



GENERAL TERMS AND CONDITIONS

All of the following General Terms and Conditions of service are incorporated by reference into all *Accepted Job Estimates* provided by DP World (Canada) Inc. (hereinafter "DPWC") for stevedoring services on a spot contract basis to customers requesting such services (hereinafter the "Customer") at terminals, anchorages, berths or facilities other than Centerm, Vancouver, BC or Duke Point, Nanaimo, BC. By accepting services from DPWC the Customer is deemed to have read and understood these General Terms and Conditions and have agreed to be bound thereby.

1. It is understood and agreed that the Customer includes the vessel owner and managers of the vessel for which the services are to be provided. The Customer by asking DPWC to provide stevedoring services warrants that the request is made on behalf of the Customer and on behalf of the vessel owner to which the services are to be provided. It is further understood and agreed that the services contemplated herein are to be performed on the credit of the vessel, and DPWC shall have a right of action against the vessel or any other property, including the cargo, for payment.
2. It is further understood and agreed that DPWC includes all directors, officers, employees, agents, representatives, authorized advisors and other third parties acting on DPWC's behalf including, without limitation, associated or affiliated companies and sub-contractors of DPWC.
3. In the absence of any other written Agreement between the Customer and DPWC all of the terms and conditions contained herein shall be deemed accepted by and binding upon the Customer provided the stevedoring services are requested and preparation for performance has been commenced by DPWC.

PROVISION OF LABOUR

4. DPWC will provide sufficient labour and supervision for the performance of the services herein contemplated in accordance with prevailing labour agreement(s) (collective or otherwise), but always contingent upon labour and supervisors being available to DPWC. DPWC shall not be responsible for any loss, damage, delay or non-performance arising from labour shortage, strikes, lockouts, union disputes, deliberate work slow-down or stoppage or other labour difficulties or disruption.

RATE QUOTES

5. All rates quoted are:
 - (a) valid for only 60 days from the date the quote is provided;
 - (b) estimates only in respect of labour and supervision;
 - (c) straight time rates and on a shift rate basis unless otherwise confirmed in writing by DPWC;
 - (d) subject to labour and supervision being available at the prevailing wage scale and working conditions in the port or ports where services are to be performed. In the event of an increase or decrease in the scale of wages, benefits, or a change in working conditions, the rates will be increased or decreased accordingly, and retroactively if applicable;
 - (e) subject to overtime charges which may vary depending on the shift (Monday-Friday or Saturday and Sunday);
 - (f) exclusive of:
 - (i) additional services;
 - (ii) additional labour such as, but not limited to, observers, holdmen, extra winchmen, extras, signalmen, heavy equipment operators, etc.;
 - (iii) welding or fabrication services;
 - (iv) deferred meal charges and shift extensions;
 - (v) BCMEA cargo assessments;
 - (vi) cartage and storage costs or charges for stevedore gear unless otherwise expressly agreed;
 - (vii) travel time and fares for labour and foremen.

6. It is understood and agreed that the quoted rates for loading or discharging of cargo contemplate the handling of cargo from place of stow on board the vessel to place of rest at ship-side and/or from place of rest at ship-side into place of stow on board vessel unless otherwise expressly agreed. All such loading and discharging is to be under the direction and supervision of the vessel's Master or Chief Officer.
7. The quoted rates apply to one single handling of cargo. If any rehandling, sorting, or shifting of cargo is necessary through no fault of the DPWC, the time required for such work shall be charged.

OVERTIME, TRAVEL AND TRANSPORTATION

8. Overtime and meal hours, when worked, will be charged to the Customer on the basis of the rates provided in the prevailing wage scale of the port. If labour and/or supervision is engaged to work outside the usual port limits and travel time is incurred or if vessels are worked where transportation of labour and/or supervision is required, the Customer shall pay DPWC at cost for such travel time or transportation. When vessels are worked where transportation of labour and/or supervision is required any expenses incurred are also payable by the Customer at cost.

EQUIPMENT

9. DPWC will provide, if available, all normal gear and equipment for the efficient performance of the services contemplated herein such as bars, beams, shackles, web belts and other such equipment. Unless otherwise agreed, additional charges will apply at costs plus 15% for the following:
 - (a) Rental of third party equipment such as dunnage, blocks, stands, cradles or other materials required for landing or lashing of the cargo on the deck of the vessel or in the vessel's holds;
 - (b) Additional stevedore gear including, but not limited, to blocks, tackle, slings, shackles, consumable gear or lighting.
 - (c) Machinery rental and insurance.

DETENTIONS, WAITING OR LAYTIME

10. A charge at the delay rate will be payable by the Customer if labour and or supervision is:
 - (a) employed and detentions occur;
 - (b) employed and unable to work through causes beyond DPWC's control;
 - (c) to be paid for a minimum working period in accordance with a prevailing Collective Agreement, or
 - (d) not dispatched and detention is thereby incurred.

DANGEROUS AND HAZARDOUS CARGO

11. The acceptance, handling or storage of explosives or inflammable or hazardous materials will be subject to the Customer obtaining prior written approval from the applicable port authority and to making special arrangements with DPWC, and will be governed by the rules and regulations of the *Transportation of Dangerous Goods Act, 1992* S.C. 1992, c. 34 and other Federal rules and regulations. There will be additional costs for special handling charges over and above normal handling rates. Hazardous Cargo must be presented in accordance with International Maritime Organization ("I.M.O.") regulations and detailed description of the goods, including its I.M.O. code and rating must be provided to DPWC in advance by the Vessel.

CONDITION OF CARGO

12. If the condition of the cargo is not in customary good order, thereby hindering or delaying prompt handling, or when bulk cargo is required to be broken out by mechanical equipment, the labour, supervision and/or equipment necessary to effect the extra handling will be charged in addition to rates quoted.

VALUABLE OR SPECIAL CARGO

13. In the event the cargo to be handled is valuable, special or requires particular security or special handling, the Customer must notify DPWC in advance and provide details of the cargo's valuable or special nature, in default of which DPWC will have no responsibility whatsoever in the event of loss or damage to the cargo, howsoever caused, even if such loss or damage is caused by the negligence of

DPWC, its employees or sub-contractors. It is understood and agreed that DPWC does not insure for such cargo. Should the Customer request the handling of such cargo, DPWC may do so, at their sole discretion at rates to be negotiated.

FORCE MAJEURE

14. DPWC shall not be responsible for delay, failure to perform or complete performance hereunder if the reason for such arises from: an act of God; fire, perils, dangers and accidents of the sea or other navigable waters; act of war; act of public enemies; arrest or restraint of princes, rulers or people; seizure under legal process; quarantine restrictions; act or omission of a third party beyond the control of DPWC; strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general; riots and civil commotion; breakdown or latent defects involving hull, machinery, equipment, lines, etc.; and any cause arising without the actual fault and privity of DPWC or over which DPWC does not have direct control.

PAYMENT

15. DPWC's accounts for all services performed and materials and equipment supplied shall be immediately due in advance of performance unless otherwise agreed in writing. The Customer shall not under any circumstances be entitled to any deduction from, reduction of, set-off against or waiver of any accounts or charges payable under this Agreement all of which shall be paid in full as and when due.

INSURANCE

16. DPWC agrees to insure against any legal liability it may have for damage to the vessel and its equipment or for loss of or damage to cargo.
17. The Customer agrees that it will at all times, at its sole cost and expense, continuously maintain insurance coverage in respect of the vessel(s) for which the services are to be provided by DPWC hereunder. The Customer further agrees that, notwithstanding any other term herein, it will at its sole cost and expense, continuously maintain insurance in respect of the cargo to be handled by DPWC to

its full value inclusive of freight, against all risks including loss or damage by stevedore handling, which insurance shall be for the joint benefit of the DPWC and the Customer.

18. The Customer shall ensure that all insurance contains a waiver of subrogation in favour of the DPWC and any persons for whom the DPWC is responsible.

BENEFICIARY OF CONTRACT (HIMALAYA CLAUSE)

19. It is understood and agreed (and hereby authorized by DPWC) that the Customer will include DPWC or arrange to have it included as an express beneficiary, to the extent of the services to be performed hereunder, of all rights, immunities, defences, time limits, and limitation of liability provisions of all contracts of affreightment, as evidenced by the Customer's or carrier's standard bill of lading, waybill, and/or passenger tickets in use at the time services are provided hereunder. If the customary rights, immunities, defences, time limits and/or liability limitations are waived or omitted by the Customer, the Customer agrees to include DPWC as an additional named insured under its insurance and ensure that DPWC is indemnified against any resultant increase in liability. If the Customer is not the actual carrier, the Customer expressly agrees that all the rights, immunities, defences, time limits and liability limitations contained in the involved carrier's applicable bill of lading shall enure to the benefit of DPWC, and the Customer agrees that in no event shall DPWC have any liability in excess of that of the Customer or carrier (whichever is less) respecting loss or damage of cargo. The Customer is hereby deemed to be acting as agent or trustee of and for the benefit of DPWC but only for the limited purpose of contracting for the extension to DPWC of such rights, immunities, defences, time limits and limitation of liability provisions referenced above.

REGULATORY COMPLIANCE

20. The Customer warrants that any cargo provided is safe for handling by DPWC and that the cargo complies with all applicable Federal, Provincial or Municipal laws, including applicable environmental laws. Where the performance of the services herein involves handling by DPWC of damaged, distressed or defective cargo, the quoted rates will not apply at DPWC's option and charges will be based upon the cost of labour and equipment plus 35%. Any gear or equipment destroyed or damaged, or any cost of equipment required for the

protection of the labour, shall be charged to and payable by the Customer at cost plus 15%. Despite the foregoing, where, in the opinion of the DPWC, cargo appears to be damaged, distressed, defective or otherwise liable to create a danger to or contaminate other cargo, or be harmful to worker health and safety, DPWC shall have the right to refuse to handle such cargo, and all costs and expenses incurred in that respect by DPWC are payable by the Customer.

POLLUTION

21. Notwithstanding any other provision contained herein, it is understood and agreed that the Customer will defend, indemnify and hold DPWC harmless from and against any loss, damage, cost, liability, expense, fine, penalty, or claim of any kind or nature whatsoever which might be brought against DPWC directly or indirectly in consequence of or with respect to any discharge, emission, spillage or leakage upon or into the vessel, seas, waters, land or air, howsoever caused (DPWC's negligence or that of its employees or sub-contractors included) of any pollutant whatsoever or with respect to or as a result of any Federal, Provincial or Municipal pollution or environmental laws.

VESSEL GEAR AND EQUIPMENT

22. The vessel's cranes are to be in good working order with certificates up to date, meeting all regulations set forth by Transport Canada. These will be inspected before use by ILWU labour. The Customer shall ensure the vessel supplies cranes and booms hoisted in position and automatic hatches opened and ready to work; adequate winches and/or ships cranes with sufficient power for their efficient operation; blocks, guys, preventers and wire or rope in good condition and of sufficient strength, dunnage, hatch tents and gantlines; adequate lighting for night work; tugs; derricks; or cranes and slings for any cargo which cannot be safely handled by vessel's gear in a normal and safe manner according to the custom of the port; all materials required for dunnaging, bracing, cooping, shoring, lashing, protection or bulkheading of cargo. When requested, DPWC will at its option, supply such material gear and equipment at current rates.

LIMITATION AND EXCLUSION OF LIABILITY

23. The Customer agrees to indemnify, defend and hold DPWC harmless from any and all, actual or alleged, losses, costs, damages, injury to persons or property or death that in any way arises from DPWC performing the services requested herein, and the Customer shall have sole legal liability for any acts or omissions occurring from the time that DPWC begins performing the services requested herein through and during the date on which DPWC ceases to perform the services requested herein (the "Customer's Liability"). For greater certainty Customer's Liability shall include liability caused or contributed to by the negligence, gross negligence, or wilful misconduct of DPWC or any personnel of DPWC or of or by its employees, agents or those for whom it is responsible in law, as well as DPWC's reasonable attorney's fees, defense costs, investigation expenses, discovery costs and court costs. Customer's Liability shall also include, without limitation, consequential loss or damage, wherever arising to the extent applicable at law. The intent of the Parties is that Customer's Liability shall include all liabilities arising under applicable law.
24. Without limiting the foregoing, all risk of loss for performing the requested services remains solely with the Customer during the Customer's Liability period. No inspection, approval or failure to inspect or approve by DPWC shall alter or affect this risk of loss. The Customer releases DPWC from any and all claims for loss of or damage to the vessel or other equipment, cargo or property, including any claims for deductibles under any policy of insurance.
25. The Customer hereby waives any and all claims which it may at any time or from time to time have against DPWC, its employees, agents or those for whom it may be responsible in law in respect of Customer's Liability or in any way arising from or in relation to Customer's Liability. ¹
26. The Customer agrees not to seek recourse from the DPWC by way of indemnity proceedings or otherwise in the event of legal proceedings against it by third parties arising in any way from damage to or loss of the vessel, cargo, personal injury or fatality unless it establishes that such personal injury or fatality was directly attributable to or resulted from gross negligence by DPWC, its employees or sub-contractors.

27. If, despite the forgoing, DPWC is determined to have any liability for loss or damage to cargo, such liability shall in no event exceed \$500.00 per package or unit of cargo.

HARBOUR DUES, WHARFAGE, CARGO, ASSESSMENTS, CUSTOMS DUTY

28. The Customer is responsible and shall pay any port dues, wharfage, delivery and related charges, cargo assessments, customs duty or similar charges, and shall defend, indemnify and hold DPWC harmless in respect thereof.

ARBITRATION, APPLICABLE LAW AND GENERAL TIME LIMIT

29. Any dispute or claim arising out of or in connection with this Agreement shall be referred to arbitration at Vancouver under the arbitration rules of the VMAA. Nothing herein prevents, restricts or prohibits DPWC from taking steps through the courts to arrest a vessel or obtain security or other interim relief not available through Arbitration.
30. This agreement is governed by and to be construed in accordance with the laws of British Columbia and Canada. Proceedings in relation to any dispute or claim arising out of or in connection with this Agreement as against DPWC must be brought within one year from the date any such dispute or claim arose, failing which DPWC shall be discharged from all liability in respect of any such dispute or claim.