



LONDON GATEWAY PORT LIMITED

**GENERAL TRADING TERMS AND CONDITIONS
FOR LONDON GATEWAY PORT**

December 2017

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1. Definitions and Interpretation

1.1. In these Terms and Conditions the following words have the following meanings:

Affiliate means in relation to any company:

- (a) a company which is either a Holding Company or a Subsidiary of such company; or
- (b) a company which is a Subsidiary of a Holding Company of which such company is also a Subsidiary

Applicable Laws means all applicable international, European and national laws, SOLAS Convention, regulations, regulatory requirements, codes of practice, practice directions of the International Maritime Organisation or the Health and Safety Executive, sanctions and byelaws

Charges includes:

- (a) all charges set out in the Supplier's published tariff;
- (b) VGM Charges;
- (c) costs incurred as a result in a change in Applicable Laws; and
- (d) any other charges imposed by the Supplier from time to time in respect of any Services and includes ship dues within the meaning of the Harbours Act 1964

Community System means the computer system used by the Supplier, shipping lines, agents, forwarders, hauliers, freight operating companies and others for customs clearance and inventory control of imports and exports, and any electronic data system that may succeed it. For the purpose of these Terms and Conditions, Community System also includes any additional electronic systems or interactive services provided by or on behalf of the Supplier for use by the Customer

Cruise or Ferry Passenger Services means Passenger Services provided to or in connection with a cruise vessel, passenger ferry or any other Ship whose primary purpose is the movement of people

Customer includes any person who:

- (a) visits the Port Premises;
- (b) is the Owner of Goods or Equipment delivered, brought into or come howsoever to be upon the Port Premises;
- (c) is the Owner, master or crew of or a passenger on a Ship which enters the Port Premises;
- (d) by itself, its employees, contractors or agents avails itself of any facility or Services provided by the Supplier;
- (e) is the VGM Declarant; or
- (f) by itself, its employees, contractors or agents seeks to avail itself of any facility or Services provided by the Supplier

Equipment means any plant, machinery, container package, case, pallet, vehicle (private or commercial), trailer, truck, train or wagon of any description

Goods means cargo of whatever nature

Holding Company has the meaning given to it in section 1159 of the Companies Act 2006

ISPS Code means the International Ship and Port Facility Security Code forming part of the SOLAS Convention

LGIC means London Gateway Identity Card, the road haulage identity system operated by the Supplier

LGP Harbour Master includes every officer of LGPL having the powers of a harbour master under the Harbours, Docks and Piers Clauses Act 1847

LGPL means London Gateway Port Limited trading as DP World London Gateway

Luggage means any property travelling with a Passenger but excludes any Goods contained in or carried on board a Ship

Manager means any manager duly appointed from time to time by the Supplier to be in charge of a department, division or operation at or on the Port Premises and/or any LGP Harbour Master appointed by LGPL and includes his or her deputies and assistants

Order means the London Gateway Port Harbour Empowerment Order 2008 (S.I. 2008/1261) as may be amended, varied or extended from time to time

Owner means:

- (a) when used with reference to Goods or Equipment includes the owner, container owner, container lessee, agent, bailee, consignor, consolidator, consignee, freight operating company or other person in charge of the Goods or Equipment and their respective agents in relation thereto;
- (b) when used with reference to any Ship includes the registered owner, agent, charterer (time, voyage or demise), line operator, manager, master or other person in charge of the Ship; and
- (c) when used with reference to any road or rail vehicles includes the owner, agent, driver or other person in charge of the vehicle

Passenger means any person using the Port Premises as the point of embarkation or disembarkation in connection with travelling on a Ship

Passenger Services means services provided to or in connection with Passengers and their Luggage including but not limited to the provision of terminal facilities for the embarkation or disembarkation of Passengers and their Luggage, clearance through HM Revenue & Customs of Passengers and their Luggage and any other ancillary services related to Passengers and their Luggage

Plan means drawing number 2632-SK133 Rev A as set out in Appendix 2 to these Terms and Conditions

Port Premises means the port premises as defined in the Order and shown tinted green and yellow on the Plan

Services means any operation, work or services performed or provided by the Supplier in connection with Goods, Equipment or a Ship and in particular with the berthing, unberthing, moving and servicing (including bunkering or watering) or repairing of any Ship or Equipment,

the shipping and unshipping of Goods, the sorting, weighing (including container weighing and associated services in order to verify or establishing the VGM), marking, checking, recording, cooping, storing, devanning or re-annning, and general handling and movement of Goods and Equipment by road, rail or otherwise, the embarking, disembarking and movement of crews and passengers and the provision of LGIC and VBS

Ship means any vessel, containership, barge, lighter, non-displacement craft, hydrofoil, hovercraft or other vessel of any description or any part thereof

Shipper means a legal entity or person named on the bill of lading or sea waybill or equivalent multi-modal transport document (e.g. "through" bill of lading) as Shipper and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company with respect to a packed container or containers being handled at the Port Premises

SOLAS Convention means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines, as amended from time to time

SOLAS Guidelines means the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organisation

Subsidiary has the meaning given to it in section 1159 of the Companies Act 2006

Supplier means the relevant entity providing the Services and will be either LGPL or an Affiliate of LGPL

VBS means the vehicle booking system operated by the Supplier

VGM or Verified Gross Mass means the total gross mass of each and every packed container which is either provided by the Customer or the Supplier (as the case may be) prescribed by the SOLAS Convention and these Terms and Conditions

VGM Charges means:

- (a) all charges incurred in obtaining the VGM to take account of the SOLAS Convention, including but not limited to, checking the existence of a VGM in the Goods documentation, establishing the VGM, additional transport, shunting, handling, re-handling, de-stuffing, stuffing and storage; and
- (b) the charges set out in Appendix 1 to these Terms and Conditions

VGM Cut-off means 24 hours prior to the estimated arrival time of a Ship as first communicated to the Customer

VGM Declarant means the Shipper or another person on behalf of the Shipper

- 1.2. Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.3. Clause headings and sub-headings are for ease of reference and do not form part of or affect the interpretation of these Terms and Conditions.
- 1.4. Appendices are part of these Terms and Conditions and are incorporated as an integral part which may be amended by the Supplier from time to time.
- 1.5. References to each party herein include references to its successors in title and permitted assignees and novatees.

- 1.6. Any phrase introduced by the terms "including", "include", "in particular", or any similar expression are to be construed as illustrative and do not limit the sense of the words proceeding those terms.
- 1.7. Any reference to "person" includes any natural person, company, body corporate or unincorporate, or other judicial person, partnership, firm, joint venture or trust.
- 1.8. References to any statute or statutory provision are to be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced except to the extent that any amendment, consolidation, modification, extension, re-enactment or replacement after the date the parties entered into a relationship would extend or increase the Supplier's liability. In the event that any liability or duty arising hereunder attaches to more than one Customer, such liability or duty is joint and several.

2. Application of Conditions

- 2.1. Save as otherwise specifically provided, these Terms and Conditions apply:
 - (a) to all Services performed by the Supplier whether directly or indirectly and whether within the area of the Port Premises or elsewhere; and
 - (b) to all or any access of or by any Goods, Equipment, person or vehicle to or from the Port Premises; and
 - (c) to all other relationships, whether contractual or otherwise and whether created with or without the agreement of the Supplier.
- 2.2. Each Customer warrants that it acts as agent for each and every (other) Owner of the Goods, Equipment or Ship as the case may be and will procure acceptance of these Terms and Conditions by each and every Owner. In the absence of express acceptance by the Customer of these Terms and Conditions, acceptance is implied in the event of the entry or delivery of any Ship, person, Goods or Equipment into or onto the Port Premises and/or the submission of any documentation via the Community System or otherwise or oral application to the Supplier for entry to the Port Premises or for any Services or the use of any facility by or on behalf of any Customer.
- 2.3. Subject to clauses 2.6 to 2.10, these Terms and Conditions constitute the entire agreement between the Supplier and the Customer and supersede any previous agreement or arrangement between them relating to the subject matter hereof and it is expressly declared that no variation to these Terms and Conditions is effective unless made in writing and signed by the duly authorised representatives of both parties.
- 2.4. No printed terms or conditions of any purchase order or other correspondence or documents issued by the Customer at any time in connection with the Services apply.
- 2.5. These Terms and Conditions are in addition to and not in substitution of the rights and powers of LGPL conferred by the Order. Furthermore the Customer, its employees, agents, contractors, Goods, Equipment and Ships are subject to LGPL's general byelaws (made pursuant to its powers under the Order) for the time being in force. In the event of any conflict between these Terms and Conditions and LGPL's byelaws then the latter prevail to the extent of such conflict. Where draft byelaws have been published by LGPL but not confirmed by the Secretary of State, the Customer will comply with all terms of the published byelaws as though they had been so confirmed.
- 2.6. Where the Customer is issued with any security pass or identification card in connection with its access to the Port Premises, the Customer must comply with any additional terms and conditions governing the use of such security pass or identification card.

- 2.7. The Supplier may issue separate terms and conditions governing the provision of specialist services. Unless specified otherwise in writing, such additional terms and conditions apply in respect of the specialist services but these Terms and Conditions also continue to apply to the extent they are applicable.
- 2.8. Where the Customer uses the VBS then such use is subject to the terms of access and use of the VBS which can be found at www.londongateway.com or can be separately provided on request.
- 2.9. Use of the Community System is subject to the standard terms of use for the Community System which are available from Community Network Services Limited upon request.
- 2.10. For the avoidance of doubt, where the Customer is acting or purports to act as an agent for a principal then it contracts with the Supplier on these Terms and Conditions.
- 2.11. In respect of Passenger Services:
 - (a) no Cruise or Ferry Passenger Services will be provided at the Port Premises without the express prior agreement of the Supplier and the express agreement of further Terms and Conditions to apply to those services; and
 - (b) any Passenger Services other than Cruise or Ferry Passenger Services provided at the Port Premises are provided subject to these Terms and Conditions and also the Passenger Terms and Conditions available from the LGP Harbour Master on request.

3. Provision of Services

- 3.1. The Supplier warrants that the Services will be carried out with reasonable skill and care.
- 3.2. The Supplier will exercise reasonable despatch in executing orders for its Services but will not be liable for any delay whatsoever, howsoever caused.
- 3.3. Goods and Equipment which for any reason cannot be delivered at the time of landing ex-ship or ex-train will be placed on the quays, in a transit shed or elsewhere within the Port Premises **at the expense and sole risk of the Customer**. Charges for transit shed and quay rental will be made where appropriate.
- 3.4. The Supplier reserves the right to:
 - (a) appoint sub-contractors to perform all or any part of the Services;
 - (b) transfer any of its functions in accordance with the provisions of the Order;
 - (c) at any time before it commences the performance of any Services, serve written notice on the Customer declining to undertake the performance of such Services and giving reasons for so declining;
 - (d) **suspend the provision of any Services in the event of any breach** of these Terms and Conditions by the Customer;
 - (e) suspend the provision of any Services in the event that the Supplier reasonably believes the Customer is attempting to damage or disrupt the Community System or any other electronic system provided by or on behalf of the Supplier.
- 3.5. Subject to clause 9, in the event the Supplier declines to perform the Services or suspends performance of the Services in accordance with clauses 3.4(c) to 3.4(e) respectively, the Supplier

will not have any liability for any loss or damage to Ships, Goods or Equipment arising out of the non-performance or cessation of performance of the Services.

- 3.6. In the case of the Supplier declining to perform any Services by written notice in accordance with clause 3.4(c), for any reason other than its own inability to perform the Services, the Customer must, at its own expense, remove any Goods or Equipment or both from the Supplier's premises within 30 days of the date of said notice, failing **which the Supplier may so remove them at the expense and risk of the Customer.**
- 3.7. In the event the Supplier suspends provision of the Services in accordance with clauses 3.4(c) to 3.4(e) and declines to recommence the provision of the Services, the Supplier will notify the Customer and the Customer must, at its own expense, remove any Goods or Equipment from the Supplier's premises within 30 days of the date of said notice failing **which the Supplier may so remove them at the expense and risk of the Customer.**
- 3.8. The Customer acknowledges and agrees that the Supplier has absolute discretion pursuant to the terms of the Order, in the allocation of berths, rail terminal capacity, quay plant, machinery, labour and storage space.
- 3.9. The acceptance by the Supplier of Goods for shipment or carriage by rail does not imply any warranty that such Goods will be shipped or carried by rail. The acceptance or refusal of Goods for shipment or carriage by rail is the responsibility of the Customer and not the Supplier.

Container Weighing

- 3.10. In accordance with the SOLAS Convention the Customer is required (among other things) to:
 - (a) establish the VGM of a packed container; and
 - (b) ensure that, once established, the VGM is communicated in the relevant shipping documents in advance to the Ship's master and to the Supplier.
- 3.11. At the Port Premises the Customer will (through the Community System) be required to:
 - (a) provide the VGM; or
 - (b) indicate that it requires the Customer to provide the VGM.
- 3.12. In the event the Customer has provided the VGM through the Community System to the Supplier, the Supplier shall rely in good faith, without further investigation, on the purported VGM.
- 3.13. The Customer warrants and represents that any VGM it provides or provided on its behalf to the Supplier (other than a VGM provided by LGPL) has been obtained in using appropriately calibrated and certified equipment in compliance with Applicable Laws.
- 3.14. If either:
 - (a) a packed container has been received by the Port Premises but the VGM for such packed container is not received by the Supplier from a Customer before the VGM Cut-off; or
 - (b) the Customer requests (through the Community System) that the packed container be weighed by the Supplier; or
 - (c) the VGM provided by the Customer is found to be +/- 900kg if at or below 18mt or +/- 5% if above 18mt of the VGM weight as determined by the Supplier,

then the Supplier shall obtain the VGM for such packed container using appropriately calibrated and certified equipment as required by Applicable Laws and, for the purpose of paragraphs 3.14(b) and 3.14(c), the VGM shall replace the VGM for that container previously provided by a VGM Declarant.

- 3.15. The Supplier will not load a packed Container onto a Ship if the VGM provided by the Customer or established by the Supplier in accordance with clause 3.14 above shows a VGM greater than the maximum gross mass indicated on the safety approval plate under the International Convention for Safe Containers as amended from time to time (an **Overweight container**). For the avoidance of doubt, the Supplier shall have no responsibility for verifying such VGM against the safety approval plate.
- 3.16. The Customer agrees and warrants to pay the VGM Charges including all cost and charges associated with Overweight containers, delays or missed sailing.

4. Customer's Warranties

- 4.1. Each Customer which avails itself of any Services provided by the Supplier in respect of any Goods, Equipment or Ship warrants to the Supplier that it has the authority of all Owners having any title to or interest in Goods, Equipment or Ship to accept these Terms and Conditions on their behalf as well as on its own behalf as principal and has specifically notified these Terms and Conditions to such persons.
- 4.2. All such Owners, including finance companies, lessors and others having or claiming to have title to or an interest in Goods, Equipment or Ship are advised that unless the Supplier is notified in writing of their title or interest in any particular Goods, Equipment or Ship prior to the commencement of any relationship between the Supplier and the Customer, these Terms and Conditions are deemed to have been accepted with the authority of such persons. Such persons' rights over and in respect of the Goods, Equipment or Ship are subordinated to the rights of the Supplier hereunder.
- 4.3. The Customer warrants that it will procure that the rights, exceptions, defences and limits available to the Customer as regards third parties, either by statute or by contractual terms, are extended to the Supplier in so far as lawfully possible in relation to those third parties.
- 4.4. The Customer warrants that its employees (and those of any agents or contractors it may engage including without limitation hauliers) are properly trained and competent (which for this purpose, includes the ability competently to read and speak English to carry out the tasks at any time assigned to them including in relation to the giving of any instructions to the Supplier or the inputting of any information into any electronic service or system operated or managed by or on behalf of the Supplier whether such instruction or input of information is given in writing, orally, electronically or by any other means. The Customer further and separately warrants that such persons have the full authority to give such instructions or input such information.
- 4.5. The Customer warrants that it has obtained or will obtain and maintain at its own expense, all necessary licences and authorisations and has complied or will comply with all Applicable Laws relating to the carriage, handling, storage and movement of the Goods and or Equipment.
- 4.6. The Customer warrants (unless otherwise specified in writing to the Manager) that any Goods, Equipment or Ship which it delivers, directs to or causes to be upon the Port Premises:
 - (a) are not dangerous or hazardous to health, property or the environment or poisonous, flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on the Port Premises;
 - (b) are not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;

- (c) are not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Port Premises;
 - (d) are not over-heated or under-heated or liable to become so while on the Port Premises;
 - (e) will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods, Equipment or Ship or the Port Premises or the environment adjacent thereto or more generally;
 - (f) do not require for their safekeeping any special protection (other than as may be agreed in writing between the Supplier and the Customer) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will remain safe if left standing in the open on the Port Premises or in covered accommodation (if agreed in writing with the Supplier);
 - (g) contain no unauthorised controlled drugs, contraband, pornographic or other illegal matter;
 - (h) are properly and sufficiently packed, marked, documented and labelled, in accordance with all Applicable Laws for all shipping, cargo handling, despatch, customs and like purposes;
 - (i) are fit for their intended purpose and are in a fit and proper condition to be handled or otherwise dealt with by the Supplier, its equipment and its employees, agents and contractors.
- 4.7. The Customer warrants that it will immediately inform and keep informed the Manager of any occurrence or incident which might affect the safe and efficient operation of the Port Premises or other persons at the Port Premises or result in adverse environmental impact.
- 4.8. The Customer must take, at its own cost, such reasonable steps with respect to that Customer, or that Customer's Goods, Equipment or Ship to prevent, minimise, control or eliminate any danger, inconvenience or adverse environmental impact as may be required by the Supplier.
- 4.9. The Customer must not and warrants that it will not:
- (a) use any devices which transmit radio signals or attempt to block radio signals (including without limitation GPS) whilst on the Port Premises;
 - (b) interfere with any systems, communication links and equipment or computer hardware and software whilst on the Port Premises;
 - (c) use or attempt to use any devices or software to gain access to unauthorised data and information; without the prior written consent of the Supplier except that the Customer may use marine band and radar radio frequencies.
- 4.10. In respect of any Ship of which the Customer is the Owner, the Customer warrants and undertakes to ensure that the Ship is operated in compliance with all Applicable Laws and international standards in relation to safety, stability, seaworthiness, fitness for purpose and security, including any regulations introduced pursuant to the ISPS Code.
- 4.11. The Customer shall comply with all such standards of fire prevention and protection against as are from time to time necessary or advisable for the protection of persons or property.

5. Hazardous Goods and Waste

- 5.1. No waste material or Goods of a dangerous, hazardous or poisonous nature will be handled by the Supplier except by prior agreement with the LGP Harbour Master and then only in accordance

with the conditions prescribed by the LGP Harbour Master and all Applicable Laws. The Supplier's policy for handling such material can be provided upon request. Without prejudice to the above, the handling of goods requiring fumigation must be in accordance with the Supplier's Safe Code of Practice for Fumigation (also available upon request).

- 5.2. The Customer warrants that any waste material or Goods of a dangerous, hazardous or poisonous nature or any Equipment containing such material or Goods are properly marked with any warning as to the hazardous nature of any contents and the precautions to be taken in handling the same (in the event of the escape of anything injurious therefrom) as may be necessary to ensure the safety and health of all persons likely to handle or come into contact with the same.

6. Documentation, Formalities and Seals

- 6.1. All documentation submissions including delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, goods handling instructions and orders for any Services must be submitted to the Community System (where the facility for submission is generally available) not less than 24 hours (or such shorter time as may be agreed in writing by the Supplier) before the Services are required to be performed. Any order given orally must be confirmed by or on behalf of the Customer via the Community System (where the facility for submission is generally available) or, in writing within 24 hours (where the facility for submission is not generally available).
- 6.2. All other notifications or communications must be made in accordance with clause 16. No communication may be made to or will be accepted by the Supplier in the form of a facsimile transmission.
- 6.3. The Supplier is not liable for any failure, disruption or other malfunction of the Community System.
- 6.4. The Customer is entirely responsible for compliance with formalities and procedures prescribed by any statutory, Government or local Government departments including, without limitation, HM Revenue & Customs, the UK Border Agency, the Home Office (including the UK Border Force), the relevant Port Health Authority, the Maritime and Coastguard Agency and the Department for Environment Food and Rural Affairs. The Supplier is not liable for any acts or omissions of any of the foregoing bodies or any losses, claims or delays resulting from those acts or omissions including, without limitation, in respect of damaged Goods and Goods not satisfactorily re-vanned by the Supplier.
- 6.5. Unless agreed otherwise in writing, the Supplier is not responsible for checking seals or seal numbers and is not required to carry out any seal check or to note seal numbers on any document at any time whatsoever. Where seal numbers are noted for whatever reason by the Supplier then no representation is made by the Supplier as to the accuracy of the number noted or to the condition of the seal.

7. Import and Export Formalities

- 7.1. Authorisation for the removal of imported Goods and Equipment will not be granted by the Supplier unless such Goods and Equipment are correctly released and cleared with no statutory authority holds applied via the Community System, or local holds that may be applied via equipment control systems operated by or on behalf of the Supplier. Goods and Equipment which fall outside the scope of the Community System are subject to acceptance of other documentation as prescribed from time to time by the Manager so that the Goods and Equipment may be released to nominated persons.
- 7.2. All Goods and/or Equipment brought to the Port Premises for shipment will only be accepted by the Port Premises if correctly entered by or on behalf of the Customer on the Community System and arriving at the Port Premises within the receiving period agreed by the Manager.

- 7.3. The Customer must ensure that any hazardous Goods are pre-entered as such on the Community System and must include the IMDG class and UN number. Such hazardous Goods must be labelled by or on behalf of the Customer in accordance with all Applicable Laws and accompanied by a duly authorised dangerous goods note.
- 7.4. Goods which fall outside the scope of the Community System must be accompanied by a standard shipping note, unit load note, dangerous goods note, vehicle condition report or temperature control document, as agreed with the Manager not later than:
- (a) the arrival of trucks/lorries conveying such Goods and/or Equipment at the Port Premises in respect of Goods and/or Equipment brought to the Port Premises by road; or
 - (b) the arrival of rail wagons conveying such Goods and/or Equipment at the Port Premises in respect of Goods and/or Equipment brought to the Port Premises by rail

and, in the case of Goods and/or Equipment brought to the Port Premises by rail must be the subject of prior notification to the Manager to allow any necessary wayleave or other arrangements to be made with Network Rail or any other operator of rail services.

- 7.5. Subject to alternative arrangements being agreed in writing with the Supplier, a standard shipping note, unit load note, dangerous goods note, vehicle condition report, temperature control document or other document accompanying the Goods or Equipment must specify marks and number of packages, description of Goods, gross weight, VGM or request for Supplier to provide the VGM, any weight imbalances, cubic measurement, name of the Ship, port to which the Goods or Equipment are to be shipped, any special carriage or storage requirements of the Goods and the name and address of the Customer or Customer's agent to whom Charges are to be rendered.
- 7.6. The Customer is responsible for all import duties, export duties, fines, charges and imposts relating to the Goods. The Customer indemnifies the Supplier against any claims made against the Supplier by HM Revenue & Customs or any other Government or regulatory agency and any other costs, charges and expenses in respect of any Goods under bond.

8. Goods, Equipment and Liens

- 8.1. The Supplier will, at its sole discretion, have the following powers in respect of Goods and Equipment abandoned, neglected or left unattended, whether wilfully or by default, on the Port Premises:
- (a) the power immediately to remove Goods and Equipment in the case of a hazard or other emergency (and to dispose of such Goods and Equipment where necessary) without notice;
 - (b) the power generally to remove, store, dispose of or sell Goods and Equipment on reasonable notice to the Customer (the length of such notice to be determined by the Supplier on a case by case basis);
 - (c) in the case of LGPL, the statutory power to remove, dispose of or sell Goods and Equipment in accordance with the provisions of the Harbour Docks & Piers Clauses Act 1847 as incorporated in the Order. Any such sale to be on the basis of the best offer immediately available, which may or may not amount to as much as the Customer (or any other person interested) may believe the Goods or Equipment to be worth in any specialist market place, and in each case to charge for the reasonable costs incurred in respect of the removal, storage and disposal of the Goods or Equipment.
- 8.2. The Supplier will have a general, as well as a particular lien on all Goods, Equipment and documents relating to Goods and Equipment in its possession custody or control for all and any

sums due to the Supplier at any time from the Customer or any other person interested in the Goods or Equipment whether in relation to the same Goods and Equipment or otherwise. The Supplier will be entitled to sell or dispose of such Goods or Equipment or documents as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums upon 14 days' written notice to the Customer.

- 8.3. In the event that any Goods or Equipment held pursuant to the lien under clause 8.2 are perishable and in the view of the Manager it is impracticable to give the notice required by clause 8.2 because the Goods or Equipment will, or may, deteriorate in value during the delay occasioned by the giving of the notice, the Supplier may sell the Goods and Equipment without giving the said notice, but will as soon as practicable inform the person to whom the notice would have been given of the action being taken.
- 8.4. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Supplier or its agents (including all costs) pursuant to clauses 8.2 and 8.3 the Supplier will be discharged of any liability whatsoever in respect of the Goods, Equipment or documents.
- 8.5. In relation to any Goods or Equipment:
 - (a) whose gross weight or VGM (as applicable) is incorrectly stated;
 - (b) whose gross weight or VGM (as applicable) exceeds the maximum gross weight appropriate for any handling equipment used (whether or not the Supplier knows at the time of such handling that the gross weight exceeds the appropriate gross weight for such handling equipment); or
 - (c) whose weight distribution does not facilitate the safe onward transportation of such Goods or Equipment, whether by rail, road or otherwise

the Supplier reserves the right not to handle such Goods or Equipment, but, in the event that the Supplier does handle such Goods or Equipment such handling by the Supplier will be at the sole risk and cost of the Owner(s) of the Equipment or Goods.

- 8.6. In the circumstances described in clause 8.5, subject to clause 9.4, the Supplier will be exempt from all liability whatsoever for deficiency, loss, damage, delay, taint or misdelivery of or to the Goods or to the Equipment or for delay arising out of, caused or contributed to by the handling by the Supplier of the Goods or the Equipment.
- 8.7. The Customer must notify and must procure that any Owner other than the Customer notifies the Manager as soon as the Customer becomes aware of any overloading or uneven loading or any failure of a load bearing part of any lifting appliance or of the Equipment.
- 8.8. The Customer is responsible for insuring its Goods or Equipment against any loss, theft or damage which they may sustain within the Port Premises.
- 8.9. Where applicable, the Supplier's statutory right (as harbour authority under the Order) to detain a Ship is (to the extent not already granted by statute) apply to all Charges due to the Supplier arising out of any call of the Ship including quay rent incurred by Goods or Equipment discharged from or awaiting loading onto the Ship. The Supplier (as harbour authority under the Order) has the power to sell the Ship and / or its fittings if any charges remain unpaid 7 days after a Ship is detained. The proceeds of such a sale will be allocated, to the Supplier's unpaid charges, then to any unpaid charge due to the Port of London Authority before any surplus is returned to the Owner of the Ship in accordance with the provisions of the Order.
- 8.10. The Supplier has the right to open any Equipment to access any Goods contained in that Equipment.

9. Supplier Liability

Negligence or wilful act or omission only

- 9.1. The Supplier is exempt from all liability whatsoever for deficiency, loss, damage, taint, delay, accuracy, failure or misdelivery of or to Goods or Equipment or damage or delay to a Ship, however or whenever caused except upon proof by the Customer (otherwise than by evidence only of such deficiency, loss, damage, delay, or misdelivery) that the deficiency, loss, damage, delay, misdelivery, accuracy or failure was caused by the negligent or unlawful act or omission of the Supplier.

Force majeure etc.

- 9.2. Subject to clause 9.4, the Supplier has no liability whatsoever (whether for negligence or otherwise) for deficiency, loss, damage, taint, or misdelivery or delay, accuracy or failure to a Ship or Equipment or Goods or any deficiency therein if the same arises out of or is caused by any of the following:
- (a) force majeure including, storm, tempest, lightning, snow, ice, drought or flood;
 - (b) fire (including steps taken for the extinguishment thereof), explosion or smoke;
 - (c) strikes, combinations, lock-outs, go-slows, blockades, or other industrial action (whether lawful or not) by any person or anything done in the course of furtherance of a trade dispute;
 - (d) improper, insufficient, indistinct or erroneous marking or addressing of Goods or Equipment;
 - (e) improper or insufficient packaging of Goods or Equipment;
 - (f) any inherent defect, flaw or quality of the Goods or Equipment;
 - (g) any act of the Supplier, its employees, agents or contractors reasonably necessary for the safety or preservation of persons, the Port Premises, a Ship and/or any Goods and Equipment;
 - (h) theft or wilful damage unless proved by the Customer to have been committed by the Supplier;
 - (i) vermin, insects, fungal attack, rot or corrosion;
 - (j) heat or cold;
 - (k) any act directly or indirectly occasioned by happening through or in consequence of war, threat of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, terrorism or acts of terrorism;
 - (l) any act of any person or persons acting on behalf of any organisation with activities directed towards the overthrow by force of any de jure or de facto government;
 - (m) civil disobedience at or in the vicinity of the Port Premises;
 - (n) shortage of berthing space, labour, plant deficiency, fuel or power or any form of storage accommodation;

- (o) insufficient depth of water at any berth or the approaches thereto or the unsafe condition of any berth;
- (p) late receipt of HM Revenue & Customs entries or deliveries or landing orders, disputes in respect of documents, or declarations made for entry purposes by or on behalf of any person, delay in passing HM Revenue & Customs entries or obtaining clearance of the Goods, or omission of information from or an incorrect statement in any order to the Supplier relating to the Goods or Equipment;
- (q) the total or partial failure of the Community System or any other electronic services or systems offered at any time by or on behalf of the Supplier including the total or partial failure of any communication links with those services or systems;
- (r) human error on the part of the Supplier, its employees, agents or contractors in inputting any information into any electronic service or system operated or managed by the Supplier or its contractors;
- (s) compliance with the instructions or order of HM Revenue & Excise or any other regulatory or statutory body or court of law, in any jurisdiction;
- (t) any other cause or event which the Supplier is unable to avoid and the consequences of which the Supplier is unable to prevent by the exercise of reasonable care;
- (u) any failure by a Customer or third party to comply with the requirements of the SOLAS Convention or these Terms and Conditions including inaccuracies in the provided VGM or receipt of an Overweight container or the Supplier not receiving the VGM within the VGM Cut-off.

Financial and consequential losses etc.

- 9.3. The Supplier is under no liability whatsoever (whether for negligence or otherwise) for any loss of income, loss of profits or loss of contracts, hire costs, survey costs, legal expenses, de-vanning or re-vanning costs, packing costs or for any indirect or consequential loss or damage of any kind, in each case howsoever arising and whether caused by tort (including negligence), breach of statutory duty, contract or otherwise.

Death and personal injury

- 9.4. Nothing in these Terms and Conditions excludes or in any way limits the Supplier's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

Liability Cap

- 9.5. Subject to clause 9.4, the total liability of the Supplier for any loss, damage, claim, cost or expense in respect of any one event or occurrence or series of incident arising from a common cause or series of related incidents in the aggregate will in no case be more than £1,000,000 and will be the lowest of the following as applicable:

- (a) Ship:
 - (i) the value of that part or parts of the Ship to which the claim relates at the time of the damage or loss;
 - (ii) the reasonable cost of repairs (as agreed between surveyors appointed by the Supplier and the Owner).

- (b) Equipment:
- (i) the reasonable cost of repairs;
 - (ii) the depreciated value of the Equipment to which the claim relates at the time of the damage or loss;
 - (iii) the sum of: (a) £2,000 per dry van/general purpose container; (b) £5,000 per refrigerated container; or (c) £3,000 per any other unit of Equipment;
 - (iv) in the case of any other Equipment owned or operated by the Customer not previously referred to in this clause 9.5, subject to a limit of £20,000, the lesser of the reasonable cost of repair and the depreciated value.
- (c) Goods:
- (i) in the case of loss or damage to Goods arising out of the performance of the/a contract of carriage, the defences and limits available to the carrier under the said contract of carriage;
 - (ii) the value of the Goods affected to which the claim relates; and if any claims in respect of a part consignment, then the value only of the part consignment as a proportion of the whole consignment (to be calculated by weight in the absence of specific values for the damaged part);
 - (iii) the reasonable cost of repairs;
 - (iv) in any other case the lesser of:
 - (A) the sum of £1300 per tonne (or pro rata for any part of a tonne); or
 - (B) the sum of £52,000 per packed container in the case of containerised Goods; or
 - (C) the sum of £35,000 per packed container in the case of break bulk or non-containerised Goods,

unless the nature and value of the Goods had been declared to the Supplier and the Supplier has agreed a higher limit of liability with the Customer (as evidenced in writing) prior to such Goods arriving at the Port Premises.

De minimis

- 9.6. The Customer may not bring any claim in respect of any single incident below the de minimis limit of £1000.
- 9.7. Notwithstanding clause 9.5, the Supplier has the right, in any circumstance, to elect to rely on (in the alternative) any relevant statutory provision providing for limitation and/or exclusion of liability including, but not restricted to, the provisions of the Merchant Shipping Act 1985.
- 9.8. It is a condition precedent to the liability of the Supplier that the Supplier is notified in writing to the LGP Harbour Master by email to harbourmaster@londongateway.com:
- (a) of any damage alleged to have been caused to a Ship and to permit inspection thereof prior to sailing;

- (b) within 30 days of their arrival at the Port Premises (in the case of import Goods) or 60 days of their removal from the Port Premises, of any alleged misdelivery or loss of or damage to Goods or any deficiency therein together with particulars of the nature and the amount of any claim to be made;
 - (c) of any damage alleged to have been caused to Equipment prior to such Equipment leaving the Port Premises. In any event the Supplier is entitled (and the Customer hereby grants permission) to inspect any such Goods or Equipment prior to their disposal or destruction by the relevant Owner.
- 9.9. Notwithstanding the provisions of clause 9.8 and subject to clause 9.4, the Supplier will, in any event, be discharged of all liability whatsoever howsoever arising unless proceedings are brought within 12 months from the date of the event or occurrence alleged to have given rise to a cause of action against the Supplier.
- 9.10. These Terms and Conditions and in particular the limitations on liability are intended to inure for the benefit of both the Supplier and its employees, agents and contractors to which end the Supplier contracts on these Terms and Conditions on its own behalf and as agent for and trustee for the benefit of its employees, agents and contractors. The Customer agrees that the exclusions and limitations on the Supplier's liability benefits the Supplier's contractors, employees and agents and anyone else who may be vicariously liable for act or omissions of such a person.
- 9.11. The Supplier is entitled, in its absolute discretion, **to reduce a claim for betterment**.
- 9.12. The Customer is under a duty to mitigate its losses, including for example, to obtain salvage.

10. Customer Indemnity

- 10.1. The Customer is liable for and will indemnify and hold harmless the Supplier against any and all fines, claims, including claims for personal injury and/or death, actions, liabilities, losses, damages and expenses (including legal expenses) incurred, whether or directly or indirectly, by the Supplier, its employees, servant, agents or sub-contractors and howsoever caused, even if contributed to by the negligence of the Supplier, its employees, servant, agents or sub-contractors, which arise out of or in connection with:
- (a) the failure of the Customer to comply with any of these Terms and Conditions or the requirements of any Applicable Laws or the taking of any step which the Supplier considers to have been reasonably required to remedy the same or to comply with the requirements of any authority in any jurisdiction;
 - (b) any act wherever carried out, omission or instruction, misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty of the Customer, any Owner or any other person interested in the Goods, Equipment or Ship; or
 - (c) the nature, state, weight (including within the circumstances in clause 8.5), fitness for purpose, packaging, character, labelling or presentation of the Customer's Goods or Equipment.
- 10.2. Any sums payable hereunder are chargeable to and payable by the Customer in addition to and subject to the same provisions as the Charges.

11. Payment

- 11.1. Unless otherwise agreed in writing all charges must be paid:

- (a) for services provided in respect of the berthing of Ships, within 7 days of the invoice date;
 - (b) for all other charges, within 14 days of the invoice date.
- 11.2. The Customer must pay or must procure that any other person liable for the Supplier's Charges (including, where applicable, agents) pays to the Supplier by bank transfer to an account specified by the Supplier, or as otherwise agreed in writing, all sums immediately when due without deduction, withholding, abatement, set-off, or any counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law, or due to overpayment by the Customer or an undisputed credit owed by the Supplier to the Customer.
- 11.3. Notwithstanding any agreement by the Supplier to collect charges from any person other than the Customer, the Customer remains liable to the Supplier for payment of all charges when due.
- 11.4. All payments hereunder must be in UK pounds sterling.
- 11.5. Interest is payable upon all sums payable by the Customer which remain unpaid after the due date at a rate of 5% above the base rate of Lloyds TSB Bank plc.
- 11.6. In the event that any payment is not made within the periods set out in clause 11.1, or such other period as has been agreed in writing, then the Supplier is entitled to immediately recover from the Customer or other person liable for the Supplier's Charges all sums then due to or levied by the Supplier (including any accrued interest and other Charges properly levied in accordance with these Terms and Conditions) and all losses arising to the Supplier as a result of such non-payment. In addition the Supplier reserves the right to suspend or withdraw Services.
- 11.7. All sums payable under these Terms and Conditions are exclusive of value added tax and any other duty or tax, which is (if and to the extent applicable) payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 11.8. If the Customer ceases to trade (either in whole, or as to any part or division involved in the performance of these Terms and Conditions), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed over the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or, where the Customer is an individual, the Customer becomes bankrupt or makes any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, then:
- (a) the Supplier is entitled to immediately recover from the Customer or any other person liable for the Supplier's Charges (notwithstanding that the periods stated above or any period of credit extended to the Customer may not have expired) all sums then due to the Supplier (including any accrued interest and other Charges properly levied in accordance with these Terms and Conditions) and all losses arising to the Supplier as a result of such circumstances arising; and
 - (b) the Supplier may, without prejudice to any other remedy or right available to it, delay, withhold or refuse to provide any Services.
- 11.9. Notwithstanding clause 11.7, if the Supplier reasonably considers that Charges levied or to be levied will not be paid within the periods stated in clause 11.1, the Supplier is entitled forthwith upon giving the Customer notice in writing, to withdraw any period of credit extended to the Customer or other person liable for the Supplier's Charges and to require payment of all such charges forthwith upon receipt of the said notice or subsequent invoice.

11.10. Any bona fide query to be raised by the Customer on any invoice issued by the Supplier must be made in writing within 14 days of the date of the invoice or the Customer will be deemed to have accepted the invoice. Disputed portions of invoices may be withheld until the dispute is resolved but undisputed amounts must be paid on the due date.

12. Data Protection and Number Plate Recognition

12.1. For the purposes of security, safety and crime prevention, CCTV cameras and ANPR (automatic number plate recognition) cameras are used throughout the Port Premises and the information and images they produce are monitored and recorded. The scheme is controlled by London Gateway. For more information, contact 01375 648380.

12.2. By entering into the Port Premises, all persons consent to the recording, storage and use of images and data relating to them and their vehicles for the purpose of security, safety and crime prevention. Data and images may also be passed to the police, HM Revenue and Customs and similar third parties in connection with such purposes. Data and images will not be sold to any third parties.

13. Governing Law and Jurisdiction

13.1. The construction, validity and performance of these Terms and Conditions and any dispute or claim arising out of or in connection with these Terms and Conditions, their subject matter or formation (including non-contractual disputes or claims) is to be governed by and construed in accordance with English Law.

13.2. All claims or disputes arising out of or related to these Terms and Conditions (including non-contractual disputes or claims) must be submitted to the jurisdiction of the English courts, provided that the Supplier will have the right, as claimant, to initiate proceedings against the Customer either (a) in the jurisdiction of the courts of the country of the principal domicile of the Customer or (b) in the jurisdiction of the courts of the country in which any ship or other asset (including a bank account) of the Customer is, or may, at the instigation of the Supplier be detained or frozen.

14. General

14.1. The failure of the Supplier to enforce or to exercise at any time or for any period of time any term of or any right pursuant to these Terms and Conditions does not constitute, and is not to be construed as, a waiver of such term or right and in no way affects the Supplier's right later to enforce or to exercise it.

14.2. If any provision of these Terms and Conditions is found to be illegal, invalid or unenforceable by any court of competent jurisdiction, such term will, insofar as it is severable from the remaining terms, be deemed omitted from these Terms and Conditions and will in no way affect the legality, validity or enforceability of the remaining terms.

14.3. Subject to clauses 14.4 and 14.5, the Supplier and Customer agree that these Terms and Conditions may be relied upon and are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 (**1999 Act**) by the Supplier's agents and contractors against a Customer.

14.4. The third party rights referred to in clause 14.3 may only be enforced by the relevant third party with the consent of the Supplier and subject to and in accordance with the provisions of the 1999 Act and all other relevant terms of these Terms and Conditions.

- 14.5. Notwithstanding any other provision of these Terms and Conditions, the Supplier and Customer may rescind or vary any of these Terms and Conditions without the consent of any third party, and accordingly section 2(1) of the 1999 Act does not apply.
- 14.6. Except as provided in clause 14.3, a person who is not a party to these Terms and Conditions has no right under the 1999 Act to rely upon or enforce any of these Terms and Conditions.
- 14.7. Any Charges agreed with the Supplier are commercially confidential and the Customer may not disclose Charges to any third party without the prior written consent of the Supplier, except where disclosure is required by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the Customer gives the Supplier as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the Supplier in relation to the content of such disclosure.
- 14.8. The Supplier may update or amend any of these Terms and Conditions from time to time. The Supplier and Customer is bound in respect of any particular visit, delivery or entry to the Port Premises or provision of a Service by the Terms and Conditions published and in force at the time and date on which that visit, delivery, entry or provision of Service is made.

15. Bribery and Corruption

The Customer represents and warrants that it and its agents, directors, employees, officers and sub-contractors will comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Regulations**) and will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and the Customer represents and warrants that it has and will maintain in place its own policies and procedures, including "adequate procedures" under the Bribery Act 2010, to ensure compliance with the Relevant Regulations.

16. Notices

- 16.1. Subject to any express provisions set out above, where any notice is required to be given or may be given under these Terms and Conditions, such notice must be given:
- (a) in respect of the Supplier, in writing to:
- LGP Harbour Master
DP World London Gateway
Gate 2
The Manorway
Stanford-le-Hope
SS17 9PD
- (b) in respect of the Customer to the registered office of the Customer or the branch or agency office of the Customer through which the Customer has dealt with the Supplier in respect of the provision of the Services.

LONDON GATEWAY PORT LIMITED

Appendix 1
VGM Charging Schedule

1. The following charges will be payable by the VGM Declarant through CNS:
 - (a) £1.04 where the VGM is received prior to the Container's arrival at LG Port;
 - (b) £3.12 for a Container which has been received by LG Port and the VGM for such Container is received from the VGM Declarant by LGPL before the VGM Cut-off;
 - (c) £18.20 where LGPL has been instructed to weigh the Container and provide a VGM;
 - (d) £3.12 plus £18.20 charge where the Container has been received by LGPL and the VGM is expected, but not received from the VGM Declarant by LGPL prior to the VGM Cut-off.
 - (e) £18.20 plus £46.80 charge where LGPL has been instructed to weigh an Out of Gauge Container and provide a VGM where such container requires handling with an overheight frame
 - (f) £18.20 plus £46.80 charge where LGPL has been instructed to weigh an Out of Gauge Container and provide a VGM where such container requires handling with non standard lift equipment

2. In the event that the VGM Declarant provides a VGM and that VGM is found to be +/- 900kg or +/- 5% of the VGM weight, whichever is greater, as determined by LGPL then the LGPL determined VGM will be used and the following charges will apply:
 - (a) £1.04 + £18.20 + a mis-declaration fee of £10.40 where the VGM is received before the arrival of the Container at LG Port; and
 - (b) £3.12 + £18.20 + a mis-declaration fee of £10.40 where the VGM is received after the arrival of the Container at LG Port, but before the VGM Cut-off.

Appendix 2
Plan