

## TERMS AND CONDITIONS FOR CONTAINER WEIGHING AT DP WORLD LONDON GATEWAY PORT

### 1 DEFINITIONS

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

“**Applicable Laws**” means all applicable mandatory laws, regulations and international conventions which are binding in effect;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

“**Cargo**” means any goods, merchandise or other property whatsoever, whether or not in a Container;

“**Charges**” means the charges for the provision of the Services as set out in the Charging Schedule and/or as otherwise imposed under these Terms and Conditions;

“**Charging Schedule**” means Schedule 1 of the Terms and Conditions;

“**Container**” means any packed container conforming with ISO dimensional standards for international shipping and which is owned, leased, chartered, managed, operated and/or used by a Shipping Line;

“**Community Network System (CNS)**” means the computer system used by LGPL, Shipping Lines, VGM Declarant, 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, CNS also includes any additional electronic systems or interactive services provided by or on behalf of LGPL for use by the VGM Declarant;

“**CNS Standard Terms and Conditions**” means the terms and conditions which govern the use of CNS by third parties including the VGM Declarant who bring Cargo through LG Port;

“**Force Majeure Event**” has the meaning given to it in clause 5.6;

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected:

- (a) in relation to the carriage of containerised and un-containerised cargo by sea, from an experienced shipping operator; and
- (b) in relation to the Services, from an experienced port terminal operator under the same or similar conditions.

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

“**LGPL**” means London Gateway Port Limited (Company No. 4341592) which has been established

by the HEO as a statutory harbour authority to construct and operate LG Port;

“**LG Port**” means the port premises as defined in the HEO which is managed and operated by LGPL;

“**Services**” means the container weighing services provided by LGPL to the VGM Declarant as more particularly set out in clause 4;

“**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 Container or Containers being handled at LGPL;

“**Shipping Line**” means the owner, charterer, operator, lessee or party otherwise controlling the Vessel calling at LG Port;

“**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;

“**Terms and Conditions**” the terms and conditions set out below;

“**Vessel**” means any ship calling at the LG Port for the carriage of Cargo of which the Shipping Line is the owner, charterer or disponent owner; which shall include mother vessels, full container vessels, feeder vessels or barges owned, chartered, operated or used by the Shipping Line;

“**VGM or Verified Gross Mass**” means the total gross mass of a Container which is either provided by the VGM Declarant or LGPL (as the case may be) prescribed by the SOLAS Convention and otherwise in accordance with Applicable Laws;

“**VGM Cut-off**” means 24 hours prior to the estimated arrival time of a Vessel which was first communicated to the VGM Declarant; and

“**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 References to each party herein include references to its successors in title and permitted assignees and novatees.

- 1.5 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.
- 1.6 Any reference to "person" includes any natural person, company, body corporate or unincorporate, or other judicial person, partnership, firm, joint venture or trust.
- 1.7 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 LGPL's liability.
- 2 BACKGROUND**
- 2.1 The SOLAS Convention requires a VGM Declarant to provide a VGM for all Containers prior to stowage aboard ship to ensure the safety of a Vessel, the workers aboard the Vessel, the onshore workers, the Cargo and the overall safety of individuals at sea.
- 2.2 In accordance with the SOLAS Convention the VGM Declarant is required (among other things) to:
- (a) establish the VGM of a Container; and
- (b) ensure that, once established, the VGM is communicated in the relevant shipping documents in advance to the Vessel's master and to LGPL.
- 2.3 At LG Port the VGM Declarant will (through CNS) be required to:
- (a) provide the VGM; or
- (b) indicate that it requires LGPL to provide the VGM.
- 2.4 The SOLAS Convention does not permit LGPL or a Shipping Line to load a Container aboard a ship without a VGM.
- 3 STATUS OF TERMS AND CONDITIONS**
- 3.1 These Terms and Conditions govern the provision of the Services performed by LGPL whether directly or indirectly and whether within the area of LG Port or elsewhere.
- 3.2 Any conditions which the VGM Declarant purports to impose or incorporate will not form part of these Terms and Conditions.
- 3.3 Any invoices or Charges (and the payment thereof) will be governed by the CNS Standard Terms and Conditions.
- 4 PROVISION OF THE SERVICES**
- 4.1 LGPL warrants that the Services will be carried out with reasonable skill and care.
- 4.2 LGPL will verify the existence of a VGM in the Cargo documentation provided by the VGM Declarant through CNS and shall not load a Container onto a Vessel to which the SOLAS Convention applies unless it has a VGM for such Container either provided by a VGM Declarant or by LGPL as more particularly set out clause 4.4 below.
- 4.3 LGPL shall treat as genuine and rely in good faith upon, without further investigation, a gross mass of a Container purporting to be a VGM received from a VGM Declarant through CNS.
- 4.4 If either:
- (a) a Container has been received by LG Port but the VGM for such Container is not provided to LGPL by a VGM Declarant before the VGM Cut-off; or
- (b) the VGM Declarant requests (through CNS) that a Container be weighed by LGPL; or
- (c) the VGM provided by the VGM Declarant is found to be +/- 500kg or +/- 5% of the VGM weight as determined by LGPL,
- then LGPL shall obtain the VGM for such Container using appropriately calibrated and certified equipment as required by Applicable Laws and, for the purpose of paragraphs (b) and (c), that VGM shall replace the VGM for that Container previously provided by a VGM Declarant.
- 4.5 Any weight of a Container established by LGPL, other than pursuant to clause 4.4 above, shall not be considered as the VGM for the purpose of the SOLAS Convention and Applicable Law related thereto.
- 4.6 LGPL will promptly communicate the VGM obtained in accordance with clause 4.4 above through CNS to the VGM Declarant.
- 4.7 LGPL shall not load a Container onto a Vessel if the VGM provided by the VGM Declarant or established by LGPL in accordance with clause 4.4 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 (an "Overweight Container").
- 4.8 The VGM Declarant shall pay all cost and Charges with respect to the Services including, but not limited to, checking the existence of a VGM in the Cargo documentation provided by the VGM Declarant, establishing a VGM for a Container in accordance with clause 4.4 above, additional transport, shunting, handling, re-handling, de-stuffing, stuffing, storage including other charges resulting from Overweight Containers, delays or missed sailings save that the VGM Declarant shall not be invoiced for a Charge to the extent that LGPL has invoiced or will invoice a Shipping Line for the particular Service with respect to the VGM Declarant's Container(s).
- 4.9 If as a result of a change in Good Industry Practice or the Applicable Laws (including the SOLAS Convention), LGPL's costs in order to comply with its obligations under this clause 4 are increased, LGPL may recover such additional costs from the VGM Declarant.

## 5 FORCE MAJEURE

### Relief from Liability

- 5.1 A party (an **Affected Party**) shall be relieved from liability (except for any accrued payment obligations) for any delay in the performance of, or inability to perform, an obligation under these Terms and Conditions which is directly caused by or results from a Force Majeure Event, for so long as the inability to perform continues.

### Obligations of Affected Party

- 5.2 Notwithstanding the foregoing, the Affected Party shall:
- (a) make all reasonable efforts to prevent, minimise and thereafter mitigate any delays or costs occasioned by any Force Majeure Event, including recourse to alternative acceptable sources of services, equipment and materials; and
  - (b) use all reasonable efforts to ensure resumption of normal performance of these Terms and Conditions after the occurrence of any Force Majeure Event and perform its obligations hereunder to the maximum extent practicable.
- 5.3 Each party shall bear their respective costs and neither party shall be required to pay to the other party any costs arising out of a Force Majeure Event.

### Notification

- 5.4 If a Force Majeure Event occurs, the Affected Party shall notify the other party as soon as reasonably practicable and in any event within 10 Business Days after the Affected Party reasonably determines that the occurrence of the Force Majeure Event affects the performance of its obligations under these Terms and Conditions in a material way. The notification shall comprise details of the suspected Force Majeure Event, the estimated financial consequences thereof and the measures and efforts exerted by the Affected Party to mitigate and overcome the effects of the occurrence of the Force Majeure Event.
- 5.5 In these Terms and Conditions, a Force Majeure Event means any event or circumstance or combination of events whenever occurring which is directly caused by or results from an event described in clause 5.6 for so long as such event or the inability to perform continues, and:
- (a) is outside the control of the Affected Party;
  - (b) could not be avoided, prevented or overcome with reasonable foresight, prudence and diligence or otherwise by taking action according to Good Industry Practice; and
  - (c) materially prevents, hinders or delays performance of all or a material part of the Affected Party's obligations under these Terms and Conditions.

## Categories of Force Majeure Events

- 5.6 Without limiting the generality of clause 5.5 and subject to clauses 5.2 and 5.3, a Force Majeure Event shall include, but not be limited to, the following categories or circumstances of a natural or general nature, including:
- (a) acts of God;
  - (b) nuclear explosion, radioactive, biological or chemical contamination;
  - (c) landslides, earthquakes and tsunamis;
  - (d) epidemic, plague or quarantine;
  - (e) blockade or closure of LG Port;
  - (f) strikes or other industrial action affecting LG Port and/or the Services, other than those caused by or directly attributable to LGPL or the VGM Declarant (as the case may be);
  - (g) war (whether declared or not), civil war, invasion, embargo, military coup, revolution or armed conflict on a national scale;
  - (h) sabotage, criminal damage, terrorism, but only when the Services are directly affected;
  - (i) riot, civil commotion, insurrection on a massive or national scale; and
  - (j) adverse weather conditions.

- 5.7 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under these Terms and Conditions if and to the extent such delay or failure is caused by a Force Majeure Event.

## 6 INDEMNITY

- 6.1 The VGM Declarant hereby warrants and represents that any VGM it provides or provided on its behalf to LGPL (other than a VGM provided by LGPL) has been obtained in using appropriately calibrated and certified equipment as required by Applicable Laws and otherwise in compliance with Applicable Laws.
- 6.2 The VGM Declarant is liable for and will indemnify and hold harmless LGPL 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 directly or indirectly by LGPL, its employees, servant, agents or sub-contractors and howsoever caused which arise out of or in connection with:
- (a) the failure of the VGM Declarant to comply with any of these Terms and Conditions or the requirements of any Applicable Laws (including, for the avoidance of doubt, the SOLAS Convention) or the taking of any step which LGPL 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 Shipper; or
- (c) the nature, state, weight, fitness for purpose, packaging, character, labelling or presentation of the Container.

## 7 LGPL'S LIABILITY

### Negligence or wilful act or omission only

7.1 Save where the VGM Declarant can prove any deficiency, loss, damage or delay was caused by the negligent or unlawful act or omission of LGPL, LGPL is exempt from all liability whatsoever for deficiency, loss, damage or delay as a result of the Services or damage or delay to a Vessel, however or whenever caused including any liability arising out of or in connection with delays or missed sailings as a result of:

- (a) any failure of a VGM Declarant or third party to comply with the requirements of the SOLAS Convention or the terms of these Terms and Conditions;
- (b) the receipt by LGPL of an Overweight Container;
- (c) LGPL not having received a VGM before the VGM Cut-off; or
- (d) establishing a VGM for a Container in accordance with clause 4.4 above.

### Financial and consequential losses etc.

7.2 LGPL 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

7.3 Nothing in these Terms and Conditions excludes or in any way limits LGPL'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 and de minimis

7.4 The liability of LGPL under these Terms and Conditions arising out of any single incident or series of incidents arising from a common cause or series of related incidents in the aggregate shall not exceed Pounds Sterling one million (£1,000,000) (the **Liability Ceiling Amount**).

7.5 The liability of LGPL under these Terms and Conditions shall not exceed the financial limits set out below for the specified category of loss or damage provided that the maximum liability of LGPL arising out of any single incident or series of related incidents

or series of incidents arising from a common cause shall not in the aggregate in any case exceed the Liability Ceiling Amount:

- (a) in the case of damage to a Vessel, a maximum of Pounds Sterling one million (£1,000,000);
- (b) in the case of physical loss or damage to a Container, or a Container and its ancillary equipment, the depreciated value or the reasonable cost of repairs whichever is less;
- (c) in the case of physical loss or damage to Cargo, up to a maximum of:
  - a. in the case of containerised Cargo: Pounds Sterling fifty-two thousand (£52,000) per Container; and
  - b. in the case of break bulk or non-containerised Cargo: Pounds Sterling thirty-five thousand (£35,000) per Container;
- (d) in the case of any other equipment owned or operated by the VGM Declarant not previously referred to in this clause, subject to a limit of Pounds Sterling twenty thousand (£20,000), the lesser of the reasonable cost of repair and the depreciated value.

7.6 The VGM Declarant shall make no claim against LGPL for an amount less than Pounds Sterling one thousand (£1,000).

## 8 CONFIDENTIALITY

The parties' employees and subcontractors shall not disclose any confidential information which it has or possesses relating to the other party, the other parties' business or its customers. This clause shall not apply to information already in either party's possession which they have full right to disclose, within public knowledge (other than by breach of this clause), which the parties independently develop or which the parties are obliged to disclose by law. There shall be no publicity by the parties or their subcontractors in relation to the other party, the other party's business or the Services without the other party's prior written consent. This clause shall survive termination of these Terms and Conditions howsoever it occurs.

## 9 WAIVER AND MODIFICATION

None of the provisions of these Terms and Conditions shall be considered waived by any party unless a waiver is given in writing by that party. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. No alteration or amendment to any provision of these Terms and Conditions will be effective or enforceable unless made in writing and signed by the parties to these Terms and Conditions.

## 10 SEVERABILITY

If any provision of these Terms and Conditions shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of these Terms and Conditions shall not be affected and

the remainder of these Terms and Conditions shall continue in full force and effect.

**11 NO MERGER**

None of the provisions of these Terms and Conditions will merge in or upon the execution of this or any other agreement, document, act, matter or thing.

**12 ENTIRE AGREEMENT**

These Terms and Conditions is the entire agreement between the parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the parties, including without limitation, any letter of intent or proposal.

**13 PRECEDENCE**

13.1 In the event that:

- (a) any conflict arises between the Terms and Conditions and the CNS Standard Terms and Conditions insofar as it relates to the Charges, payments, invoices or any costs associated with the Services, the provisions set out in the CNS Standard Terms and Conditions will take precedence; or
- (b) there is a conflict between these Terms and Conditions and the CNS Standard Terms and Conditions insofar as it relates to the provision and performance of the Services, these Terms and Conditions will take precedence.

**14 BRIBERY AND CORRUPTION**

The VGM Declarant represents and warrants that it and its agents, directors, employees, officers and

subcontractors will comply with all Applicable Laws including those relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and the VGM Declarant 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.

**15 THIRD PARTY RIGHTS**

No person who is not a party to these Terms and Conditions shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any thereof.

**16 NOTICES**

Any notice to be served on either party shall be served personally by first class pre-paid post (or by email). Any notice, if delivered personally, shall be deemed to have been served at the time of delivery; if sent by post, shall be deemed to have been served on the second business day following posting; and if sent by email, shall be deemed to have been served upon the receipt by the recipient.

**17 GOVERNING LAW AND JURISDICTION**

The construction, validity and performance of these Terms and Conditions shall be governed by the laws of England, and both parties hereby submit to the exclusive jurisdiction of the English Courts.

## Annex 1

### Charging Schedule

1. The following charges will be payable by the VGM Declarant through CNS:
  - (a) £1.00 where the VGM is received prior to the Container's arrival at LG Port;
  - (b) £3.00 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) £17.50 where LGPL has been instructed to weigh the Container and provide a VGM; and
  - (d) £3.00 plus £17.50 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.
2. In the event that the VGM Declarant provides a VGM and that VGM is found to be +/- 500kg or 5% of the VGM weight as determined by LGPL then the LGPL determined VGM will be used and the following charges will apply:
  - (a) £1.00 + £17.50 + a mis-declaration fee of £10.00 where the VGM is received before the arrival of the Container at LG Port; and
  - (b) £3.00 + £17.50 + a mis-declaration fee of £10.00 where the VGM is received after the arrival of the Container at LG Port, but before the VGM Cut-off.