



PEEL PORTS LOGISTICS LIMITED

TERMS AND CONDITIONS

FOR SHEETING OF STOCKPLIED GOODS / CARGO

September 2021

TERMS AND CONDITIONS

- 1. INTERPRETATION**
- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.
- "**Agreement**" has the meaning set out at clause 2.1;
- "**Customer**" means the party identified in the Quote;
- "**Customer's Equipment**" means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services (including the equipment provided by the Customer to enable the Sheeting to be lifted onto the stockpile);
- "**Force Majeure Event**" means any circumstance arising from or attributable to acts, events or attributable to acts, events, omissions or accidents beyond its reasonable control, including but not limited to any of the following: acts of God (including but not limited to fire, flood, earthquake, windstorm or other natural disaster); war; terrorist attack, civil war, civil commotion or riots; compliance with any law; fire, explosion or accidental damage; loss at sea; adverse weather conditions (including severe gales); collapse of building structures, failure of plant machinery, machinery, computers or vehicles; strikes or other industrial action; delays by suppliers or subcontractors; and interruption or failure of utility service;
- "**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- "**Performance Date**" has the meaning set out at clause 2.2;
- "**Quote**" means the letter issued by the Supplier to the Customer setting out the specific details of the Services to be provided and the costs of providing the Services;
- "**Services**" means:
- (a) providing one or more woven polypropylene sheets of sufficient size to cover the Customer's stockpile ("**Sheeting**");
- (b) providing sufficient number of bags to weigh the Sheeting down (such bags to be filled by the Customer in accordance with clause 4.1.9);
- (c) installing the Sheeting over the stockpile; and
- (d) training the Customer's employees on how to safely and effectively remove the Sheeting;
- "**Sheeting**" has the meaning set out in the definition of "Services" above;
- "**Sheeting Diagram**" is the diagram provided by the Supplier together with the Quote identifying how to store and profile the product to enable the Supplier to perform the Services;
- "**Supplier**" means Peel Ports Logistics Limited, a company incorporated and registered in England and Wales with company number 04006089 whose registered office is at Maritime Centre, Port of Liverpool, L21 1LA;
- "**VAT**" means value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to "**writing**" or "**written**" includes faxes but not e-mail.
- 1.7 Where the words "**include(s)**", "**including**" or "**in particular**" are used in this Agreement, they are deemed to have the words "**without limitation**" following them. Where the context permits, the words "**other**" and "**otherwise**" are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement.
- 2. COMMENCEMENT AND DURATION**
- 2.1 Following acceptance of the Customer's order, the Supplier shall provide the Services to the Customer on the terms and conditions set out herein and in the Quote ("**Agreement**").
- 2.2 The Supplier shall provide the Services to the Customer on the date(s) agreed by the parties ("**Performance Date**").
- 3. SUPPLIER'S OBLIGATIONS**
- 3.1 The Supplier shall use reasonable endeavours to provide the Services, in accordance with the Agreement in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet the Performance Date(s), but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement. Further, the Customer acknowledges that the Services cannot be performed during adverse weather conditions (including high winds) or where the Supplier deems it otherwise unsafe to perform the Services.
- 3.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 4.1.5, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 4. CUSTOMER'S OBLIGATIONS**
- 4.1 The Customer shall (at its own cost):
- 4.1.1 co-operate with the Supplier in all matters relating to the Services;
- 4.1.2 provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier or any of them;
- 4.1.3 provide, in a timely manner, other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- 4.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this clause 4.1.4;
- 4.1.5 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- 4.1.6 ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- 4.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- 4.1.8 provide all equipment necessary to facilitate the lifting of the Sheeting onto the top of the stockpile;
- 4.1.9 provide sufficient labour to fill the bags of product that are required to hold the Sheeting in place, in accordance with the Supplier's instructions;
- 4.1.10 ensure that the stockpile is stored and profiled in accordance with the Sheeting Diagram by the Performance Date. The Customer hereby acknowledges that it is essential that the stockpile is profiled in accordance with the Sheeting Diagram to enable the Supplier to perform the Services. In the event that the Customer fails to comply with this clause 4.1.10 and as a result thereof the Supplier is unable to perform the Services on the Performance Date, without prejudice to the Supplier's rights under clause 4.3, the Customer shall pay to the Supplier (in accordance with clause 6) the abort fee identified in the Quote; and
- 4.1.11 to the extent that the Customer disposes of the Sheeting at any time, it shall do so in accordance with all applicable law and regulations (including any relevant environmental law and regulations) and the Customer hereby acknowledges that it is not the Supplier's responsibility to dispose of the Sheeting.
- 4.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5. CHANGE CONTROL**
- 5.1 No amendment to the provisions of this Agreement shall be effective unless agreed in writing by the Supplier and the Customer.
- 6. CHARGES AND PAYMENT**
- 6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Quote.
- 6.2 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Quote. The Supplier shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate.
- 6.3 Unless otherwise agreed in writing by the Supplier, the Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds on demand and without reduction or deferment on account of any claim counterclaim or set off, to a bank account nominated in writing by the Supplier.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 6.4.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of the Bank of Scotland, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- 6.4.2 suspend all Services until payment has been made in full.
- 6.5 All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This clause 6.5 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 6.6 The Supplier may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Customer under this Agreement against any amounts payable by it to the Customer under any other agreement.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 As between the Customer and the Supplier, all Intellectual Property Rights shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If this Agreement is terminated, this licence will automatically terminate.
- 8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 8.2 The Customer may disclose such information:
- 8.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this Agreement; and
- 8.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 8.
- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this Agreement.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (with the exception of the Sheeting, title to which shall transfer to the Customer upon the Supplier being in receipt of full payment in accordance with clause 6) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 9. LIMITATION OF LIABILITY**
- 9.1 This clause 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- 9.1.1 any breach of this Agreement however arising;
- 9.1.2 any use made by the Customer of the Services or any part of them; and
- 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.3 Nothing in this Agreement limits or excludes the liability of the Supplier:
- 9.3.1 for death or personal injury resulting from negligence; or
- 9.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- 9.3.3 for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 9.4 Subject to clauses 9.2 and 9.3, the Supplier shall not under any circumstances be liable to the Customer for any special, indirect or consequential loss whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise arising out of, or in connection with, the supply, non-supply or delay in supplying the Services or otherwise in connection with this Agreement.
- 9.5 Subject to clauses 9.2, 9.3 and 9.4 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, non-performance or contemplated performance of this Agreement shall in all circumstances be limited to 120% of the price paid for the Services.
- 10. DATA PROTECTION**
- The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.
- 11. TERMINATION**
- 11.1 Subject to clause 11.2 and 11.3, this Agreement shall terminate automatically on the later of:
- 11.1.1 completion of the Services by the Supplier; or
- 11.1.2 full payment being received by the Supplier in accordance with clause 6.
- 11.2 Without prejudice to any other rights or remedies which the parties may have the Supplier may terminate this Agreement without liability on giving the Customer not less than five days written notice.
- 11.3 On termination of this Agreement for any reason:
- 11.3.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 11.3.2 the Customer shall make available for collection by the Supplier any Sheeting which has been delivered to the Customer in advance of the Performance Date.
- 11.3.3 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- 11.3.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 7 (Intellectual property rights), clause 8 (Confidentiality and the Supplier's property), clause 9 (Limitation of liability), clause 11.3, clause 21 (Notices), clause 22 (Dispute resolution) and clause 23 (Governing law and jurisdiction).
- 12. FORCE MAJEURE**
- 12.1 A party, provided that it has complied with the provisions of clause 12.3, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and, subject to clause 12.4, the time for performance of the obligations shall be extended accordingly) arising from a Force Majeure Event, save that nothing in this Agreement shall relieve the Customer of the obligation to pay the Supplier in accordance with clause 6.
- 12.2 The corresponding obligations of the other party will be suspended to the same extent.
- 12.3 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 12.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- 12.3.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- 12.3.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 12.4 If the Force Majeure Event prevails for a continuous period of more than 1 month, either party may terminate this Agreement by giving 5 days' written notice to all the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.
- 13. VARIATION**
- Subject to clause 5, no variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 14. WAIVER**
- 14.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 14.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.
- 15. CUMULATIVE REMEDIES**
- Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 16. SEVERANCE**
- 16.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 16.2 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17. ENTIRE AGREEMENT**
- 17.1 This Agreement and any documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.
- 17.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement or those documents (whether made innocently or negligently) shall be for breach of contract.
- 17.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 18. ASSIGNMENT**
- 18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.3 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.
- 19. NO PARTNERSHIP OR AGENCY**
- Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20. RIGHTS OF THIRD PARTIES**
- A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 21. NOTICES**
- 21.1 A notice or other communication given to a party under or in connection with this Agreement:
- 21.1.1 shall be in writing in English (or accompanied by a properly prepared translation into English);
- 21.1.2 shall be signed by or on behalf of the party giving it;
- 21.1.3 shall be sent for the attention of the person, at the address or fax number specified in this clause (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this clause); and
- 21.1.4 shall be:
- 21.1.4.1 delivered personally; or
- 21.1.4.2 sent by commercial courier; or
- 21.1.4.3 sent by fax; or
- 21.1.4.4 sent by pre-paid first-class post or recorded delivery; or
- 21.1.4.5 sent by airmail requiring signature on delivery.
- 21.2 The addresses for service of a notice or other communication are as follows:
- 21.2.1 Supplier:
- 21.2.1.1 address: Peel Port Logistics Limited, Maritime Centre, Port of Liverpool, L21 1LA
- 21.2.1.2 for the attention of: General Counsel / Company Secretary
- 21.2.2 Customer: as per details set out in the Quote.
- 21.3 If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- 21.3.1 if delivered personally, at the time of delivery; or
- 21.3.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or
- 21.3.3 if sent by fax, at the time of transmission; or
- 21.3.4 if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second day after posting; or
- 21.3.5 if sent by airmail, five days from the date of posting.
- For the purposes of this clause:
- 21.4.1 all times are to be read as local time in the place of deemed receipt; and
- 21.4.2 if deemed receipt under this clause is not within business hours (meaning 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.
- 21.5 To prove delivery, it is sufficient to prove that:
- 21.5.1 if sent by fax, the notice or other communication was transmitted by fax to the fax number of the party; or
- 21.5.2 if sent by pre-paid first class post, the envelope containing the notice or other communication was properly addressed and posted.
- 21.6 The provisions of this clause 21 shall not apply to the service of any process in any legal action or proceedings.
- 21.7 A notice or other communication required to be given under or in connection with this Agreement shall not be validly served if sent by e-mail.
- 22. DISPUTE RESOLUTION**
- 22.1 If any dispute arises in connection with this Agreement, the Supplier and the Customer shall, within five days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 22.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("**ADR notice**") to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 5 days after the date of the ADR notice.
- 22.3 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 23. GOVERNING LAW AND JURISDICTION**
- 23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).