



Shannon Foynes
PORT COMPANY

TERMS AND CONDITIONS OF TRADE incorporating Plant Hire Agreement

Valid 01 September 2017 until further notice

1. In these Conditions:-

"Company": means SHANNON FOYNES PORT COMPANY LIMITED and its subsidiaries.

"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.

"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 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.

"Conditions of Hire": means the Company's Conditions for Hire of Cranes and Equipment from time to time issued to users of the Company's facilities, machinery and/or services in any part of the Port.

"Owner": means, in relation to any goods for which the Company (or any of its subsidiaries) supplies any services, the person who has contracted with the Customer in relation to any such services.

- 2 (A)** Subject to Sub-Paragraphs (B), (C), (D), (E) and (F) below, all and any advices, facilities, machinery, information and/or services provided by the Company, whether gratuitous or not, are provided, inter alia, subject to these Terms and Conditions.
- 2 (B)** If any legislation is compulsorily applicable to any business undertaken by the Company 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.
- 2 (C)** If there is any conflict between these Conditions and the Bye Laws, the Bye Laws shall be deemed to apply.
- 2 (D)** If there is any conflict between these Conditions and the Schedule of Charges, the Schedule of Charges shall be deemed to apply.
- 2 (E)** If there is any conflict between these Conditions and the Conditions of Hire, the Conditions of Hire shall be deemed to apply.
- 2 (F)** In addition to the terms herein set out, the Customer is hereby deemed to be bound by the Bye Laws, the Conditions of Hire (where applicable) 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 (whether or not a parent, subsidiary or associated company of the Company) the provision of facilities, machinery, information and/or services by the Company to the Customer and every such provision by any such third party or parties shall also be on the basis of these Terms and Conditions, unless otherwise agreed in writing by the Company with the Customer.

4(A) Subject to Sub-Clause 4(B) hereof, the Company shall have a general lien on all goods in the ownership or custody of the Customer (and documents relating to any such goods) which are in the Company's possession or control for all sums due at any time from that Customer and/or the Owner to the Company (and/or any of the Company's subsidiaries), and the Company 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 all such 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.

4 (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 said goods before doing so.

5(A) If delivery of goods or any part thereof is not taken by the Customer, consignee or Owner, at the time and place when and where the Company has directed, the Company shall be entitled at any time thereafter to remove and store such goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of such goods or that part thereof stored as aforesaid shall wholly cease and 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 by the Company to contact any parties who may reasonably be supposed by the Company to have any interest in the goods), any goods which have been stored 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 contracted by the Company with the Customer; 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 The Customer acknowledges that no insurance will be effected by the Company except with express prior written agreement of the Company with the Customer and all insurances so effected by the Company are subject to the limits, limitations, exceptions and conditions of the policy(ies) of insurance of the Insurance Company or Underwriters contracted by the Company to take the risk.

7 The Customer undertakes to the Company that no claim shall be made by the Customer against any Director, Servant, or Employee of the Company which imposes or attempts to impose upon them any liability of the Company in connection with any services which are the subject of these Terms and Conditions and, if any such claim shall nevertheless be made, the Customer shall indemnify the Company against all consequences thereof for the Company.

- 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 to the Customer as the Company shall from time to time agree in writing with the Customer and, in default of any such agreement, the Customer shall be entitled to credit of 30 days from the date that same are invoiced by the Company.
- 8(B)** The Customer shall pay to the Company in cash or as otherwise agreed in writing by the Company all sums immediately when due without deduction or deferment on account of any claim, counterclaim and/or set-off.
- 9.** The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.
- 10.** The Company is relieved of liability to the Customer and/or any Owner 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, or other event or incident the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or
- (B) any circumstances or event which the Company is unable to avoid and/or 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 break-down or stoppage of any of any machinery and/or equipment (whether belonging to the Company or any third party) 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 Customer shall indemnify the Company against all and any damage to property and/or injury to persons which may be due to the Customer's use (authorised or otherwise) of any such machinery and/or equipment in the Port, and the said Customer shall at all times insure against such risks and the policy and premium receipts in respect of such insurance shall be produced by the Customer to the Company on demand.
- 12.** Except under special arrangements specifically agreed in writing by the Company with the Customer, the Company shall not be liable for any default in the provision of services, facilities and/or machinery to the Customer (or to his order) by a specified time or date, even where such dates and/or times are represented by the Company.
- 13.** The Company shall not in any circumstances whatsoever be liable for any indirect or consequential loss suffered by the Customer (or any of its customers) such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation howsoever caused.
- 14 (A)** Any claim by the Customer against the Company in relation to any facilities, information, machinery and/or services provided (or, which the Company has failed to provide) 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 the event or occurrence alleged to have given rise to such claim and any claim not made and notified as aforesaid shall be deemed to have been 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.
- 14 (B)** Notwithstanding the provisions of Sub-Paragraph 14(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 (or, which the Company has failed to provide) 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 by the Customer within six months from the date of the event or occurrence alleged to have given rise to a cause of action against the Company.

- 15 (A)** If the Customer fails to make any payment or part of any payment to the Company by its due date for payment, the Company shall be entitled, without prejudice to any other remedies it may have against the Customer, to withdraw the provision of any further services, machinery and/or facilities to the Customer and/or to cancel its contract with the Customer without notice to the Customer and the Customer shall not be entitled to compensation from the Company in respect of such withdrawal or cancellation.
- 15 (B)** Without prejudice to the generality of the foregoing sub-paragraph 15(A), the Company may terminate any agreement between the Customer and the Company forthwith if the Customer:
- (i) calls a meeting of its creditors or makes or executes any assignment for the benefit of or compounds with its 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.
- 15 (C)** The Company may terminate any agreement between the Customer and the Company at any time by giving to the Customer 28 day's in writing notice of such termination and the Company shall not be liable to the Customer for any loss or damage suffered by it whatsoever on foot of any such termination.
- 15 (D)** Any cancellation by the Customer of any agreement between the Customer and the Company shall be made by the Customer giving 28 days written notice thereof to the Company and in the event of any such cancellation 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 thereunder.
- 16** These Terms and Conditions, and any contract to which they apply, shall be governed by the laws of Ireland (Eire) and any dispute arising out of any such contract to which these Terms and Conditions apply shall be subject to the exclusive jurisdiction of the Courts of Ireland (Eire).

Conditions for Hire of Cranes and Equipment at SFPC

Applications for hire of equipment from SFPC (including cranes of SFPC available for hire) must be made via the SFPC online booking form, available on Cargopro. All applications must be made before 12.00 the day before the equipment is required. Failure to book equipment on time may lead to delays in providing the equipment.

SFPC do not guarantee the availability of its cranes, grabs, hoppers or any other of its equipment for hire at any specific time. The final decision on the allocation of cranes and/or other equipment owned by SFPC to berths and/or vessels lies with the SFPC Port Services Manager.

A. General

1. *In these conditions, the following terms shall have the following meanings:*

"Hirer": means any person (legal or natural) with whom the owner contracts for the hire of Plant.

"the Owner": means SHANNON FOYNES PORT COMPANY LIMITED and its subsidiaries.

“Plant”: means the equipment (whether cranes, hoppers, grabs or other equipment) which the Owner supplies on hire to the Hirer.

“Quay”: means the quays and yards at Foynes Harbour, Foynes, County Limerick and Ted Russell Docks, Dock Road, Limerick controlled by the Owner.

“Schedule of Charges”: means the rates from time to time published by the Owner for the hire of Plant.

2. The hire of cranes is on a crane hire only basis and as per the following publications:
 - a. I.S. 360:2004 Code of Practice for the Safe Use of Cranes in the Construction Industry
 - b. Guide to the Safety, Health and Welfare at Work (General Application) Regulations 2007, Chapter 2 Part 2: Use of Work Equipment,
 - c. Code of Practice for Health and Safety in Dock Work [HSA]

It is the Hirer’s responsibility to fully plan, control, direct, supervise and insure the crane operation and personnel.

3. The Owner reserves the right of limiting the time of any crane hire and restrict the type of grabs that may be operated with any particular crane or cranes.
4. The Owner shall not be liable for any delay or its consequences arising from breakdowns of any of its cranes, grabs, hoppers or other equipment.
5. Operators are not permitted to use their own cranes, 3rd party cranes or ships cranes/gear unless the operation to be undertaken is acknowledged by the SFPC Port Services Manager in writing as beyond the capabilities of the Owner’s cranes. In these circumstances the Owner may allow licensed third party cranes on the port estate, for that specific operation, and each such operation will require specific approval from SFPC Port Services Manager, and a specific license to operate will be issued for that operation.
6. The Owner shall provide a competent crane driver, who shall be under the exclusive control of the Hirer during the period of hire. Such a crane driver shall, for all purposes in connection with the operation of the crane, be regarded as a servant or agent of, and as being under the exclusive direction, control and supervision of, the Hirer.
7. The Hirer must provide their own slings or other lifting equipment as required and the Hirer must be satisfied that all such equipment is fully certified for the proposed use, fit for purpose and safe to use and the Hirer shall furnish such certification to the Owner on request by the Owner.
8. It is the responsibility of the Hirer to ensure that the crane’s working conditions and methods employed in their operation are safe and free of risk to the health and safety of its and the Owner’s employees and all other third parties^[PM1]. [Ditto]
9. It is the responsibility of the Hirer to ensure that the Quay is left clean and free of any spillage/debris/dunnage/skips/waste receptacles on completion of vessel operations.
10. The Hirer is prohibited from using any Plant outside the Quay without the prior written agreement of the SFPC Port Services Manager.
11. All Plant supplied by the Owner to the Hirer shall be on the basis of the Schedule of Charges applicable at the time of hire.

B. Acceptance of Plant.

1. Use of the Plant by the Hirer implies acceptance of all terms and conditions herein unless otherwise agreed in writing by the Owner with the Hirer.

2. Any personnel supplied by the Owner in connection with the hire of any Plant by the Owner to the Hirer shall be deemed to be under the Hirer's control, direction and supervision and the Hirer shall be responsible to ensure that such personnel comply with all directions of the Hirer, health and safety legislation and standards, including those set out at A2 above [PM2].

C. Delivery in Good Order and Maintenance Inspection Reports.

1. Unless notification in writing to the contrary is received by the Owner from the Hirer before its use by the Hirer, in the case of Plant supplied by the Owner to the Hirer with an operator, the Plant is accepted by the Hirer as being in good order and save from any inherent fault or a fault not ascertainable by reasonable examination.
2. The Hirer shall be responsible for the safe keeping of all Plant, its use in a workmanlike manner within the manufacturers rated capacity and its return on the completion of hire in equal good order (fair wear and tear excepted). The current inspection and test report(s) required under any relevant legislation in respect of any Plant, or a copy thereof, shall be supplied by the Owner to the Hirer, if requested in writing by the Hirer, and returned by the Hirer on the completion of hire.

D. Servicing and Inspection.

1. The Hirer shall at all reasonable times allow the Owner, its agents or its insurers to have access to the Plant to inspect, test, adjust, repair, refuel or replace same. So far as is reasonably possible, such work will be carried out to suit the convenience of the Hirer.

E. Liability for loss and damage.

1. When a driver or operator is supplied by the Owner with the Plant, such a driver or operator shall be competent in operating the Plant and the Hirer shall not allow any other person to operate such Plant without the Owner's prior consent in writing.
2. The liability of the Owner to the Hirer in respect of all loss and/or damage of property (including claims for loss or injury whether to persons or property) arising from the negligence of the Owner or that of its servants or agents shall in no event exceed the money which the Hirer has agreed to pay the Owner for the hire of the Plant at the time of the negligence. The Owner shall have no further or other liability to the Hirer.
3. The Hirer shall be liable to, and hereby indemnifies, the Owner in respect of all loss and/or damage to property including the Plant and in respect of all claims for loss or injury whether to persons or property arising from the Hirer's negligence or that of its servants or agents.
4. The Hirer shall ensure that adequate insurance cover is arranged by them in respect of their obligations to the Owner under these terms and conditions and in respect of their obligations to third parties whether by statute, common law or otherwise. Such insurance cover shall include where appropriate but shall not necessarily be restricted to Public Liability, Employers Liability and such property insurance as may be relevant. Proof of the existence of such cover shall be made available by the Hirer to the Owner upon request.

F. Breakdown, Repairs and Adjustment & Stoppages.

1. The Hirer shall be responsible to the Owner for all losses damages and/or expenses incurred by the Owner arising from any breakdown of the Plant and/or all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the Plant, or that of the Hirer's servants or agents, and including the payment of hire at the Owner's rate set out in the Schedule of Charges at that time during the period any such Plant is necessarily idle due

to such breakdown or damage. The Owner will also be responsible for the cost of repairs to the Plant involved in breakdowns from all other causes and will bear the cost of providing spare parts to such Plant.

2. The Owner shall not in any circumstances be liable to the Hirer for stoppages or breakdowns in the Plant.

G. Loss of Use of Plant due to Breakdown.

1. Each item of Plant is hired by the Owner to the Hirer as a separate unit and the breakdown or stoppage of one or more such units through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant on hire.

H. Consequential Losses.

1. The Hirer acknowledges that the Owner shall not have any liability or responsibility to the Hirer for any consequential loss or damage howsoever arising.

I. Notice of Accidents.

1. If the Plant is involved in any accident resulting in injury to any persons or damage to any property, immediate notice shall be given by the Hirer to the Port Services Department of the Owner by telephone and confirmed in writing to the SFPC Port Services Manager, and no admission, offer, promise of payment or indemnity shall be made by the Hirer to any third party without the Owner's prior consent in writing.