

EMPIRE STEVEDORING (HOUSTON) INC.
TERMS AND CONDITIONS

1 **Engagement.** These Conditions, as defined herein, between Empire Stevedoring (Houston) Inc. ("Empire") and any vessel or barge (collectively, "Vessel") owner, Vessel charterer, Vessel operator, shipper, receiver, consignee, holder of any bills of lading and/or any owner of Goods (each a "Customer") shall be valid and binding upon the parties hereto, unless the parties have executed a valid, written agreement to the contrary otherwise setting forth the Conditions contained herein. If a valid, written agreement between the parties does not incorporate one or more Conditions, in whole or in part, set forth herein then such Condition or Conditions or portion thereof shall be incorporated into the parties' agreement. Any and all business undertaken by Empire, including any advice, information or services provided by Empire (collectively, "Services") is transacted subject to the terms and conditions contained herein (collectively, "Conditions").

2. **Payment.** Payment is due in full within 30 calendar days of Empire's invoice date. Notwithstanding the foregoing, Empire shall retain the option to demand an advance or cash payment or such other security as it considers proper for any invoice presented but not paid and/or for payment of current operations and/or any claim and, until any request for payment or security has been properly satisfied, to refuse to perform, or suspend or terminate operations without previous warning or court intervention and without incurring any liability on its part. Invoiced amounts outstanding more than 15 days past the invoice date due shall accrue interest at the lesser of 18% per annum or the highest rate permitted by applicable law. Customer shall not be allowed to withhold amounts due to Empire or defer payment on account of any claim, counterclaim or set-off. All monetary amounts outstanding shall be paid in the lawful currency of the United States.

3. **Fees.** Empire's fees may be increased from time to time by giving Customer at least 7 days' prior notice. Fees for Services quoted are a part of these Conditions and shall be subject to these Conditions.

4. **Berth; Accommodation.** Empire cannot and does not guarantee that the necessary berth or accommodation shall be available on arrival of a Vessel. Empire shall not be responsible for any loss of time, demurrage or shifting expenses resulting therefrom.

5. **Vessel; Gear.** Customer shall ensure that: (a) the Vessel is properly berthed and moored with mooring lines in sufficient number and quality such that the Vessel is at all times and is in all ways in a condition fit to receive or discharge goods and/or cargo (collectively, "Goods"); (b) operations on the Vessel can immediately be commenced and can be continued and completed without delay; (c) the Vessel's on-board winches, derricks, deck cranes, winch gear, tackle or other gear, plant or machinery are in good operating conditions and ready for use for the purposes of handling or carrying out Empire stevedoring tasks; (d) there shall be sufficient light for carrying out operations; and (e) after completion of operations, the Vessel shall be moved or removed at the first request of Empire. No Vessel is to be tied off, berthed or moored at a dock owned, leased or operated by Empire without receiving prior written consent from Empire.

6. **Handling Methods.** Empire shall have the sole and absolute right to determine the means, route, handling method and procedure to be followed in the loading, unloading, handling and storage of Goods under the supervision of the Vessel's crew.

7. **Customer Acting on Own Account.** Customer shall be deemed to be acting on its own behalf, unless when giving an order for work to be carried out, Customer set forth in writing that Customer is acting as an authorized agent for a third party and the name of such third party. When Goods are ordered or handled by Empire on instructions from a third party, Customer shall remain responsible for all fees if they are not paid for by the third party within 30 calendar days of Empire's invoice date.

8. **Owner of Goods.** Customer warrants that it is either the owner or the authorized agent of the owner(s) of any Goods to which a transaction for Services between Customer and Empire relates, and further warrants that

Customer is authorized to accept and accepts these Conditions not only on its own behalf, but also as an authorized agent for and on behalf of all other persons who are or may thereafter become interested in the Goods.

9. **Warehousing Goods.** Pending distribution or delivery, Empire may warehouse or otherwise hold Goods at any place or places of its choosing and the cost thereof shall be paid for by Customer.

10. **Packaging of Goods.** Except where Empire is instructed in writing to pack, crate and/or prepare Goods, Customer warrants that all Goods have been properly and sufficiently packed, crated and/or prepared.

11. **Description of Goods.** Customer warrants the accuracy of all descriptions, values and other particulars regarding the Goods furnished to Empire.

12. **Right to Dispose of Goods.** (a) Perishable Goods that are not transported immediately upon arrival or which are insufficiently addressed or marked or otherwise are not readily identifiable may be sold or otherwise disposed of by Empire without notice to Customer. Empire shall tender the net proceeds of any sale of such perishable Goods, after deduction of Empire fees, which net proceeds shall be Customer's sole and exclusive remedy for the sale of such perishable Goods. All fees arising in connection with the storage, sale or disposal of perishable Goods shall be paid for by Customer; (b) Empire shall be entitled to sell or dispose of all non-perishable Goods which, in the sole opinion of Empire, cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by Customer or consignee or any other person, after giving Customer 21 days' advance written notice of any sale or disposal of non-perishable Goods. All fees arising in connection with the storage, sale and disposal of non-perishable Goods shall be paid by Customer.

13. **Hazardous Goods.** Except under special arrangement previously made in writing between Empire and Customer, Empire shall not accept any noxious, dangerous, hazardous, flammable or explosive (collectively described herein as, "Hazardous") Goods or any Goods likely to cause damage. Hazardous Goods may be destroyed or otherwise disposed of at the sole discretion of Empire or any other person in whose custody such Hazardous Goods may be at the relevant time if such Hazardous Goods pose a threat to the health, safety or wellbeing of any persons or property, as Empire shall determine in its sole discretion.

14. **Charges for Standing time.** Customer shall be responsible for Empire's fees for detention of equipment and/or Goods and standing time for idle machinery and/or personnel caused by Customer or events arising beyond the control of Empire.

15. **Subcontracting.** Services performed by Empire may, in the sole and absolute discretion of Empire, be performed by third parties or independent subcontractors with which Empire may contract to perform Services hereunder.

16. **No Warranties.** Empire MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND REGARDING THE SERVICES, EITHER EXPRESS OR IMPLIED.

17. **Health and Safety.** Customer shall be responsible for compliance with and shall ensure that its employees and agents comply with all applicable international maritime, federal, state and local occupational safety and health laws and administrative regulations.

18. **Himalaya Clause.** Customer shall include Empire or arrange to have it included as an express beneficiary, to the extent of the Services provided, of all rights, immunities and limitation of liability provisions of all contracts of affreightment or contracts of carriage, as evidenced by its or carrier's standard bills of lading, issued by Customer or the carrier during the effective period of these Conditions. Whenever the customary rights, immunities and/or liability limitations are waived or omitted by Customer, the Customer agrees to indemnify, defend and hold harmless Empire, its officers, directors, managers, employees and authorized agents against any resultant increase in liability. In the event Customer is not the carrier of Goods to be handled by Empire, Customer expressly agrees that all the rights, immunities and liability limitations contained in a carrier's applicable bill of lading shall inure to the benefit of Empire.

Customer agrees that in no event shall Empire have any liability in excess of that of the carrier respecting loss or damage of Goods and agrees to indemnify, defend and hold harmless Empire, its officers, directors, managers, employees and authorized agents from any liability incurred by Empire in excess of that of the carrier respecting loss or damage to Goods.

19 **EMPIRE Liability.** Empire's liability shall be limited solely to loss or damage to the Vessel, its equipment or Goods where such loss or damage results from the willful misconduct or gross negligence of Empire or its own employees, which loss or damage occurs while providing Services, and the Vessel's officer or Customer notifies Empire in writing of such loss or damage within 7 days thereafter. Empire's Services shall be provided between 7 A.M. and 4 P.M., Monday through Friday. Empire shall not provide Services on weekends, federal holidays or Texas state holidays, unless otherwise agreed to in writing between the parties. Under no circumstances shall Empire be liable for loss or damage in excess of \$250 per unit of goods or \$1 per metric tonne for bulk cargo. Any liability of Empire shall be as a ship's stevedore and notes a bailee. Empire hereby expressly disclaims any and all liability for: (i) any salvage and/or wreck removal claims brought by Customer or any third party whether or not such salvage or wreck removal are rendered necessary as a result of Empire's negligence, fault, action or omission; (ii) any loss, damage or deterioration to warehoused Goods except upon proof that such loss, damage or deterioration is due solely to the willful misconduct or gross negligence of Empire or its own employees; (iii) any loss, damage or deterioration to Goods occurring during their transportation; (iv) any loss, damage or deterioration to Goods resulting from insufficient packing and crating; (v) any loss, damage or deterioration to Goods or a Vessel resulting from the inadequacy, unfitness or defective condition of a Vessel or its gear and equipment; (vi) any loss, damage, delay or non-performance of Services hereunder arising from strikes, lockouts, union disputes, work slowdowns or stoppages, inability to obtain qualified and/or skilled labor or other labor difficulties; (vii) any duties, taxes, imposts, levies, deposits or outlays of any kind levied by the authorities at any port, wharf or place for or in connection with the Goods and for any payments, fines, expenses, losses or damage whatsoever incurred in connection therewith; and (viii) any loss or damage resulting from, caused by, to, or in connection with Customer's delivery to Empire or Empire's handling of any Hazardous Goods. IN NO EVENT SHALL EMPIRE BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER THESE CONDITIONS FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, BUSINESS OPPORTUNITY OR ENTERPRISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. **Indemnification.** Customer hereby indemnifies, defends and hold harmless Empire, its officers, directors, managers, employees and authorized agents against all losses, penalties, damages, claims, costs, fines and expenses (including legal fees and expenses) arising from: (a) any inaccuracy or omission under Section 11 hereof; (b) third-party claims against Empire of damage to or destruction of Goods or the Vessel, other than as set forth in Section 19; (c) damage to or destruction of Goods caused by Empire's subcontractors and/or independent contractors; (d) Customer's breach of the Conditions contained herein; or (e) damage caused by the Vessel, its equipment or Goods to persons, property or goods of any third party.

21. **Lien.** Empire may subject all Goods to a lien and right of detention for fees due and owing to Empire for Services rendered or for any general balance or other fees due to Empire from Customer or any third-party sender. If any fees due to Empire are not paid within 30 calendar days of Empire's invoice date and after notice has been given to the person from whom such fees are due and owing and/or Customer that such Goods are being detained, the Goods may be sold at auction or otherwise at the sole discretion of Empire and at the expense of such persons from whom fees are due and owing and the net proceeds of such sale of Goods shall be applied toward satisfaction of such indebtedness.

22. **Force Majeure.** Any delay in the performance of Services shall not be considered a breach of these Conditions, and the time required for performance shall be extended for a period equal to the period of such delay; provided that such delay has been caused by or is the result of: (a) any acts of God; (b) acts of a public enemy; (c) insurrections, acts of terrorism or riots; (d) failure of suppliers; (e) embargoes or strikes, lockouts, union disputes, work slowdowns or stoppages, inability to obtain qualified and/or skilled labor or other labor difficulties; (f) equipment failure; (g) fires, explosions, or floods; (h) shortages of material, labor or energy; or (i) other unforeseeable causes beyond the reasonable control and without the fault or negligence of Empire. Empire shall give prompt written notice to Customer

of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as reasonably possible. However, notwithstanding the foregoing, Empire shall be under no obligation to settle any labor dispute, strike, lockout, work slowdown, stoppage or inability to obtain qualified or skilled labor. Notwithstanding anything in these Conditions to the contrary, if Empire is unable to perform Services hereunder as a result of force majeure for a period longer than 90 days, Customer shall immediately have a right of termination.

23. **Severability.** If any part of these Conditions shall be determined to be invalid, illegal or unenforceable by any law or regulation duly promulgated by the United States or a state acting in accordance with the law, or declared null and void by any court of competent jurisdiction, then such part shall be omitted and the remaining parts of these Conditions shall be fully effective and operative to the greatest extent permitted by applicable law.

24. **Waiver; Modification.** Waiver by Empire of compliance with any term or Condition contained herein shall not be construed as a waiver of any future breach. These Conditions represent the full understanding of Customer and Empire with respect to the subject matter hereof, and no terms, conditions or understandings or agreements purporting to modify or amend the terms hereof shall be binding unless made in writing and signed by each of the parties.

25. **Compliance with Laws.** Customer agrees to perform its obligations hereunder in compliance with all applicable laws, rules and regulations.

26. **Choice of Laws.** These Conditions will be governed by and construed in accordance with the substantive laws of the United States of America and the State of Texas and their interpretation, construction and enforcement shall be determined pursuant to the laws of such State without giving effect to conflict of law principles.