glasses and steel toed shoes, and any other personal protective equipment that the Terminal Operator deems necessary. Under no circumstances will any Person be allowed access to the Terminal Facilities that does not meet these requirements. Any delays to a Vessel resulting from such non-compliance shall be for the User's or Vessel's account.

F. **Clean-Up.** The User shall remove all of its materials, supplies, tools, equipment, personal property, employees, and subcontractors from the Terminal Facilities on a daily basis and shall otherwise keep all areas used by the User clean and free of debris.

G. **No Security for Cargo or User Property.** The Terminal Operator does not provide any security for the Cargo, materials, supplies, tools, equipment, or personal property of the User or any User Party or any other Persons at the Terminal Facilities. The User shall be solely responsible for the security of all such items, including those of any User Party, and the User shall monitor the same carefully and remove all such items on at least a daily basis and store them safely elsewhere.

H. **Maritime Security.** The User must comply with Maritime Security (MARSEC) requirements as set forth in 33 CFR Parts 104 and 105, and must be capable of carrying out the requirements of the Terminal Operator's Terminal Security Plan. All Persons, Vessels, railcars, trucks, and other vehicles entering the Terminal Facilities are subject to search. Under no circumstances are guns, weapons, alcohol, or animals allowed at the Terminal Facilities. Any Person violating these provisions will be banned forever from entering the Terminal Facilities. Any delays to the Vessel resulting from such non-compliance shall be for the User's or Vessel's account.

I. **Warehouse and Shed Dimensions.** If the User requests the storage of Cargo in a warehouse or shed at the Terminal Facilities, then the User must ensure that the dimensions of any Cargo to be stored do not exceed the dimensions of the warehouse and shed doors. The dimensions of warehouse and shed doors located within the Terminal Facilities are available from the Terminal Operator upon request. If Cargo cannot safely pass through the warehouse or shed doors, the User agrees to bear all risk of climate-related loss or damage to Cargo from outside storage, including precipitation, ice, heat, flood, changes in temperature, and changes in humidity.

J. **Climate Controls.** The User acknowledges that the Terminal Facilities used for the storage of Cargo are not climate controlled. The User agrees to bear all risk of loss or damage to Cargo resulting

from climate changes while such Cargo is stored at the Terminal Facilities. Such risk of loss or damage includes damage to or deterioration of Cargo resulting from changes in temperature and humidity and other weather-related causes, such as precipitation, icing, and heat damage.

K. **Maintenance; Facility Downtime.** The Terminal Operator may take the Terminal Facilities or any portion or part thereof out of service at any time in order to perform inspections, maintenance, or repairs. Except for any emergency or event of Force Majeure where providing advance notice is not practicable, the Terminal Operator will use commercially reasonable efforts to provide the User with at least thirty (30) days' prior written notice of any such maintenance or downtime that affects any Terminal Services provided to the User.

L. **Damage to Terminal Facilities.** If the User or any User Party causes or contributes to cause damage to Terminal Facilities or equipment, then the User and its agents or contractors shall be liable for such damage, jointly and severally, and must fully reimburse the Terminal Operator for any and all damage. The Terminal Operator shall be reimbursed for the total cost of restoration, repair, or replacement in the event damage is beyond repair. The Terminal Operator may detain any Vessel or other watercraft responsible for any damage to the Terminal Facilities or equipment until said Vessel or watercraft posts adequate security for all such damages in a form acceptable to the Terminal Operator. If payment is not made to the Terminal Operator hereunder, the User, or its agents or contractors, shall further be liable for costs of collection, including Attorney Fees and Costs, plus prejudgment interest from the date of the damage.

## **ITEM 5**      **STEVEDORING SERVICES**

A. **Stevedoring Services.** Unless otherwise agreed in the Rate Quote, the Terminal Operator shall perform the following stevedoring services (the “*Stevedoring Services*”):

- i. Loading of Cargo from place of rest in the Terminal Facilities onto a Vessel as directed by the Vessel's Master and/or the User. Special stowing of Cargo shall not be included in the Stevedoring Services.
- ii. Unloading Cargo from a Vessel and delivering such Cargo to an agreed place of rest in the Terminal Facilities.

B. **Terminal Operator's Obligations for Stevedoring Services.** In performing the Stevedoring Services, the Terminal Operator shall provide:

- i. All customary gear and equipment deemed reasonably necessary for the performance of the Stevedoring Services by the Terminal Operator, if and when available.
- ii. Sufficient labor and such supervision reasonably necessary for the satisfactory performance of the Stevedoring Services, but always contingent upon labor being reasonably available to the Terminal Operator and in consideration of safety, efficiency, and practice in the Terminal Facilities.

C. **Stevedoring Commodity Rate.** The Terminal Operator shall assess a stevedoring rate (a “*Stevedoring Rate*”) for the Stevedoring Services set forth above. The Stevedoring Rate shall be set forth in the applicable Rate Quote and shall apply to Vessels suitable for the type of Cargo being handled by the Terminal Operator. All other stevedoring-related services performed by the Terminal Operator shall be subject to Special Services Charges, as set forth below.

D. **Special Service Charges.** When the Terminal Operator performs stevedoring-related services that are not included in the Stevedoring Services listed above or when the Terminal Operator is otherwise authorized to supply extra labor, material, and/or equipment, the Terminal Operator will charge its cost (including fringe benefits) plus a service charge (the “***Special Service Charge***”) to be set forth in the applicable Rate Quote. Services that will be subject to a Special Service Charge include, but are not limited to, the following:

- i. Removing and replacing hatch covers and beams and the rigging necessary to work Cargo in each respective hatch.
- ii. Handling Vessel lines and gangways.
- iii. Discharge and disposal of dunnage or debris.
- iv. Loading or discharging a Vessel’s stores, dunnage, material, or equipment other than the Cargo.
- v. Carpentry or coopering work of any nature.
- vi. Handling or placing flooring timbers for Heavy Lifts or for use by carpenters.
- vii. Rigging and unrigging Heavy Lift booms and hatch tents.
- viii. Lashing, Unlashing and Securing: Where the User requires lashing, unlashing or securing of Cargo on board the Vessel, on deck or elsewhere, all labor and materials shall be for the account of the User and are not included in the Stevedoring Rate unless explicitly specified otherwise. The services shall be performed under the direction, control, supervision, and responsibility of the Vessel’s Master and/or other authorized personnel of the User. The Vessel’s Master or authorized personnel shall be responsible for the sufficiency of such lashing and securing. The User expressly agrees to defend, indemnify, and hold harmless the Terminal Operator and the Terminal Parties from and against any Losses in any way related to actual or allegedly insufficient or improper lashing and/or securing of Cargo.
- ix. Supplying extra labor for any other services when authorized.
- x. If the condition of the Cargo or its packaging is other than in customary good order and condition such that prompt handling is delayed, special arrangements shall be agreed upon in lieu of the Stevedoring Rate.
- xi. When materials (*i.e.*, dunnage, banding, lashing chains, cargo intended for other ports, or any other materials) impede normal cargo operations, said materials will be moved or removed at the Terminal Operator’s discretion. The Terminal Operator shall charge the User for the aforementioned service at the prevailing “stand-by” Rate. Standard disposal costs will be for the account of the User.

E. **Rehandling, Sorting, and Shifting of Cargo.** A Stevedoring Rate applies to one handling of Cargo. When rehandling, sorting, or shifting the Cargo is necessary through no fault of the Terminal Operator, the Terminal Operator will charge a Special Service Charge for such services.

F. **Detention, Standby Time, Lay Time.** Once work starts, the Terminal Operator shall charge the User a Special Service Charge for Vessel detentions or periods of stand-by time greater than 15 minutes. When longshore workers are employed but unable to work due to causes beyond the control of the Terminal Operator, or if longshore workers must be paid for a minimum working period pursuant to prevailing labor agreements or port customs, then the Terminal Operator shall charge the User a Special Service Charge.

G. **Previously Damaged Cargo.** For any Cargo damaged, deteriorated, or otherwise altered by improper packing, improper loading, improper securement, fire, water, humidity, weather conditions, inherent vice, oil, or other conditions at any intermediate port or prior to the Cargo's arrival at the Terminal Facilities, the Terminal Operator shall charge the User to handle such damaged Cargo based on: the cost in accordance with the prevailing labor agreements (including fringe benefits), plus a Special Service Charge, plus the Stevedoring Rate, together with the repair or replacement cost of the damaged or destroyed gear, and the cost of the equipment required for the protection of longshore workers as required under the circumstances.

H. **Sorting Cargo.** Extra sorting other than bill of lading lots, separations to fill individual orders, or any service beyond the normal delivery by bill of lading lots, including any sorting of allegedly damaged Cargo, shall be for the sole account of the User (including fringe benefits and a Special Service Charge).

I. **Description and Tender of Cargo.** The User shall be solely responsible for providing the Terminal Operator with complete and accurate particulars for all Cargo, including but not limited to information, description, nature, characteristics, markings, number, count, weight, dimensions, volume, quantity, and instructions relating to the Cargo (including any special instructions or conditions applicable to their storage, handling, and/or transportation). The User hereby warrants the accuracy of all particulars provided to the Terminal Operator and acknowledges that the Terminal Operator is entitled to rely on the particulars provided by the User. The User shall tender Cargo to the Terminal Operator at the date, time, and place agreed by the Terminal Operator. At the time the Cargo is tendered to the Terminal Operator, the Cargo shall be in good order, count, and condition, and packaged, protected, packed, and stowed sufficiently to withstand the contemplated Terminal Services, handling, and subsequent transportation, including by Vessel, railcar, motor vehicle, and/or any other mode of conveyance, as applicable. The User shall be responsible for, and agrees to protect, release, defend, indemnify and hold harmless the Terminal Parties from and against, any Losses incurred by any Terminal Party, resulting from (i) any inaccuracies or errors in the particulars provided to the Terminal Operator and/or (ii) the tender of any Cargo that does not comply with warranties in this Section.

J. **Merchandise Information and Manifests.** The User must provide advanced notice for any Cargo arriving at the Terminal Facilities. Upon arrival at the Terminal Facilities, Cargo must be adequately marked and includes dimensions and weight per unit. If the User fails to provide notice or adequately mark Cargo as stated in this paragraph, the Terminal Operator may, at its sole discretion, refuse to accept such Cargo. The User must furnish the Terminal Operator with a cargo manifest showing weights and measurements for all Cargo so manifested. Sorting of Cargo within bills of lading will only be performed by special agreement with the Terminal Operator. If the Terminal Operator agrees to sort Cargo within bills of lading, the User must provide complete packing list information and ensure that Cargo is adequately marked to match packing list data. Any such arrangements are subject to the provisions of Item 5(H). Manifests for all inbound or outbound Cargo must clearly indicate whether said Cargo was freighted on either a weight or a measurement basis. If the User fails to provide freight information, then the Terminal Operator shall invoice on the higher amount of the weight or measurement basis.

K. **Consignments.** Outbound shipments of Cargo must be consigned to the appropriate Person and/or Vessel c/o the Terminal Operator.

L. **Valuable or Special Cargo.** The User must obtain prior authorization from the Terminal Operator for any valuable or special Cargo, including Cargo that requires security or special handling. If the User fails to obtain prior authorization from the Terminal Operator prior to delivery of any valuable or special Cargo, then Terminal Operator shall have no responsibility for the loss of, or damage to, such Cargo, howsoever caused. The User must obtain prior authorization and agreement of the Terminal Operator for any unusual Cargo, which shall be subject to special rates. Unusual Cargo, such as Cargo that is perishable, bulk, loose lumber, unpackaged goods, obnoxious, or dangerous (including ammunition, explosives, and dangerous cargo) shall only be handled by special arrangement. Any valuable, special, or unusual Cargo shall be subject to a Special Service Charge.

## **ITEM 6** **VESSEL REQUIREMENTS AND BERTHING GUIDELINES**

A. **Vessel Requirements.** Unless otherwise agreed, the User shall ensure that the Vessel is in a seaworthy condition and will supply booms hoisted in position and automatic hatches opened and ready to work; adequate winches and/or Vessel's cranes with sufficient steam or current for their efficient operation; blocks, guys, preventers, and wire or rope in good condition and of sufficient strength for falls; dunnage, hatch tents, and gantlines; adequate lighting for night work; tugs; derricks or cranes and slings for any Cargo that cannot safely be handled by Vessel's gear, or when Vessel's gear is not adequate to handle Cargo in a normal and safe manner according to the custom of the port; and all materials required for dunnaging, bracing, recoopering, shoring, lashing, protecting, or bulkheading of Cargo. All Vessels shall provide the Terminal Operator with gear certifications upon request. The Terminal Operator may reject any Vessel if (i) the Terminal Operator determines the Vessel is in a condition which cannot be handled, loaded, or unloaded safely or in a reasonable time frame or (ii) the Vessel does not meet the specifications provided by the Terminal Operator or set forth in this Tariff. Alternatively, the Terminal Operator may, in its sole discretion, accept the Vessel, in which event the User will reimburse the Terminal Operator for any additional expense to be incurred by the Terminal Operator in loading, unloading, handling, or storing the Vessel. The Terminal Operator will have no liability to the User for the Terminal Operator's failure to reject any Vessel.

B. **Safety and Health Regulations.** The User warrants that each Vessel and its equipment is maintained in such condition as to comply with the United States Department of Labor's Safety and Health Regulations for Longshoring, as published in the Federal Register, and all amendments thereto; all provisions of the Occupational Safety and Health Act, and all amendments thereto, and all regulations adopted and orders issued pursuant thereto; all Coast Guard regulations; and all state statutes, regulations, and orders for safety and health, and all amendments thereto. The User shall be responsible for, and agrees to protect, release, defend, indemnify and hold harmless the Terminal Operator and the Terminal Parties, from and against, any Losses resulting from any violations or alleged violations of this provision, whether issued by federal, state or local governmental organizations, or instituted by a Person.

C. **Nomination and Acceptance.** The User will nominate Vessels by submitting to the Terminal Operator a complete list of vessel information, including demurrage rate, arrival draft, cargo onboard to be unloaded at the Terminal Facilities, the Vessel's last five (5) cargoes and the User's desired lay dates, with as much advanced notice as possible, but in no case less than thirty (30) days in advance of the expected time of arrival at the Terminal Facilities. Nominations will be accepted or declined within twenty-four (24) hours after receipt by the Terminal Operator on a Business Day. If the nomination is received on a day other than a Business Day, it will be accepted or rejected within twenty-four (24) hours after 0900 of the next Business Day. If the Terminal Operator rejects a nominated Vessel, the Terminal Operator will provide the reason(s) for such rejection in writing to the User.

D. **Vessel Arrival Notices.** The User shall provide notice to the Terminal Operator by email at the email address set forth in Item 1 or such other addresses as the Terminal Operator may notify the User from time to time, at ten (10) days, seven (7) days, six (6) days, five (5) days, four (4) days, three (3) days, two (2) days, one (1) day, and twelve (12) hours prior to the estimated time of arrival of any Vessel at the entrance buoy for the Terminal Operator's Port. Vessels shall tender a "Notice of Readiness" to the Terminal Operator (regardless of the time of day) upon the Vessel's arrival at the entrance buoy for the Terminal Operator's Port, whether in port or not, whether in berth or not, whether in free pratique or not, whether customs have cleared or not, including on non-Business Days. If a Vessel arrives within the berthing window approved by the Terminal Operator, such Vessel will be allowed to berth, provided that the Terminal Operator has received confirmation by the User or the User's agent that such Vessel has been certified, all holds have passed inspection, and such satisfactory evidence has been provided and acknowledged by the Terminal Operator. If a Vessel arrives outside the berthing window approved by the Terminal Operator, the Vessel shall anchor at the entrance buoy for the Terminal Operator's Port.

E. **Stowage Plans and Cutoff Time.** The User must provide the Terminal Operator with an inbound Cargo stowage plan and manifest at least two full Business Days prior to arrival of Vessel. For outbound Cargo, a cutoff time is set one full Business Day before Vessel loading begins. At this point, all Cargo on the load list is considered confirmed for loading, and no further changes to the load list will be accepted after the cutoff. Additionally, the User must provide the Terminal Operator with a provisional outbound Cargo stowage plan at least two full Business Days prior to the cutoff time. Where practical, prior to the beginning of each year, the User will advise the Terminal Operator, in writing, of the expected quantities and proposed schedule for shipment and receipt of materials. This schedule is to be used for planning purposes only and is subject to change and, therefore, is not a commitment from the User to meet said schedule. The User will advise tonnages and Vessel lay-days for each shipment through the Terminal Operator at least one month in advance, unless otherwise impracticable.

F. **Docking and Departure; Safe Berth Availability.** If a Vessel fails to move to the Terminal Facilities when notified by the Terminal Operator, the Terminal Operator will provide the User and/or the Vessel another berthing window for such Vessel to berth. This process will be repeated until such Vessel arrives in the berth window provided by the Terminal Operator. The Terminal Operator shall exercise due diligence to provide a safe berth at the Terminal Facilities to which each Vessel may proceed, from which each Vessel may depart, and where each Vessel can lie safely afloat. Notwithstanding anything contained in this Tariff, the Terminal Operator does not warrant the safety or draft of public channels, fairways, approaches thereto, anchorages, or other publicly maintained areas either inside or outside the port area where Vessels may be directed. The Terminal Operator shall not be liable for any Losses incurred by the User or any Vessel resulting from the use of such public waterways. If hold-in tugs are required because a Vessel does not meet the Terminal Operator's minimum mooring requirements, any charges for hold-in tugs shall be for the User's account. Except as may be caused by the Terminal Operator's sole fault, the Terminal Operator shall not incur any liability to the User, any Vessel, or any Vessel Interests for any damage resulting from grounding or otherwise while a Vessel is berthed at, or entering or leaving, the Terminal Facilities.

G. **Shifting in Berth; Notice to Vacate.** In order to alleviate current or prospective congestion at the Terminal Facilities, the Terminal Operator may require any Vessel already in berth, or about to berth, to work continuously to the completion of loading and/or discharging at the Vessel's sole risk and expense, weather permitting. In addition, in the event any delay or stoppage in the loading or unloading of a Vessel results from a defect or malfunction on such Vessel and such delay or stoppage continues for more than six (6) hours in the aggregate, then the Terminal Operator shall have the right to order such Vessel to immediately vacate the Terminal Facilities, and such Vessel shall not be permitted to return until such time as the Terminal Operator is reasonably satisfied that the cause of delay or stoppage has been repaired or remedied, as applicable. In the interest of safety, the Terminal Operator reserves the right to require the

User, at its sole cost and expense, to (i) provide tugboats to assist each Vessel at the Terminal Facilities or hold such Vessel against the dock and/or (ii) take other safety measures as are deemed reasonably necessary by the Terminal Operator. Any User or Vessel that refuses to take any safety measures ordered by the Terminal Operator or any Terminal Party may be ordered to immediately vacate the Terminal Facilities, and such Vessel shall not be permitted to return until such time as the Terminal Operator is satisfied that safe dock and cargo operations may be continued. Any Vessel refusing to vacate the berth after being so notified pursuant to this Item may be subject to removal by the Terminal Operator at the Vessel's sole risk and expense, including any damage, as it may accrue, to the Terminal Facilities. At Terminal Operator's sole option, additional Dockage fees commencing two (2) hours after notice to vacate is given, may be assessed against the User and/or the Vessel. This charge shall not constitute a waiver by the Terminal Operator of any greater actual damage it may sustain as a result of a Vessel's failure or refusal to vacate. The Terminal Operator shall not be responsible for any demurrage charges incurred as a result, and laytime shall cease. The Vessel, after tendering Notice of Readiness to recommence discharging, shall be re-berthed in order of rotation in accordance with the provisions contained herein, unless otherwise agreed by the Terminal Operator, and laytime shall resume after the Vessel is safe and fast at the Terminal Facilities. Expenses incurred for vacating the berth or re-berthing shall be for the User's or Vessel's account.

H. **Laytime; Dockage and Wharfage Charges.** Laytime for a Vessel shall commence upon the earlier to occur of (i) the commencement of discharge for such Vessel or (ii) twelve (12) hours after the Terminal Operator has received a Notice of Readiness; *provided, however*, that for Vessels arriving outside of the assigned arrival window, laytime shall commence after the Vessel is safe and fast at the Terminal Facilities. If a Vessel remains at the Terminal Facilities after the expiration of the laytime set forth in the Rate Quote or otherwise communicated to the Vessel or after unloading is complete and/or is forced to remain at the Terminal Facilities by action of a Government Authority, then the Terminal Operator may charge Dockage and other customary fees at the applicable rate set forth in the Rate Quote, the Annexes, and/or other rate information made available by the Terminal Operator upon request. Notwithstanding anything to the contrary in this Tariff, the Terminal Operator shall not be obligated to commence discharge operations until the Vessel has arrived and is tied off at the Terminal Facilities and is customs cleared, in free pratique, and in all respects ready to discharge.

I. **Additional User and Vessel Responsibilities.** The User shall be responsible for arranging customs, consumables, crew needs, surveyors, stores, waste disposal, and any other needs. Each Vessel at the Terminal Facilities must retain sufficient officers and crew on board to perform any shifting or undocking maneuvers that may be required by the Terminal Operator. While at the Terminal Facilities, except to the extent permitted by the Terminal Operator in writing, a Vessel shall not disable its engines or perform any engine maintenance that would prevent such Vessel from maneuvering under its own power. The User and/or the Vessel will be responsible for the cost of line handlers, tugboats, and pilots for any Vessel that must shift at the Terminal Facilities in order to accomplish the discharging operation, except in the case where such shifting is required on the part of the Terminal Operator. The User shall identify and develop a listing of any Persons needing access to each Vessel while such Vessel is located at the Terminal Facilities. Such list must include the Person's name, company name, and title. The list must be submitted to the Terminal Operator not less than twenty-four (24) hours prior to arrival of a Vessel. Furthermore, any representative of the User desiring access to a Vessel must possess a valid driver's license or passport; *provided, however*, that if not a citizen of the United States, a valid passport is required for access to the Terminal Facilities.

## **ITEM 7 RAILROAD AND MOTOR CARRIERS**

A. **General Requirements.** If Cargo will be transported to or from the Terminal Facilities via Railroad and/or Motor Carrier, the User shall be responsible for providing an appropriate number of suitable and fit railcars and/or trucks that are properly documented and permitted with federal, state, and local

governments, as applicable, into which or from which the Terminal Operator may unload, load, or transload Cargo at the Terminal Facilities, and for all associated payments, charges, costs, and expenses. All railcars and trucks provided or designated by the User must meet the specifications provided to the User by the Terminal Operator from time to time, and be in good repair and capable of being promptly loaded or unloaded, as applicable. The Terminal Operator may reject any railcar or truck provided by the User if (i) the Terminal Operator determines the railcar or truck, as applicable, to be in a condition which cannot be handled, loaded, or unloaded safely or in a reasonable time frame or (ii) the railcar or truck does not meet the specifications provided by the Terminal Operator. Alternatively, the Terminal Operator may, in its sole discretion, accept the railcar or truck, in which event the User will reimburse the Terminal Operator for any additional expense to be incurred by the Terminal Operator in loading, unloading, handling, or storing the railcar or truck. The Terminal Operator will have no liability to the User for the Terminal Operator's failure to reject any railcar or truck. The Terminal Operator shall not be responsible for dispatching the Railroad or any Motor Carrier or for any related delays.

**B. User Responsibility.** The User shall be responsible for contracting with the Railroad and/or Motor Carrier for transportation of the User's railcars or trucks, as applicable, to and from the Terminal Facilities, and for all associated payments, charges, costs, and expenses. The Terminal Operator will have no responsibility for the actions or failures of the Railroad or Motor Carrier in delivering railcars or trucks to or removing railcars or trucks from the Terminal Facilities or in operating railcars or trucks at the Terminal Facilities. The User shall timely notify the Terminal Operator of any specifications, weight limitations, or other restrictions that apply to railcars or trucks destined for a specific destination. If any railcars or trucks are staged outside of the boundary of the Terminal Facilities, the User shall be responsible for any charges associated with such staging.

**C. Railroad and Motor Carrier Experience and Compliance.** The User represents and warrants that the Railroad and Motor Carrier have the requisite knowledge, experience, personnel, and equipment required to load, unload, and transport Cargo. The Railroad and Motor Carrier shall be in compliance with all applicable federal, state, and local laws relating to the provision of its services and/or the handling of Hazardous Materials, to the extent any Cargo transported by the Railroad and/or Motor Carrier, as applicable, constitutes Hazardous Materials. The Railroad and Motor Carrier shall not have an "Unsatisfactory" safety rating issued by the Federal Railroad Administration or the Federal Motor Carrier Safety Administration, as applicable. The Railroad and Motor Carrier agree to be bound by this Tariff. The User shall be responsible for, and agrees to protect, release, defend, indemnify and hold harmless the Terminal Operator and the Terminal Parties, from and against, any Losses resulting from any violations or alleged violations of this provision, whether issued by federal, state, or local governmental organizations, or instituted by a Person.

**D. Required Documents.** The User must ensure that the Railroad and/or Motor Carrier has the following document(s) available for each and every pick-up/delivery, which the Terminal Operator may request and inspect at its sole discretion: (i) truck pick-up order describing the Cargo, the originating Vessel, bill of lading, identifying marks and numbers, driver's name, and commercial driver's license number, legal load limit, and tractor and trailer license numbers, in a form satisfactory to the Terminal Operator; and (ii) if a load of Cargo requires state permit(s) for railcar or motor carriage, then copies of such permits(s) (covering the entire route) must be presented prior to the loading of the Cargo onto a railcar or trailer.

**E. Loading and Unloading.** The User warrants and agrees that it and its designated Railroad and/or Motor Carrier shall be responsible for supervising and ensuring the safe and proper loading of Cargo onto, or unloading of Cargo from, its railcar, trailer, and/or vehicle. The User shall protect, release, defend, indemnify, and hold harmless the Terminal Operator, its officers, directors, employees, agents and servants and pay the Terminal Operator on demand for any Losses arising from or relating to (a) any failure of a Motor Carrier to comply with governmental regulations or applicable law, (b) any failure to properly secure



or inspect a load, and (c) any claim of any kind or nature whatsoever made against the Terminal Operator, caused by, arising from, or relating to a failure to properly secure or inspect the Cargo loaded or unloaded and/or any breach of these terms and conditions.

**F. Policy for Truck Loading Sequence.** Where practicable, all trucks will be loaded on a “first come, first served” basis. However, the Terminal Operator reserves the right to dictate another truck loading sequence in order to best service all customers in a productive manner, at the sole discretion of the Terminal Operator. The Terminal Operator shall make best efforts to avoid congestion, provide continuity, and best utilize manpower and equipment to maximize efficiency. The User or its dispatcher must notify the terminal by 3:15 p.m., one Business Day in advance, for truck loading. The number of loads will be entered on a truck list, and any trucks not on the list will be turned away if the Terminal Operator cannot accommodate extra trucks. The Motor Carrier must pick-up a cargo pass from the traffic department and obtain instructions from the traffic department as to the location of the designated Cargo. Only one cargo pass will be given to a Motor Carrier unless the loading of the truck requires otherwise. A commercial driver’s license must be produced if requested by the Terminal Operator. Each Motor Carrier must have wood for blocking, dunnage, chains, coil racks, or binder, as may be required at the Motor Carrier’s discretion. The Terminal Operator does not supply wood, dunnage, chains, coil racks, or binders, and the Motor Carrier may not remove any such supply/equipment belonging to the Terminal Operator from the Terminal Facilities. Motor Carriers may not use the driveways beside the Vessel when a Vessel is in port. The roads are reserved for cranes and lift trucks used for the unloading of the Vessel. Motor Carriers may not congregate in warehouse doorways or block forklift access to storage areas. Motor Carriers must properly secure Cargo before moving the truck. The Terminal Operator is not responsible for inspecting or securing Cargo on trucks and trailers.

**G. Motor Carrier Rules.** For their own safety and the safety of others, Motor Carriers must obey the following truck rules:

- i. All Motor Carriers must remain not less than twenty (20) feet away from any truck, trailer, and/or chassis while the truck, trailer, and/or chassis is being loaded or unloaded.
- ii. All Motor Carriers must stay a safe distance (not less than twenty (20) feet) away from any area where loads are being suspended overhead.
- iii. All Motor Carriers must comply with posted speed limits within the Terminal Facilities.
- iv. All Motor Carriers must come to a complete stop at all stop signs and yield at unmarked crossings and/or intersections.
- v. Terminal equipment has the right of way at all times.
- vi. Do not attempt to pass, drive, walk, or stand behind terminal equipment that is backing up.
- vii. No unauthorized pedestrian traffic is allowed on the terminal. Drivers must stay close to their vehicles while in Terminal Facilities and should be out of their vehicle only for actual operating needs.
- viii. The use of mobile phones and other electronic devices while driving is strictly prohibited.

- ix. All Motor Carriers are required to comply with the personal protective equipment requirements of this Tariff while present at the Terminal Facilities.
- x. It is the responsibility of the User, the Motor Carrier and truck driver to properly secure Cargo on the trailer before moving the vehicle.
- xi. A valid Transportation Worker Identification Credential (TWIC®) is required to enter the Terminal Facilities. TWIC escorts can be provided for a fee. Each visitor must present a valid government-issued photo ID. The Terminal Facilities accept money order or COMcheck (authorized).

## **ITEM 8**      **RATES AND CHARGES FOR SERVICES RENDERED**

A.     **Rates and Other Charges.** The User shall pay for all Terminal Services based upon the Rates and charges specified in the Rate Quote and this Tariff. Unless provided otherwise in the Rate Quote, the User shall be responsible for paying all taxes (other than the Terminal Operator's income taxes), including inventory or property taxes, value added taxes, levies, tolls, user charges, and other duties of any nature imposed by any Governmental Authority on Cargo owned or controlled by the User that is handled in any manner by the Terminal Operator under or pursuant to this Tariff. The Rate Quote and this Tariff shall be deemed accepted and agreed to by the User upon commencement of any performance by either party, including without limitation any access to and/or use of the Terminal Facilities and/or Terminal Services whatsoever by or on behalf of the User. Upon any such acceptance, this Tariff shall be deemed fully incorporated into the Rate Quote and binding upon the User. Rates and charges that are based on inaccurate or incomplete information, descriptions, instructions, or particulars may be recalculated at any time and without notice to the User. Except as otherwise stated herein, all charges are for the account of the User. Payment must be assured prior to acceptance or release of any Cargo.

B.     **Terminal Transfer Charges and Special Service Charges.** The Terminal Operator may assess a Terminal Transfer Charge (a "**TTC**") and/or a Special Service Charge for services requested in a Rate Quote or otherwise. All TTCs and Special Service Charges shall be for the account of the User.

C.     **Payments.** Unless provided otherwise in the Rate Quote, the User will pay each invoice to the Terminal Operator within fifteen (15) days after the date of the invoice, to the address designated by the Terminal Operator. Invoices not paid by the User on the due date will bear interest from the due date until paid at the Prime Rate, plus three percent (3%) per month. In the event the User disputes in good faith one or more of the items in an invoice, the User will notify the Terminal Operator promptly (and in any event by the due date therefor) in writing of the item or items under dispute and the reasons therefor. The User may withhold payment of the disputed portion of such invoice, without payment of interest, until the dispute is resolved in accordance with the terms of the Agreement; *provided, however*, that any portion of a disputed invoice that is later paid will be paid with accrued interest thereon at the rate specified in this Item, from the date of such invoice until paid. In the event the User fails to pay any invoice when due, the Terminal Operator may engage a collection agent and/or attorney, or file suit to collect the amounts due and the User shall be responsible for all fees and costs incurred therefor, including Attorney Fees and Costs.

D.     **Right to Withhold Delivery.** The Terminal Operator reserves the right to withhold the delivery of Cargo until all Rates and charges related to Terminal Services have been paid in full, or an acceptable guarantee of payment has been arranged.

E.     **Adequate Assurances.** If at any time, the Terminal Operator has reasonable grounds for believing that the User cannot or will not be able to meet its current or future obligations, then as adequate assurance of performance, the Terminal Operator may require, at its option, the User to provide (i) an

irrevocable stand-by letter of credit from a bank acceptable to the Terminal Operator, and on terms and in an amount acceptable to the Terminal Operator; (ii) a guaranty from a Person, and on terms, acceptable to the Terminal Operator; or (iii) prepayment in an amount sufficient to provide, in the Terminal Operator's sole reasonable discretion, adequate security for payment by the User of all its obligations. If the User fails to provide the required adequate assurance within five (5) Business Days after its receipt of the Terminal Operator's notice requiring same, the Terminal Operator may suspend or terminate the provision of Terminal Services to User.

F. **Access to Documents.** The Vessel, Vessel Interests, User, and each User Party shall permit the Terminal Operator to access and copy all Cargo documents, including bills of lading, charter parties, contracts of carriage or affreightment, cargo manifests, delivery tickets, dray receipts, hatch lists, or invoices for services and furnish to the Terminal Operator such other documentation, reports, or information as it may require, for purpose of audit so as to secure necessary data to permit correct billing for charges incurred under this Tariff. Failure to provide such information upon request will constitute cause for denial of use of the Terminal Facilities.

G. **Advances.** The Terminal Operator may (but shall not be required to) make advances or incur liabilities with respect to Cargo, such as but not limited to storage, stevedoring, transportation, terminal charges, insurance, labor charges present and future, as well as expenses necessary for preservation of the Cargo, whether or not such advances are required or permitted by this Tariff. The User agrees to be responsible for all reasonably incurred advances regardless of whether Cargo is received by the Terminal Operator. The Terminal Operator may also advance such expenses reasonably incurred in the judicial sale of Cargo pursuant to law.

H. **Lien.** In addition to lien rights provided to the Terminal Operator by law, the User grants the Terminal Operator a general contractual lien on all Cargo, goods, and/or property (collectively referred to as "property" in this section) in the possession of the Terminal Operator as security for the payment of amounts due the Terminal Operator hereunder. The lien rights shall include storage, transportation, demurrage and terminal charges, insurance, labor, or other charges, past, present or future, in relation to property against which the lien is asserted and/or arising from the Terminal Operator's provision of any previous services to the User, and for expenses necessary for preservation of the property or reasonably incurred in their sale. If the Terminal Operator elects to exercise its rights under this provision, the Terminal Operator will provide written notice of that election to the User at the User's last known address. If the User fails to make payment of all amounts due or fails to post security to the Terminal Operator's satisfaction within thirty (30) days of the date the Terminal Operator sends such notice, then the Terminal Operator shall have the right to sell such property at public or private sale or auction. The proceeds of any such sale or auction shall first be applied to the sale costs, including Attorney Fees and Costs, then to amounts due to the Terminal Operator including all Storage charges, with the remaining net balance, if any, to be remitted to the User. The User shall provide notice to any other parties known to have an interest in the property of the Terminal Operator's lien rights and the exercise of those rights by the Terminal Operator. The User agrees that the Terminal Operator shall be entitled to its Attorney Fees and Costs incurred in enforcing any lien rights hereunder.

I. **Suspension or Termination of Terminal Services.** The Terminal Operator reserves the right to suspend or terminate the provision of Terminal Services to User whenever the Terminal Operator, in its sole discretion, determines that User has materially breached any term of this Tariff. The suspension or termination of Terminal Services shall be without prejudice to any additional rights or remedies available to the Terminal Operator hereunder.

J. **Overtime Charges.** Unless set forth otherwise in the Rate Quote, the rates provided for herein and therein are for Terminal Services provided during the normal straight-time working period on

Monday through Friday, excluding Holidays. Terminal Services performed on weekends, outside normal working hours, or on Holidays will be charged at the prevailing man-hour differential and will be for the account of the party requesting the overtime work or the User, as the case may be.

K. **Port Congestion and Peak Season Fees.** The Terminal Operator, at its sole discretion, may apply a surcharge to any Services rendered during peak or congested periods at the Terminal Facilities. This surcharge will apply in addition to the agreed base rates to cover increased operational costs during periods of high demand. Surcharges shall be calculated either as a flat fee or a percentage above the quoted rate. The Terminal Operator shall provide advance notice of any surcharge applied pursuant to this provision. Additionally, if outside labor is contracted to assist during these high demand periods, labor will be allocated based on agreed terms for contracting the additional manning or gangs.

L. **Storm Preparedness Fees.** The Terminal Operator, at its sole discretion, may apply a surcharge to any Services rendered while preparing for named storms or other inclement weather. This surcharge will apply in addition to the agreed base rates and shall be calculated either as a flat fee or a percentage above the quoted rate. The Terminal Operator shall provide advance notice of any surcharge applied pursuant to this provision. Additionally, if outside labor is contracted to assist during these periods, labor will be allocated based on agreed terms for contracting the additional manning or gangs.

M. **Fuel Surcharges.** The Terminal Operator, at its sole discretion, may apply a fuel surcharge to any Services rendered at the Terminal Facilities to offset increase in the price of fuel outside of the control of the Terminal Operator. This surcharge will apply in addition to the agreed base rates. Surcharges shall be calculated either as a flat fee or a percentage above the quoted rate. The Terminal Operator shall provide advance notice of any surcharge applied pursuant to this provision.

N. **Wharfage and Stormwater Fees.** Unless otherwise charged directly by the applicable port authority to the User, the Terminal Operator shall charge Wharfage against all Cargo passing or conveyed over, onto or under wharves, or between Vessels when berthed at a wharf, or when moored in a slip adjacent to a wharf. The Wharfage rate shall be as set forth in the Annexes, the applicable Rate Quote, and/or any other rate information made available by the Terminal Operator upon request. The Terminal Operator shall charge a stormwater or environmental fee against all Cargo passing or conveyed over, onto or under the wharves, or between Vessels when berthed at a wharf, or when moored in a slip adjacent to a wharf in the terminal.

O. **Facility User Fee.** The Terminal Operator shall charge a fee for any User performing their own work at the Terminal Facilities.

## **ITEM 9** **FREE TIME POLICY**

A. **Allowed Free Time.** The amount of Free Time allowed to the User and/or the Vessel, if any, shall be set forth in the Rate Quote. For import Cargo, Free Time commences upon completion of discharge from the Vessel. For export Cargo, Free Time commences, for the full manifested quantity, upon receipt of Cargo at Terminal Facilities and shall be pro-rated based on the date of arrival of individual pieces.

B. **Extensions of Free Time.** The Terminal Operator reserves the right to extend Free Time, at its sole discretion, if requested by the User. Any agreement to extend Free Time will be confirmed in writing by the Terminal Operator to the User. Extensions of Free Time do not alter or amend any other terms or conditions of this Tariff, which shall remain in full force and effect. Free Time or extensions of Free Time herein shall not alter or affect the time of delivery under the bill of lading or contract of carriage.

C. **Demurrage/Transfer to Storage.** Any Cargo remaining at the Terminal Facilities after the expiration of Free Time shall be subject to a “transfer to storage” charge and Wharf Demurrage at the rates set forth in the Annexes, the applicable Rate Quote, and/or any other rate information made available by the Terminal Operator upon request.

## **ITEM 10** **INDEMNIFICATION; LIMITATIONS OF LIABILITY**

A. **INDEMNIFICATION.** THE TERMINAL OPERATOR AND THE TERMINAL PARTIES SHALL NOT BE LIABLE FOR, AND THE USER AND THE USER PARTIES SHALL PROTECT, RELEASE, DEFEND, INDEMNIFY, AND HOLD THE TERMINAL OPERATOR AND THE TERMINAL PARTIES HARMLESS FROM AND AGAINST, ANY AND ALL LOSSES THAT ARISE OUT OF, OCCUR IN CONNECTION WITH, ARE INCIDENT TO, OR RESULT FROM THE USER’S USE OR ACCESS OF, OR PRESENCE AT, THE TERMINAL FACILITIES OR THE TERMINAL OPERATOR’S PERFORMANCE OF TERMINAL SERVICES FOR THE USER OR ANY USER PARTY, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PERSON (INCLUDING THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR FAULT OF THE TERMINAL OPERATOR OR ANY TERMINAL PARTY), AND ANY THEORY OF STRICT LIABILITY AND ANY DEFECT OF PREMISES OR THE UNSEAWORTHINESS OF ANY VESSEL (WHETHER OR NOT PRE-EXISTING THE DATE OF THIS SCHEDULE, EXCEPT TO THE EXTENT SUCH LOSSES ARE CAUSED SOLELY BY THE NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF THE TERMINAL OPERATOR.

B. **Limitation of Liability for Cargo Losses.** Notwithstanding anything to the contrary in this Tariff, the Terminal Operator shall not be or become liable for any Losses for damage to or loss of Cargo in an amount exceeding \$500 per unit or package, and in the case of bulk cargo, \$10 per long ton, or if the Cargo cannot be unitized, \$500 per shipment unless, prior to the commencement of Terminal Services, the User declares a higher value for the Cargo to the Terminal Operator and pays to the Terminal Operator a premium computed at one percent (1%) of the declared value of each package or unit in addition to the other charges for such Terminal Services as herein set forth. If the User provides the Terminal Operator with a declared value for Cargo in accordance with these terms, then the declared value shall be only *prima facie* evidence of the true value of the Cargo and the Terminal Operator’s liability, if any, shall be limited to the lesser of the declared value or the actual value. In no event shall the Terminal Operator be liable for any damage unless and only to the extent that the User proves it resulted solely from the Terminal Operator’s negligence and not due to any inherent vice or condition of the Cargo, whether hidden or apparent. For purposes of this limitation, an intermodal shipping container will be considered a single “package”, and the contents therein will not be considered separate packages. For purposes of this limitation, if the Cargo includes machine(s) or machinery(ies), the entire composite machine shall be deemed a single unit, regardless of how shipped or received. The User shall protect, release, defend, indemnify and hold harmless the Terminal Operator and the Terminal Parties from and against any and all Losses for damage to or loss of Cargo that exceed the limitations of liability provided in this provision, without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any Person (including the sole, joint, or concurrent negligence or fault of any Terminal Party), and any theory of strict liability and any defect of premises or the unseaworthiness of any Vessel (whether or not pre-existing the date of this Tariff. In addition to any other defenses which the Terminal Operator may have, the Terminal Operator shall also be entitled to the benefit of all the rights, immunities, and defenses available or stated to be available to the carrier under its bill of lading or contract of carriage.

C. **Limitation of Liability for Non-Cargo Losses.** Notwithstanding anything to the contrary in this Tariff, with respect to Losses not subject to Item 10(B) of this Tariff, the Terminal Operator shall not be liable for, and the User shall protect, release, defend, indemnify, and hold harmless the Terminal

Operator and the Terminal Parties from and against, the amount of any such Losses that, in the aggregate, exceed the aggregate amount of Rates paid to the Terminal Operator by the User during the one (1) year period preceding the events that gave rise to such Losses, without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any Person (including the sole, joint, or concurrent negligence or fault of any Terminal Party), and any theory of strict liability and any defect of premises or the unseaworthiness of any Vessel (whether or not pre-existing the date of this Tariff).

**D. Terminal Operator Demurrage.** The Terminal Operator shall not be liable for Vessel, Railroad, Motor Carrier, or other demurrage or delays, including but not limited to demurrage or delays arising out of strikes, weather conditions, Acts of God, events of Force Majeure, failure of the Vessel, Railroad, or Motor Carrier to spot or remove equipment in a timely manner, issues related to unloading from Vessel, Railroad, or Motor Carrier equipment, or when unloading from trucks/trailers or when Cargo does not lend itself to being unloaded from Vessel, Railroad, or Motor Carrier equipment or trucks to dock or shed awaiting arrival of a Vessel, unless and only to the extent that the User proves the demurrage or delay resulted solely from the Terminal Operator's negligence, in which case the Terminal Operator's liability for demurrage and/or delay shall be limited to the sum of \$50 per hour for a maximum period of twenty-four (24) hours.

**E. Waiver of Consequential Damages.** THE TERMINAL PARTIES SHALL NOT BE LIABLE FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF PROFITS, LOSS OR DIMINUTION OF MARKET VALUE OF PRODUCT, OR BUSINESS INTERRUPTIONS ARISING OUT OF THIS SCHEDULE OR THE TERMINAL SERVICES, AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE SOLE, CONCURRENT OR CONTRIBUTORY NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), STRICT LIABILITY (INCLUDING, WITHOUT LIMITATION, STRICT STATUTORY LIABILITY AND STRICT LIABILITY IN TORT) OR OTHER FAULT OF ANY PARTY. THE IMMEDIATELY PRECEDING SENTENCE SPECIFICALLY PROTECTS THE TERMINAL PARTIES AGAINST SUCH PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS SCHEDULE OR THE TERMINAL SERVICES EVEN WITH RESPECT TO THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY OF ANY TERMINAL PARTIES; AND ALL RIGHTS TO RECOVER SUCH DAMAGES OR LOST PROFITS ARE HEREBY WAIVED AND RELEASED BY THE USER PARTIES.

**F. Notice of Claim and Opportunity to Inspect.** Notwithstanding anything to the contrary in this Tariff, the Terminal Operator shall not be liable for any Losses for loss, injury, or damage or non-delivery, mis-delivery, or cross-delivery to freight or Cargo handled or transshipped through the Terminal Facilities, and shall be discharged from all Losses in respect of said loss, injury, or damage or non-delivery, mis-delivery, or cross-delivery, unless such Loss is presented to the Terminal Operator, in writing, within a reasonable time, not exceeding sixty (60) days after the User learns or, in the exercise of reasonable care, should have learned of such Loss. As a condition precedent to making any claim and/or filing any suit, the User shall provide the Terminal Operator with a reasonable opportunity to inspect the Cargo which is the basis of the claim. NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY THE USER OR OTHERS AGAINST THE Terminal Operator WITH RESPECT TO THE CARGO UNLESS (I) A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN THIS ITEM, (II) THE USER HAS PROVIDED THE Terminal Operator WITH A REASONABLE OPPORTUNITY TO INSPECT THE CARGO AS PROVIDED IN THIS ITEM, AND (III) SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN NINE (9) MONTHS AFTER THE USER LEARNS OF, OR IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS, INJURY, OR DAMAGE OR NON-DELIVERY, MIS-DELIVERY, OR CROSS-DELIVERY TO THE GOODS. Unless an express notice of the Loss, along with a description of the general nature of such Loss, is given in writing

to the Terminal Operator at the time of the removal of the Cargo, or at the time the Cargo should have been removed into the custody of the Person entitled to delivery thereof, the removal shall be *prima facie* evidence of delivery of the goods by the Terminal Operator in good order and condition, or in the order and condition as noted on the delivery documents. Should the Loss not be apparent, the above notice must be given in writing to the Terminal Operator within three (3) days of the date of delivery or the date the goods should have been delivered.

## **ITEM 11**      **INSURANCE**

A.      **No Insurance for Benefit of User.** The Terminal Operator does not provide any insurance whatsoever for the benefit of the User, nor any insurance whatsoever covering the Cargo or User's goods, property, or personnel. The Rates and other charges do not include any insurance covering damage to or loss of the Cargo or the User's goods, property, or personnel, it being expressly understood and agreed that such insurance, if any is desired by the User, shall be carried by the User at its own cost and expense.

B.      **Motor Carriers and Railroads.** The User and any Motor Carrier or Railroad entering the Terminal Facilities warrant and agree that such Motor Carriers and Railroads shall maintain valid insurance coverage in amounts and on terms deemed acceptable to the Terminal Operator in its sole discretion with the Terminal Operator named as an additional insured with a waiver of subrogation in its favor. Upon request, the User shall furnish the Terminal Operator with a Certificate of Insurance evidencing such insurance coverage maintained by any Motor Carrier or Railroad.

C.      **User Insurance.** Without in any way limiting any of the User's obligations, indemnities, or liabilities as specified elsewhere in this Tariff, the User shall, at its expense, procure and maintain throughout the Term, the following insurance coverage by insurance companies that have a financial strength rating of at least "A-, VII" as rated by A.M. Best:

- i.      Worker's Compensation insurance with statutory limits as required by Applicable Law;
- ii.     Employer's Liability insurance protecting against liability in the absence of Worker's Compensation statutory liability or where Worker's Compensation statutory liability does not apply, for employee bodily injury with limits of \$1,000,000 per occurrence;
- iii.    Commercial General Liability insurance for bodily injury, property damage, personal injury, contractual liability and products and completed operations with limits of not less than \$2,000,000 per occurrence, including cross-liability coverage, and if the Cargo is a Hazardous Material, such Commercial General Liability insurance must (A) include a "named peril / time element pollution" endorsement with limits of not less than \$5,000,000 per occurrence or (B) be supplemented by a separate Contractor's Pollution Legal Liability policy with limits of not less than \$5,000,000 per occurrence; and
- iv.     Automobile Liability insurance including non-owned and hired vehicle coverage for loading and unloading, with limits of \$1,000,000 combined single limit, and if the Cargo is a Hazardous Material, an MCS 90 endorsement is required and coverage will include the CA 9948 (Broadened Pollution Liability) endorsement or equivalent, non-owned and hired vehicle coverage and coverage for loading and unloading, with limits of \$5,000,000 combined single limit.

D. **Vessel Insurance** If User nominates one or more Vessels to deliver or accept redelivery of Cargo at the Terminal Facilities, then without in any way limiting any of the User's obligations, indemnities, or liabilities as specified elsewhere in this Tariff, the User represents and warrants that each such Vessel shall procure and maintain the following minimum insurance, satisfactory to the Terminal Operator in its sole discretion and in compliance with all Applicable Law:

- i. Hull and Machinery Insurance on each Vessel, in an amount not less than the fair market value of such Vessel, with navigation limits adequate for such Vessel's trade; and
- ii. Protection and Indemnity ("P&I") Insurance provided through any combination of (A) full entry with a P&I Club (that is a member of the International Group of P&I Clubs) or (B) policy(ies) with a commercial insurance company(ies) or underwriters syndicate(s) acceptable to the Terminal Operator with terms and amounts no less broad than those customarily carried by similar marine carriers, *provided* that P&I insurance shall include coverage for injury to or death of master, mates and crew; tower's liability; excess collision liability; cargo legal liability; pollution liability; and contractual liability, and *provided further* that the P&I Insurance coverage against pollution liability shall be at limits of (1) not less than \$1,000,000,000 per incident for "Ships" and (2) no less than \$200,000,000 per incident for "Inland Barges".

E. **Other Insurance Rights.** The Terminal Operator and the Terminal Parties will be named as additional insureds on all policies required under this Item. All such policies will also be endorsed to waive subrogation against such Persons. Furthermore, all such insurance policies will be primary and non-contributory coverage, and not concurrent with, or excess over, any other valid insurance that may be available to the Terminal Operator or the Terminal Parties. Upon request, the User will provide to the Terminal Operator and/or the Terminal Parties certificates or other acceptable documentary evidence evidencing the foregoing insurance.

## **ITEM 12 WAIVER OF WARRANTIES**

A. **No Warranty of Workmanlike Performance.** The Terminal Operator makes no warranties of any kind, express or implied, including the implied warranty of workmanlike performance, and specifically disclaims the application to the Terminal Operator, its employees or agents of any duty or theory of breach of warranty, strict liability or absolute liability for loss or damage to Vessels, trucks, vehicles, railcars, Cargo, for Terminal Services performed, or claims for personal injury or death.

B. **No Warranty for Terminal Facilities.** The Terminal Operator makes no warranties whatsoever with respect to the Terminal Facilities or the User's access or use thereof. Prior to access, the User shall conduct a thorough inspection of the Terminal Facilities and the areas that it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for the User's intended access and use. If the User believes there is any problem as to safety or suitability, the User shall immediately notify the Terminal Operator. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to the User's satisfaction, the User shall cease all of its operations related to the Terminal Facilities. Once the User begins any access or use of the Terminal Facilities whatsoever, or continues to conduct operations at the Terminal Facilities, it shall be irrevocably presumed that the Terminal Facilities was inspected and accepted by the User as both safe and suitable for its operations.

C. **Waiver of All Other Warranties.** THE USER SPECIFICALLY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF WORKMANLIKE PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE,



WITH RESPECT TO THE TERMINAL OPERATOR'S PERSONNEL, PROPERTY, TERMINAL FACILITIES, TERMINAL SERVICES, TERMINAL STORAGE, AND USAGE.

**ITEM 13**      **HAZARDOUS CARGOES**

A.      **Notice; Right to Refuse.** The User must notify the Terminal Operator of any Cargo that contains Hazardous Materials at least three (3) Business Days in advance of tendering such Hazardous Materials to the Terminal Operator. The Terminal Operator, in its sole discretion, may refuse to handle any Hazardous Materials (i) that it believes could present an unreasonable risk of harm or damage to any person, Vessel, vehicle, equipment, Terminal Facilities or property, and/or (ii) if the Terminal Operator does not have the Permit(s) needed to handle or store such Hazardous Materials. If the Terminal Operator refuses any Hazardous Materials, the Terminal Operator shall notify the User as soon as possible. The User shall promptly thereafter, at its sole risk and expense, alleviate all concerns to the Terminal Operator's satisfaction or otherwise promptly retrieve and remove the Hazardous Materials from the Terminal Facilities.

B.      **Hazardous Materials Indemnification.** The User agrees to be responsible for, and to defend, indemnify and hold harmless the Terminal Operator, its officers, directors, employees and agents, and all related entities and their officers, directors, employees and agents, from and against, any and all loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to Hazardous Materials, or the handling, storage or transportation of Hazardous Materials. The User's indemnification obligations include without limitation any Losses resulting from or in any way relating to the User's Hazardous Materials, the User's failure to comply with the requirements and responsibilities allocated to it above, or the User's failure to comply with any federal or state hazardous materials law or regulations. The foregoing allocation of responsibility and agreement to defend and indemnify specifically includes property damage and bodily injury, illness and/or death claims, as well as all pollution and/or environmental matters such as response, cleanup, mitigation, remediation, alleviation, removal, and restoration.

**ITEM 14**      **FORCE MAJEURE**

A.      **Procedure.** If either the Terminal Operator or the User is rendered unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Tariff, other than to make payments then or thereafter due hereunder, upon such party giving notice and a detailed description of such Force Majeure to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, to the extent they are affected by such Force Majeure, will be suspended during the continuance of any inability so caused but for no longer period, and such cause must as far as possible be remedied with all reasonable and diligent dispatch by the party claiming such in order to put itself in a position to carry out its obligations under this Tariff. The party claiming Force Majeure must promptly provide notice to the other party of the date of termination of such Force Majeure event.

B.      **Definition.** The term "*Force Majeure*" means any event not within the control of the party (or any of its Affiliates) claiming suspension and that by the exercise of due diligence such party could not have prevented or overcome, including but not limited to events of nature or the elements, strikes, lockouts or other labor disturbances, sabotage, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, storms, storm warnings, floods, high or low water, washouts, arrests and restraints of Governmental Authorities and other Persons, civil disturbances, environmental accidents affecting the land, air or water, explosions, breakage or accident to or freezing of equipment or machinery, other casualty occurrences substantially affecting the operation of the Facility, terrorist acts or the threat thereof, the necessity for making repairs or alterations to equipment, machinery, materials, equipment, rights-of-way, permits, or labor, or any actions by Governmental Authorities that are resisted in good faith.

## **ITEM 15**      **TARIFF ENFORCEMENT**

Use of the Terminal Facilities shall constitute agreement to the terms and conditions of this Tariff and evidences an agreement on the part of the User to pay all applicable Rates and charges, be governed by all rules and regulations contained herein, and the acceptance of all limitations contained herein. A separate contract or agreement with the Terminal Operator shall only supersede this Tariff if the contract or agreement contains a written statement that the terms of this Tariff do not apply. In the event of any conflict or inconsistency between any other agreement (including but not limited to any tariff or schedule published or maintained by the applicable port authority) and this Tariff, the terms, conditions, and limitations of this Tariff shall apply; *provided, however*, that in the event of a conflict or inconsistency between the Rate Quote and this Tariff, the terms, conditions, and limitations of the Rate Quote shall apply.

## **ITEM 16**      **DEFAULT**

Upon any Default by the User, in addition to any other remedies available to the Terminal Operator under law or in equity, the User shall be liable to the Terminal Operator for: (a) all expenses, including Attorney Fees and Costs (i) incurred by Terminal Operator in curing or seeking to cure such Default or in exercising or seeking to exercise any of the Terminal Operator's rights and remedies with respect to such Default, and (ii) otherwise arising out of such Default, plus (b) Interest on all such expenses, all of which expenses and Interest will be due and payable by the User to the Terminal Operator upon written demand.

## **ITEM 17**      **GOVERNING LAW; DISPUTE RESOLUTION**

A. The general maritime law of the United States (excluding its conflict of law rules) shall apply to the interpretation and/or construction of this Tariff. If the general maritime law of the United States is found not to apply or does not provide the rule of decision for the issue in question, then the statutory and common laws of the state where the Terminal Services were rendered shall apply (excluding its conflict of law rules).

B. If the local management of each of the Terminal Operator and the User is not able, in good faith, to resolve any dispute within ten (10) days from the receipt of written notice thereof, the senior management of each of the Parties will meet within twenty (20) days following the receipt of such notice and will attempt in good faith to resolve such dispute. If senior management is not able to resolve the dispute within ten (10) days, either the Terminal Operator or the User may submit the dispute to a court of competent jurisdiction in the state where the Terminal Services were rendered. EACH OF THE TERMINAL OPERATOR AND THE USER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THE AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

## **ITEM 18**      **GENERAL PROVISIONS**

A. **Changes to the Tariff.** This Tariff may be changed, modified, altered, amended, terminated, cancelled, or revoked by the Terminal Operator or any Terminal Party without notice. The current version of this Tariff is available online.

B. **Notices.** All notices, requests, demands and other communications provided for by the Agreement shall be in writing and shall be given by personal delivery, sent via a nationally recognized overnight courier service, or sent by United States mail, receipt confirmed, (i) if to the User, the corresponding address set forth in the Rate Quote or (ii) if to the Terminal Operator (A) Carolina Marine Terminal LLC, c/o Savage Services Corporation, 901 W. Legacy Center Way, Midvale, Utah 84047, Attn:

Group Leader, Industrial Facilities and (B) with a copy (which shall not constitute notice) to, Savage Services Corporation, 901 W. Legacy Center Way, Midvale, Utah 84047, Attn: General Counsel; or such other address as provided in writing by the Terminal Operator. Any notice shall be deemed received, unless earlier received, (1) if sent by overnight courier service, on the next Business Day, (2) if sent by certified or registered United States mail, return receipt requested, when actually received and (3) if sent by United States mail, first class, five (5) Business Days after posting in the United States mail.

C. **Severability.** If any term or other provision of this Tariff is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Tariff shall nevertheless remain in full force and effect to the greatest extent practicable.

D. **No Waiver.** Any waiver or consent, express or implied, by the Terminal Operator of any Default by the User or any other Person shall not constitute a consent or waiver of any other rights of the Terminal Operator hereunder, including the Terminal Operator's rights on subsequent Defaults by the User. Any failure on the part of the Terminal Operator to complain of any act of the User or any other Person in Default, irrespective of how long the failure continues, does not constitute a waiver by the Terminal Operator of its rights with respect to that Default.

E. **Conflict of Interest.** The User shall not pay any commission fee, or rebate to any employee of the Terminal Operator or favor an employee of the Terminal Operator with any gift or entertainment of significant value.

F. **Survival.** The provisions of this Tariff that by their nature survive its termination (including indemnities, waivers, releases, limitations, exclusions, warranties, licenses, confidentiality and governing law provisions and all provisions requiring payment of Rates, fees or other amounts that have not been paid prior to such termination or expiration) shall survive, regardless of the basis for such termination.

G. **Headings.** The Section headings contained in this Tariff are used only as a matter of convenience and shall not be considered a part of this Tariff or used in determining the intent of the Terminal Operator or the User.

H. **Interpretation.** Unless the context requires otherwise: (i) the gender (or lack of gender) of all words used in this Tariff includes the masculine, feminine and neuter; (ii) references to Sections refer to Sections of this Tariff; (iii) references to laws refer to such laws as they may be amended from time to time, and references to particular provisions of a law include any corresponding provisions of any succeeding law; (iv) references to any agreement refers to such agreement as it may be amended from time to time; (v) references to money refer to legal currency of the United States of America; (vi) words, including defined terms in this Tariff, in the singular include the plural and vice versa; (vii) the conjunction "or" shall be understood in its inclusive sense (and/or); (viii) the words "includes", "including" and words of similar import are deemed to be followed by the words "without limitation"; and (ix) the words "hereby", "herein", "hereunder", "hereof" and words of similar import refer to this Tariff as a whole and not merely to the specific section, paragraph, or clause in which such word appears.

I. **Further Assurances.** The User shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Tariff and the transactions contemplated hereby.

## ANNEX "A"

### **RATES AND FEES FOR CAROLINA MARINE TERMINAL LLC**

#### **DOCKAGE CHARGES**

Dockage is the charge assessed against a vessel or other craft for berthing or making fast to any wharf, mooring devise or other facility of the terminal or for mooring to a vessel so berthed. The following dockage charges will be assessed:

#### **DOCKAGE, PER LINEAR FOOT PER 24-HOUR PERIOD**

0' to 649'	\$12.50
650' and over	\$13.50

Note: Includes seagoing barges loading or discharging cargo carried on foreign or intracoastal manifests.

Dockage will be computed on LOA (Length Overall) as published in Lloyd's Register of Shipping. Minimum Dockage Charge is \$300.00 per day or fraction. After the first 24-hour period of dockage assessment, dockage will be assessed on an hourly basis; 1/24 of daily dockage charge for each hour over the initial 24-hour period.

#### **Wharfage Rates:**

- (a) Dry bulk commodities \$2.19 per ton of 2,000 lbs.
- (b) Cargo not otherwise shown \$ 5.10 per ton of 2,000 lbs.

#### **SECURITY SURCHARGE**

Security Surcharge is a fee assessed against the vessel to recover costs incurred for security assessments, security plans, equipment purchases, installation and maintenance and staffing required to implement and maintain surveillance and access controls mandated by the Maritime Transportation Security Act of 2002 and U.S. Coast Guard regulation 33 CFR 105. The security surcharge described herein shall apply to all vessels and barges (working or in lay berth) that utilize the facilities of Carolina Marine Terminal, LLC

Based on hours at Berth.....\$ 54.00 per hour

#### **FRESH WATER**

For furnishing fresh water to vessel, the charge will be \$ 7.14 per short ton of 2,000 lbs., minimum charge of \$430.00 plus \$ 50.00 connection fee.

## MISCELLANEOUS CHARGES

### SECTION 1. MOBILE HARBOR CRANE RENTAL (4 Hour Min. Charge)

Straight Time	\$ 581.74 per hr.
Overtime	\$ 647.35 per hr.
Holidays	\$ 711.80 per hr.

#### CRANE STANDBY

Straight Time	\$ 193.44 per hr.
Overtime Mon. – Fri.	\$ 255.93 per hr.
Overtime Weekends – Holidays	\$ 323.85 per hr.

### SECTION 2 EQUIPMENT RENTAL (4 Hour Min. Charge)

Front End Loader with Operator	\$ 224.00 per hr.
Excavator with Operator	\$ 300.00 per hr.

### SECTION 3 LABOR FURNISHED RATES (4 Hour Min. Charge)

Supervisor	
Straight Time	\$ 63.00
Overtime	\$ 84.00
Holidays	\$ 137.00
Crane Operator	
Straight Time	\$ 58.00
Overtime	\$ 80.00
Holidays	\$ 134.00
Equipment Operator	
Straight Time	\$ 57.00
Overtime	\$ 71.00
Holidays	\$ 120.00
Skilled Laborer	
Straight Time	\$ 57.00
Overtime	\$ 71.00
Holidays	\$ 120.00