

TERMS AND CONDITIONS OF TRADE

Valid October 2004 until further notice

1. In these Conditions:-

"Company" :means SHANNON FOYNES PORT COMPANY LIMITED.

"Person" :includes persons or any Body or Bodies Corporate.

"Bye Laws": means the bye laws from time to time adopted by the Company in respect of the Port in accordance with the Harbours Act, 1996 (as amended).

"Port": means all waters and every quay, pier, jetty, wharf, dock, graving dock, building, roadway or land in any case owned, administered or occupied by and lying within the statutory jurisdiction of the Company within the statutory jurisdiction of the Company.

"Customer": means any person at whose request or on whose behalf the Company undertakes any business or provides advice, facilities, machinery, information and/or services.

"Schedule of Charges": means the Company's current Schedule of Charges from time to time issued to users of the Company's facilities, machinery and/or services in any part of the Port.

- 2(A)** Subject to Sub-Paragraphs (B), (C) and (D) below, all and any advices, facilities, machinery, information and/or services provided by the Company, whether gratuitous or not, are undertaken subject to these Conditions.
- (B)** If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.
- (C)** If there is any conflict between these Conditions and the Bye Laws, the Bye Laws shall be deemed to apply.
- (D)** If there is any conflict between these Conditions and the Schedule of Charges, the Schedule of Charges shall be deemed to apply.
- (E)** In addition to the terms herein otherwise set out herein, the Customer are hereby deemed to be bound by the Bye Laws and the Schedule of Charges which are hereby deemed to be incorporated as part of these Conditions as if set out herein, traversed seriatim.
- 3** The Company shall be entitled to sub-contract to any third party or parties the provision of facilities, machinery, information and/or services to the Customer. Furthermore, the Company shall be entitled to perform any of its obligations herein by itself or by its parent, subsidiary or associated Companies and any such company shall be entitled to the benefit of these Conditions.
- 4(A)** Subject to Sub-Clause (B) hereof, the Company shall have a general lien on all goods (and documents relating to any such goods) in its possession, custody or control for all sums due at any time from the Customer and/or the Owner to the Company (and/or any of the Company's subsidiaries), and shall be entitled to store, sell and/or dispose of such goods or documents as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 28 days' notice in writing to the Customer. Upon accounting to the Customer and/or the Owner (as the case may be) for any balance remaining after payment of any sum due to the Company and the costs of such storage sale and/or disposal, the Company shall be discharged of any liability whatsoever in respect of the goods or documents.



- The aforesaid contractual lien shall be in addition to and not in substitution for any other lien which the Company may have against the goods of the Customer and/or Owner in law.
- (B)** When any goods over which the Company has or acquires a lien are liable to perish or deteriorate, the Company's right to sell or dispose of the goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the goods before doing so.
- 5(A)** If delivery of the goods or any part thereof is not taken by the Customer, consignee or Owner, at the time and place when and where the Company is entitled to call upon such person to take delivery thereof, the Company shall be entitled to remove and store the goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of the goods or that part thereof stored as aforesaid shall wholly cease and the Customer shall pay the entire cost of such storage (at the Company's then current rates or if the said goods are stored in property let to the Company, at the cost thereof incurred by the Company) shall, upon demand by the Company, be paid by the Customer to the Company.
- (B)** The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):-
- (i) on 14 days' notice in writing to the Customer (or without notice where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the goods), any goods which have been held by the Company for 30 days and which have not been collected by the Customer or, if delivery is a contractual obligation of the Company to the Customer in respect of such goods, cannot be delivered as instructed; and
 - (ii) without prior notice, goods which have perished, deteriorated or altered or are or have become dangerous or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to third parties or to contravene any applicable laws or regulations.
- 6** No insurance will be effected by the Company except upon express prior written instructions given by the Customer to the Company and all insurances so effected by the Company are subject to the usual limits, limitations, exceptions and conditions of the Policies of the Insurance Company or Underwriters contracted by the Company to take the risk.
- 7** The Customer undertakes that no claim shall be made against any Director, Servant, or Employee of the Company which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 8.** (A) The Customer shall be entitled to such credit terms in respect of the facilities, goods, information and/or services provided by the Company as the Company shall from time to time agree in writing with the Customer and, in default of such agreement, the Customer shall be entitled to credit of 30 days from the date that same are invoiced by the Company.
- (B) The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- (C) In respect of all sums which are overdue the Customer shall be liable to pay to the Company interest calculated at 2% above the rate of interest from time to time prescribed by the Courts, Act 1981 (as amended) for summary judgements. In addition, the Customer shall



- be liable to the Company for all legal costs and expenses incurred by the Company in seeking payment of any payments due by the Customer.
9. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.
 10. The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:-
 - (A) strike, adverse weather conditions, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or
 - (B) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence; or
 - (C) any delay, or any other consequences of any nature which may follow upon a breakdown or stoppage of any of the Company's machinery and/or equipment from any cause whatsoever (irrespective of the condition of such machinery and/or equipment)
 11. The Company will not be liable in any circumstances for any damage or injury to any property or person arising from any use of any machinery or equipment, whether belonging to the Company or otherwise and irrespective of the condition of such machinery and/or equipment. The user of any of the said machinery and/or equipment shall indemnify the Company against all and any damage to property and/or injury to persons which may be due to the use (authorised or otherwise) of the said machinery and/or equipment in the Port, and the said user shall at all times insure against such risks and the policy and premium receipts in respect of said insurance shall be produced to the Company on demand.
 12. Except under special arrangements previously made in writing the Company accepts no responsibility for dates or times for the provisions of services, facilities and/or machinery to the Customer (or his order), even where such dates and/or times are represented by the Company.
 13. The Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.
 - 14 (a) Any claim by the Customer against the Company arising in respect of any facilities, information, machinery and/or services provided to or for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this time limit and that he has made the claim as soon as it was reasonably possible for him to do so.
 - (B) Notwithstanding the provisions of Sub-Paragraph (A) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any facilities, information, machinery and/or services provided to or for the Customer or which the Company has undertaken to provide unless suit be brought and written notice thereof given to the Company within six months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.



- (C) The Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.
- 15(A)** If the Customer fails to make any payment or part of any payment the Company shall be entitled, without prejudice to any other remedies it may have against the Customer, to withdraw further services, machinery and/or facilities to the Customer and to cancel its Contract without notice to the Customer and the Customer shall not be entitled to compensation from the Company in respect of such withdrawal or cancellation.
- (B) Without prejudice to the generality of the foregoing, the Company may terminate this Agreement forthwith if the Customer:
- (i) calls a meeting of creditors or makes or executes any assignment for the benefit of or compounds with creditors; or
 - (ii) being a company, an order is made or an effective resolution is passed for its winding up (save a winding up for the purpose of reconstruction or amalgamation) or being an individual, commits an act of bankruptcy; or
 - (iii) commits any breach of this Contract and continues such breach or permits such breach to be continued for a period of fourteen days or more.
- (C) The Company may terminate this Contract at any time by giving to the Customer 28 day's notice of such termination and the Company shall not be liable to make any payment whatsoever on foot of such termination.
- (D) In the event that for any reason this Contract is cancelled by the Customer, the Company shall, in addition to and without prejudice to any other rights which it may have against the Customer, be entitled to recover from the Customer payment for all services provided to the Customer hereunder. Any such cancellation by the Customer shall be made by giving 28 days written notice thereof to the Company.
- 16** These Conditions and any act or contract to which they apply shall be governed by the laws of Ireland (Eire) and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the Courts of Ireland (Eire).

(SHA002001)