



**Marine Terminal Operator Schedule for  
Federal Marine Terminals,  
a division of Fednav Limited**

**Issued by:** Fednav Limited

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**ITEM 1: PURPOSE, SCOPE AND APPLICABILITY**

The rules, regulations, conditions, commodity rates and/or charges set forth in this Schedule apply to Terminal Services provided by Federal Marine Terminals, a division of Fednav Limited, rendered in Canada.

For additional terms, rates and charges at the below locations, please refer to the terminal-specific Annex located at the end of this Schedule.

**FMT Hamilton**  
208 Hillyard Street  
Hamilton, ON L8L 6B6  
Phone: 905.528.8741  
Annex A

**FMT Thorold**  
1281 Old Thorold Stone Road  
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Thorold, ON L2V 3Y7  
Phone: 905.528.8741  
Annex B

**ITEM 2: ABBREVIATIONS**

\$	Canadian Dollars
%	percent
<	less than
>	greater than
CBM	cubic meter
LBS	pounds
MT	metric tonne of 2,204.6 lbs
SCR	stevedoring commodity rate
TTC	terminal transfer charge

**ITEM 3: DEFINITIONS**

The following definitions apply to this Schedule:

**ATTORNEY FEES AND COSTS:** includes all legal costs and expenses, attorney fees, expert witness fees, paralegal fees, court reporter fees, filing fees, copying charges, and charges relating to document production incurred by the MTO in relation to the investigation, prosecution and/or defense of any loss, damage, expense, claim, liability, indemnity, suit, fine, and/or penalty, including attorney fees and costs incurred for appellate and/or bankruptcy proceedings.

**BULK CARGO:** Loose, unpackaged cargo that is loaded and carried in bulk without mark or count. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirement of this part.

**BUSINESS DAY:** Monday through Friday, excluding weekends, federal, provincial, and local holidays, or any holiday as set out in Item 23.

**CARGO:** Any and all goods that are the subject of any services provided by the MTO hereunder (including Bulk Cargo), along with any personal property, supplies and equipment related to such goods, including



all packing, packaging, crates, cradles, pallets, tanks, platforms, flatbeds, trailers, containers, other equipment, and other items, materials, and supplies associated therewith.

**CARGO HANDLING:** The service of physically moving Cargo between any point of rest and any place on the Terminal Facility, other than the end of Vessel's tackle, along with any other services provided by the MTO to any Cargo while located at the Terminal Facility.

**CARGO INTEREST:** Any Person having interest in the Cargo including the owner of the Cargo, the shipper, the consignor, the consignee, the receiver, or any of its agents, servants and/or employees.

**CHECKING:** The service of counting and checking Cargo against appropriate documents for the account of the Cargo, the Vessel, or any other Person requesting same.

**DAY:** means one calendar day

**DEFAULT:** The User's failure to perform any of the terms, conditions or obligations set forth in this Schedule, the Rate Quote, or any other evidence of an agreement for terms of the Terminal Service.

**DETENTION:** Non-productive longshore worker's time caused by weather delays, equipment failure, any violations of municipal, provincial and/or federal safety, health or environmental law, rule or regulations existing on board a Vessel or any other cause whatsoever beyond the MTO's control.

**DOCKAGE:** The charge assessed against a Vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a Vessel so berthed.

**EFFECTIVE DATE:** The date a Schedule or an element of a Schedule takes effect. Where there are multiple publications on the same day, the last Schedule or element of a Schedule published with the same effective date is the one effective for that day.

**EXPIRATION DATE:** The last day, after which the entire schedule or single element of the schedule is no longer effective.

**FOOD PRODUCTS:** Any commercial bagged or packaged food goods including goods which are subject to laws and regulations administered by the Canadian Department of Agriculture, any Export Food Aid, International Food Assistance program administered by Canada's Department of Global Affairs and/or food commodities for the World Food Programme.

**FOREST PRODUCTS:** Any material derived from forestry for direct consumption or commercial use, including lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp on rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular byproducts derived from pulping and papermaking, and engineered wood products.

**FREE TIME:** The time period immediately prior to the loading of Cargo onto a Vessel, or subsequent to the discharge of such Cargo from a Vessel, during which Cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of Wharf Demurrage or Terminal Storage charges, as specified in the Schedule.

**HAZARDOUS MATERIALS:** Includes any Cargo that has any hazardous, dangerous, explosive, flammable, poisonous, infectious, noxious, spontaneously combustible, radioactive, corrosive or oxidizing character or effect whatsoever, including without limitation any material or substance listed in any Canadian legislation, federal or provincial, governing the packaging, labelling and carriage of Hazardous or Dangerous Goods or otherwise identified by any federal or provincial hazardous materials law as being a marine or other pollutant, an explosive, a dangerous or hazardous material, or a hazardous waste.

**HEAVY LIFT:** The service of providing heavy lift cranes and equipment for lifting Cargo.

**INTEREST:** interest, where applicable, shall be calculated at a rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), compounded monthly.

**LOADING/UNLOADING:** The service of loading Cargo onto or unloading Cargo from railroad cars, trucks, lighters, Vessels or any other means of conveyance of Cargo on, to or from the Terminal Facility.

**MARINE TERMINAL OPERATOR (MTO):** A Person engaged in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier. A marine terminal operator includes terminals owned or operated by provinces and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators. Where the term MTO appears throughout this Schedule, it shall refer to Federal Marine Terminals, a division of Fednav Limited.

**MOTOR CARRIER:** Any Person hired by the User to provide motor vehicle transportation for compensation, or any of its agents, contractors, subcontractors, drivers, owner/operators, servants and/or employees.

**PERSON:** Includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees, and personal representatives.

**PRACTICES:** Those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by an MTO.

**RATE:** A price the MTO charges for providing Terminal Services.

**RATE QUOTE:** An offer from the MTO to provide Terminal Services to a User at a specified Rate.

**SCHEDULE:** This publication including the Annexes, which contains the actual rates, charges, classification, regulations, terms, conditions and Practices of the MTO.

**TERMINAL FACILITIES (or FACILITIES):** One or more structures (and services connected therewith) comprising a terminal unit, including docks, berths, piers, aprons, wharves, warehouses, sheds, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of Cargo or the interchange of same between land and ocean common carriers or between two ocean



common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne Cargo may be tendered to the consignee or outbound Cargo may be received from shippers for Vessel or container loading.

**TERMINAL SERVICES (or SERVICES):** Checking, Cargo Handling, Heavy Lift, Loading, Unloading, Terminal Storage, Usage, Wharfage, and Wharfage Demurrage, or other such services identified in this Schedule, as appropriate. Any additional services which are offered shall be listed and charges therefor shall be shown in the Annex.

**TERMINAL STORAGE (or STORAGE):** The service of providing warehouse or other Terminal Facilities for the storage of Cargo, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and other available methods of storage.

**THIRD PARTY:** Any Person with an interest in or that provides services in connection with the Cargo or Vessel that is not a User.

**USAGE:** The use of Terminal Facility by any Vessel Interests, rail carrier, lighter operator, trucker, consignee, the User, or any of their agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

**USER:** The party ordering or receiving Terminal Services from the MTO; the Cargo Interest; the Motor Carrier; the Vessel Interests; any other party having any interest in the Cargo and/or receiving, directly or indirectly, any benefit from the Services rendered by the MTO; and any Vessel, vehicle, conveyance of any kind, and the owners and operators thereof, and Person and/or entity that requests, is provided with, and/or receives any benefit from any Terminal Services of any kind or description.

**VESSEL(S):** Any ship, boat, barge or watercraft of any kind or description.

**VESSEL INTEREST(S):** The registered owners, beneficial owners, ocean carrier, water carrier, common carrier, and charterers (whether demise, bareboat, time, slot, voyage or otherwise) of the Vessel.

**WHARF DEMURRAGE:** A charge assessed against Cargo remaining in or on Terminal Facilities after the expiration of Free Time, unless arrangements have been made for storage.

**WHARFAGE:** A charge assessed against the Cargo or Vessel on all Cargo passing or conveyed over, onto, or under wharves or between Vessels (to or from barge, lighter, or water), when berthed at a wharf or when moored in a slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

#### **ITEM 4: TERMINAL HANDLING SERVICES**

**A. Commencement:** The terminal handling services commence at the end of the Vessel's tackle in respect of inbound Cargo or upon receipt of Cargo in the case of outbound Cargo, unless stevedoring services are provided (see ITEM 5). The normal terminal handling services performed by the MTO are:

1. The delivery of Cargo by bills of lading as described in the Vessel's manifest.
2. The responsibility of custodianship of all Cargo.
3. The obligation to deliver all Cargo in the same condition as received.

**B. Terminal Transfer Charge:** The MTO assesses a Terminal Transfer Charge (TTC) for the services identified in ITEM 4(A). The MTO shall assess special service charges for all other services. All special service charges shall be for the account of the User.

**C. Volume lots:** The MTO may negotiate a TTC for volume lots of Cargo and such rates will supersede the Rates listed in the Annex.

**D. Special services:** Nothing contained herein shall be construed as requiring the MTO to perform any service not specifically provided for herein. If the MTO agrees to perform services not specifically identified in this Schedule, the charge for any such service shall be mutually agreed upon.

**F. No climate controls:** The Terminal Facilities used for Storage of Cargo are not climate controlled. The User agrees to bear all risk of loss or damage to Cargo resulting from climate changes during Storage in Terminal Facilities. Such risk of loss or damage includes damage to or deterioration of Cargo resulting from changes in temperature and humidity, or other weather-related causes, such as precipitation, icing and heat damage.

**G. Warehouse and shed dimensions:** If the User requests storage of Cargo in a warehouse or shed, then the User must ensure that the dimensions of any Cargo to be stored do not exceed the dimensions of the warehouse and shed doors. The dimensions of warehouse and shed doors located with the Terminal Facilities are available from the MTO upon request. If Cargo cannot safely pass through the warehouse or shed doors, the User agrees to bear all risk of climate-related loss or damage to Cargo from outside storage, including precipitation, ice, heat, flood, changes in temperature and changes in humidity.

## **ITEM 5: VESSEL AND STEVEDORING SERVICES**

**A. Stevedoring Services:** Stevedoring Services provided by the MTO shall include:

1. Loading of Cargo from place of rest in the Terminal Facilities onto a Vessel as directed by the Vessel's Master and/or the User. Special stowing of Cargo shall not be included in Stevedoring Services.
2. Unloading Cargo from a Vessel and delivering to an agreed place of rest in the Terminal Facilities in bill of lading lots to be readily available for delivery.

**B. MTO's obligations for Stevedoring Services:** In performing the Stevedoring Services, the MTO will provide:

1. All customary gear and equipment deemed reasonably necessary for the performance of Stevedoring Services by the MTO, if and when available.
2. Sufficient labor and such supervision reasonably necessary for the performance of Stevedoring Services in accordance with prevailing Collective Bargaining Agreement, but

always contingent upon labor being available to the MTO thereunder and in consideration of safety, efficiency, and practice in the port or terminal.

3. Dunnage board placement during loading, if required for proper stowage of Cargo, except where full platforms must be laid on Cargo for the carriage of general Cargo or where dunnage is carried as Cargo.

**C. Stevedoring Commodity Rate:** For the foregoing services specified in ITEM 5(A) and ITEM 5(B), above, an SCR is assessed. All other Stevedoring Services performed by the MTO are subject to Special Service Charges, as set forth in paragraph D, below.

1. The SCR applies only to Vessels suitable for the type of Cargo being handled by the MTO.
2. Rates for other Stevedoring Services are available upon request.
3. All SCR's apply only to the specific job quoted, unless otherwise stated.

**D. Special Service Charges:** When authorized to supply extra labor, material, and/or equipment, the MTO will charge its cost (including fringe benefits) plus a service charge as "Special Service Charges". Extra labor, materials, and/or equipment services subject to Special Service Charges include, but are not limited to, the following:

1. Removing and replacing hatch covers and beams and the rigging necessary to work Cargo in each respective hatch when such work is performed by the MTO.
2. Handling Vessel lines and gangways.
3. Discharge and disposal of dunnage or debris.
4. Loading or discharging a Vessel's stores, dunnage, material or equipment other than the Cargo.
5. Carpentry or coopering work of any nature.
6. Handling or placing flooring timbers for Heavy Lifts or for use by carpenters.
7. Bolting and unbolting tank lids.
8. Battening down hatches when called upon to do so upon completion of the Vessel.
9. Rigging and unrigging Heavy Lift booms and hatch tents.
10. Lashing and Securing: Unless otherwise agreed between the Parties, where the User requires lashing or securing of Cargo on board the Vessel, on deck or elsewhere, all labor and materials shall be for the account of the User. The services shall be performed under the direction, control, supervision and responsibility of the Vessel's Master and/or other authorized personnel of the User. The Vessel's Master or authorized personnel shall be responsible for the sufficiency of such lashing and securing. The User expressly agrees to defend, indemnify, and hold harmless the MTO, its officers, directors, employees and agents from and against any claims, demands or suits whatsoever in any way related to actual or allegedly insufficient or improper lashing and/or securing of Cargo, including Attorney Fees and Costs incurred by the MTO with respect to any such claim, demand, or suit.
11. Supplying extra labor for any other services when authorized.
12. If the condition of the Cargo or its packaging is other than in customary good order and condition such that prompt handling is delayed, special arrangements shall be agreed upon in lieu of the SCR.
13. When materials (i.e. dunnage, banding, lashing chains, cargo intended for other ports, etc.) impede normal cargo operations, said materials will be moved or removed at the



MTO's discretion. The MTO shall charge the User for the aforementioned service at the prevailing "stand-by" Rate. Standard disposal costs will be for the account of the User.

**E. Rehandling, sorting, and shifting of Cargo:** An SCR applies to one handling of Cargo. When rehandling, sorting, or shifting the Cargo is necessary through no fault of the MTO, the MTO will charge for such services at its cost (including fringe benefits) plus a service charge.

**F. Detention, stand-by time, lay time:** Once work starts, the MTO shall charge the User for Detentions greater than 15 minutes at its cost (including fringe benefits) plus a service charge. When longshore workers are employed, but unable to work due to causes beyond the control of the MTO, or if longshore workers must be paid for a minimum working period pursuant to prevailing labor agreements or port customs, then the MTO shall charge the User such costs (including fringe benefits) plus a service charge.

**G. Damaged Cargo:** For any Cargo damaged, deteriorated or otherwise altered by improper packing, improper loading, improper securement, damage sustained at any intermediate port, fire, water, humidity, weather conditions, inherent vice, oil, or other such conditions that cause distress or obnoxious conditions, the MTO shall charge the User to handle such damaged Cargo based on: the cost in accordance with the Labor Agreement (including fringe benefits), plus a service charge, plus the SCR, together with the repair or replacement cost of the damaged or destroyed gear, and the cost of the equipment for the protection of the longshore workers as required under the circumstances.

**H. Sorting Cargo:** Extra sorting other than bill of lading lots, separations to fill individual orders, or any service beyond the normal delivery by bill of lading lots, including any sorting of allegedly damaged Cargo, shall be for the sole account of the User (including fringe benefits and service charge).

**I. Description and tender of Cargo:**

1. The User shall be solely responsible for providing MTO with complete and accurate particulars for all Cargo, including: information, description, nature, characteristics, markings, number, count, weight, dimensions, volume, quantity, and instructions relating to the Cargo (including any special instructions or conditions applicable to their storage, handling and/or transportation). The User hereby warrants the accuracy of all particulars provided to the MTO and acknowledges that the MTO is entitled to rely on the particulars provided by the User. The User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO and its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from any inaccuracies or errors in the particulars provided to the MTO, including Attorney Fees and Costs incurred by the MTO therefor.
2. The User shall tender Cargo to the MTO at the date, time and place agreed by the MTO. At the time the Cargo is tendered to the MTO, the Cargo shall be in good order, count and condition, and packaged, protected, packed and stowed sufficiently to withstand the contemplated Terminal Services, handling and subsequent transportation, including by Vessel, rail car, motor vehicle and/or any other mode of conveyance, as applicable. The User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO and its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from the tender of any Cargo

that does not comply with this provision, including Attorney Fees and Costs incurred by the MTO therefor.

**J. Vessel Requirements:** Unless otherwise agreed, the User shall ensure that the Vessel will supply booms hoisted in position and automatic hatches opened and ready to work; adequate winches and/or Vessel's cranes with sufficient steam or current for their efficient operation; blocks, guys, preventers, and wire or rope in good condition and of sufficient strength for falls; dunnage, hatch tents, and gantlines; adequate lighting for night work; tugs; derricks or cranes and slings for any Cargo that cannot safely be handled by Vessel's gear, or when Vessel's gear is not adequate to handle Cargo in a normal and safe manner according to the custom of the port; all materials required for dunnaging, bracing, reeving, shoring, lashing, protection, or bulkheading of Cargo. All Vessels shall provide the MTO with gear certifications upon request.

**K. Safety and health regulations:** The User warrants that each of the Vessels and its equipment is maintained in such condition as to comply with the Canada Shipping Act, 2001 and all regulations enacted thereunder, including, where applicable, those international conventions and protocols listed on Schedule 1, the Canada Labour Code and regulations enacted thereunder, and all provincial statutes, regulations, and orders for safety and health, and all amendments thereto. The User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO and its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from any violations or alleged violations related to this provision, whether issued by federal, provincial or local governmental organizations, or instituted by a Person, including Attorney Fees and Costs incurred by the MTO therefor.

**L. Stowage plans:**

1. The User must provide the MTO with an inbound Cargo stowage plan and manifest at least two full Business Days prior to arrival of Vessel. The User must provide the MTO with a provisional outbound Cargo stowage plan at least two full Business Days prior to the start of loading operations.
2. Where practical, prior to the beginning of each year, the User will advise the MTO, in writing, of the expected quantities and proposed schedule for shipment and receipt of materials. This schedule is to be used for planning purposes only and is subject to change and, therefore, is not a commitment from the User to meet said schedule. The User will advise tonnages and Vessel laydays for each shipment through the MTO at least one month in advance, unless otherwise impracticable.

**M. Merchandise information and manifest:**

1. The User must provide advanced notice for any Cargo arriving at the MTO's Facilities. Upon arrival at the MTO's Facilities, Cargo must be adequately marked. If the User fails to provide notice or adequately mark Cargo as stated in this paragraph, the MTO may, at its sole discretion, refuse to accept such Cargo.
2. The User must furnish the MTO with a cargo manifest showing weights and measurements for all Cargo so manifested.
3. Sorting of Cargo within Bills of Lading will only be performed by special agreement with the MTO. If the MTO agrees to sort Cargo within Bills of Lading, the User must provide

complete packing list information and ensure that Cargo is adequately marked to match packing list data. Any such arrangements are subject to the provisions of ITEM 5(H).

4. Manifests for outbound Cargo must be in the MTO's possession within seven (7) Days after completion of Vessel. In the event a manifest is not received within that time, the MTO will invoice by dock receipt information and the User agrees to pay such invoices.
5. Manifests for all inbound or outbound Cargo must clearly indicate whether said Cargo was freighted on either a weight or a measurement basis. If the User fails to provide freight information, then the MTO shall invoice on the higher amount of the weight or measurement basis.

**N. Consignments:** Outbound shipments of Cargo must be consigned to the appropriate Person and/or Vessel c/o Federal Marine Terminals, a Division of Fednav Limited.

**O. Vessel Berthing:**

1. The MTO or Port Authority shall have the exclusive right to assign berths.
2. Vessels may be required to move or shift at the MTO's or Port Authority's discretion and direction in order to allow other Vessels to load/unload, to efficiently use Terminal Facilities, or for other reasons to be determined by the MTO or Port Authority.
3. All Vessels utilizing Terminal Facilities shall be liable for any damage to Terminal Facilities or equipment resulting from or caused by such Vessel's Usage or as further set out in this MTO Schedule.
4. The MTO strives to maintain a proper schedule to maintain operational efficiencies. Should a Vessel arrive out of schedule during high demand periods, the MTO reserves the right to charge additional fees to ensure safe and efficient operations at the terminal.

**P. Valuable or Special Cargo:**

1. The User must obtain prior authorization from the MTO for any valuable or special cargo, including cargo that requires security or special handling. If the User fails to obtain prior authorization from the MTO prior to delivery of any valuable or special cargo, then MTO shall have no responsibility for the loss of, or damage to, such cargo, howsoever caused.
2. The User must obtain prior authorization and agreement of the MTO for any unusual cargo, which shall be subject to special rates. Unusual cargo, such as cargo that is perishable, bulk, loose lumber, unpackaged goods, obnoxious or dangerous (including ammunition, explosives and dangerous cargo) shall only be handled by special arrangement.

**Q. Work to be performed by the MTO:**

1. All stevedoring and Terminal Services required by the Vessels or the User shall be done by or arranged through the MTO, when working at the MTO Facilities.
2. Any penalty or compensation payment arising due to Vessel's crew or the User's actions in contravention of the prevailing collective bargaining agreement shall be for the account of the User.

**R. Port Congestion or Peak Season Fee:** The MTO at its sole discretion, may apply a surcharge to any Services rendered during peak or congested periods at the Terminal Facilities. This surcharge will apply in addition to the agreed base rates to cover increased operational costs during periods of high demand. Surcharges shall be calculated either as a flat fee or a percentage above the quoted rate. The MTO shall provide advance notice of any surcharge applied pursuant to this provision. Additionally, if outside labor is contracted to assist during these high demand periods, labor will be allocated based on agreed terms for contracting the additional manning or gangs.

**S. Fuel Surcharge:** The MTO at its sole discretion, may apply a reasonable fuel surcharge to any Services rendered at the Terminal Facilities to offset increase in the price of fuel outside of the control of the MTO. This surcharge will apply in addition to the agreed base rates. Surcharges shall be calculated either as a flat fee or a percentage above the quoted rate. The MTO shall provide advance notice of any surcharge applied pursuant to this provision.

#### **ITEM 6: WHARFAGE/STORMWATER FEE**

**A. Wharfage:** Unless otherwise charged directly by the Port Authority to the User, the MTO shall charge Wharfage against all Cargo passing or conveyed over, onto or under wharves, or between Vessels when berthed at a wharf, or when moored in a slip adjacent to a wharf.

**B. Stormwater or Environmental Fee:** The MTO shall charge a stormwater or environmental fee against all Cargo passing or conveyed over, onto or under the wharves, or between Vessels when berthed at a wharf, or when moored in a slip adjacent to a wharf in the terminal. The party that will be paying the Wharfage will be assessed the stormwater fee, as well.

#### **ITEM 7: FOOD PRODUCTS**

**A.** The MTO has no special storage facilities for Food Products. The User accepts all risk of loss or damage to Food Products of any nature whatsoever, howsoever caused, resulting from Services or Storage. Food Products that are or may be subject to damage or deterioration, including by mold or mildew, through temperature or humidity conditions or changes, climatological causes of any nature whatsoever, or any other causes incidental to storage will be received solely at the risk of the User, and the MTO shall have no liability with regard to any such damage or deterioration.

**B.** The User is solely responsible for ensuring that Food Products are properly bagged and/or packaged in such a manner as to prevent damage or deterioration, including the development and/or growth of mold or mildew on or in the Food Product and/or on or in the bag or packaging for the Food Products, when stored in sheds that are not temperature or humidity controlled in the climatological conditions that can or do exist at the Facilities.

**C.** The User is solely responsible for ensuring that the bagged and/or packaged Food Products are properly loaded into an inland means of conveyance (railcar, truck, or trailer) that has been properly prepared to prevent damage or deterioration, including the development and/or growth of mold and/or mildew, during transit to the Facilities and until such time as the Food Products are unloaded from the

inland means of conveyance. When handling Food Products damaged or deteriorated by improper packaging and/or loading, water, humidity, weather conditions, inherent vice, or any other similar cause, the User shall be responsible for all additional charges incurred by the MTO related thereto.

**D.** The MTO shall not be responsible for inspecting, monitoring, reporting, maintaining or repairing equipment used in the transportation or storage of Food Products, including refrigerated containers.

**E.** The User agrees to be responsible for, and to defend, indemnify and hold harmless the MTO, its officers, agents, and employees and all related entities and their officers, agents and employees, from and against, any and all loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to such Food Products and/or their handling and/or transportation, including without limitation any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to the User's failure to comply with the requirements and responsibilities allocated to it above and/or under any federal or provincial laws or regulations, including attorneys' fees and costs incurred by the MTO in defending against any such loss, damage, expense, claim, liability, suit, fine and/or penalty.

#### **ITEM 8: HAZARDOUS MATERIALS**

**A. Notice; MTO's right to refuse:** The User must notify the MTO of any Cargo that contains Hazardous Materials at least three (3) Business Days in advance of tendering such Hazardous Materials to the MTO. The MTO, in its sole discretion, may refuse to handle any Hazardous Materials that it believes could present an unreasonable risk of harm or damage to any person, Vessel, vehicle, equipment, Terminal Facilities or property. If the MTO refuses any Hazardous Materials, the MTO shall notify the User as soon as possible. The User shall promptly thereafter, at its sole risk and expense, alleviate all concerns to the MTO's satisfaction or otherwise promptly retrieve and remove the Hazardous Materials from the Terminal Facility.

**B. Marking and labeling:** Shipments of regulated Hazardous Materials the Terminal Facilities must be documented, marked, labeled and/or placarded in strict compliance with all applicable federal laws and regulations relating to the packaging, labelling and carriage of hazardous or dangerous goods, and any applicable provincial and local laws. Each bill of lading related to Hazardous Materials must contain a shipper certification, as required by any federal or provincial hazardous materials law.

**C. Documentation:** The User shall be solely responsible for providing the MTO with complete, comprehensive and approved shipping papers with respect to any Hazardous Materials tendered hereunder, which papers shall include all information, descriptions, instructions, disclosures and documentation required by any federal or provincial hazardous materials law, along with a full description and identification of the Hazardous Materials (including their type, quantity, proper shipping name, classification, packing group, chemical group, identification number(s) and hazardous and subsidiary hazardous nature(s)). The User must also provide the MTO with all relevant Material Safety Data Sheets. Without limiting the foregoing, the User shall obtain and provide the following to MTO prior to the performance of any Terminal Services whatsoever: (1) any registration required under federal legislation governing the packaging, labelling and carriage of hazardous or dangerous goods as an offeror of hazardous materials for interstate transportation (or an applicable federal approval/exemption); (2) full name and street address, telephone and contact name for the owner, shipper/consignor and consignee

of the Hazardous Materials; (3) a full description of the Hazardous Materials, as stated above; (4) booking confirmation number(s); (5) complete and clear written instructions for the loading, handling, storing, movement, transportation and unloading of the Hazardous Materials, as well as for response, cleanup, mitigation, remediation, alleviation, removal and restoration in the event of a spill or release; and (6) the full name, address and telephone number for a contact person who has comprehensive knowledge with respect to the Hazardous Materials, including their hazardous nature and emergency incident response requirements. The contact person must be immediately available at all times during the performance of Terminal Services.

**E. Hazardous Waste:** If the Hazardous Materials include hazardous waste, the User must give prior written notice to the MTO and obtain express authorization from the MTO at least thirty (30) Days in advance of tender of such hazardous waste cargo. In addition, the shipping papers must include original Manifest(s) and all other paperwork required by any federal or provincial hazardous materials law and/or any government, terminal and/or port agency or authority applicable to the transportation of hazardous waste. The User shall be solely responsible for the ultimate disposal/destination of any hazardous waste shipment.

**F. Permits and authorizations:** The User shall be solely responsible for obtaining and providing any and all transit or movement notices, permits, authorizations and confirmations for the Hazardous Materials and/or their handling and transportation, in accordance with and as required by applicable any federal or provincial hazardous materials law and/or any government, terminal and/or port agency or authority.

**G. Security Plans:** If the Hazardous Materials include those enumerated in Canadian federal legislation governing the packaging, labelling and carriage of hazardous or dangerous goods or otherwise require a security plan, the shipping papers must also include a security plan conforming to law and other applicable federal or provincial hazardous materials law.

**H. Indemnification:** The User agrees to be responsible for, and to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, and all related entities and their officers, directors, employees and agents, from and against, any and all loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to Hazardous Materials, or the handling, storage or transportation of Hazardous Materials. The User's indemnification obligations include without limitation any loss, damage, expense, claim, liability, suit, fine, penalty resulting from or in any way relating to the User's Hazardous Materials, the User's failure to comply with the requirements and responsibilities allocated to it above, or the User's failure to comply with any federal or provincial hazardous materials law or regulations. The User's obligation to defend, indemnify and hold harmless the MTO shall include Attorney Fees and Costs incurred by the MTO with respect to against any such loss, damage, expense, claim, liability, suit, fine and/or penalty. The foregoing allocation of responsibility and agreement to defend and indemnify specifically includes property damage and bodily injury, illness and/or death claims, as well as all pollution and/or environmental matters such as response, cleanup, mitigation, remediation, alleviation, removal and restoration.

**I. Hazardous Materials Insurance:** The User shall have all environmental and/or pollution insurance required by applicable federal or provincial law, including all insurance required by any Comprehensive Environmental Response, Compensation & Liability scheme (including any water, air, or land environmental or anti-pollution legislation), and all insurance required by the province where the



Terminal Facility is located. The User shall further cause the MTO to be named as an additional insured with a waiver of subrogation on any such policy of insurance. The User shall provide the MTO with all certificates of insurance or other proofs of insurance that the MTO requires prior to any access to or use of the Terminal Facility and/or Terminal Services. The failure of the MTO to request or obtain a certificate of insurance shall not excuse the User from obtaining such certificate or obtaining such insurance.

#### **ITEM 9: OVERTIME CHARGES**

**A. Rates:** The rates provided herein are for work performed during the normal straight-time working period on Monday through Friday, inclusive, and excludes any and all holidays specified in the collective bargaining agreement. A list of holidays from the current collective bargaining agreement is available upon request.

**B. Overtime:** Terminal Services performed on weekends, outside normal working hours or on holidays set forth in the collective bargaining agreement will be charged at the prevailing man-hour differential and will be for the account of the party requesting the overtime work or the User, as the case may be. Overtime will only be worked when ordered by the User.

#### **ITEM 10: RATES AND CHARGES FOR SERVICES RENDERED**

**A. Payment:** The User shall pay for all Services based upon the rates and charges specified in the MTO's Rate Quote. The Rate Quote shall be deemed accepted by the User upon commencement of any performance by either party, including without limitation any access to and/or use of the Terminal Facility and/or Terminal Services whatsoever by or on behalf of the User. Upon any such acceptance, this Schedule shall be deemed fully incorporated into the Rate Quote and binding upon the parties. Except as otherwise stated herein, charges are for the account of the User. Payment must be assured prior to acceptance or release of any Cargo through any one of the following methods to the satisfaction of the MTO:

1. All rates and charges are to be paid in advance of delivery of Cargo unless the MTO, in its sole discretion, has determined that proper credit has been established.
2. All rates and charges may be advanced by the Motor Carrier picking up Cargo from, or delivering Cargo at the terminal.
3. All rates and charges shall be charged to the account of the User, only if prior arrangements have been made with the MTO.

**B. Charges pursuant to credit:** All charges for any Services, including stevedoring, rendered by the MTO for which credit is granted shall be due and payable upon receipt of invoice, without any setoff, compensation, or counterclaim, failing which Interest shall accrue until paid in full.

**C. Right to withhold delivery:** The MTO reserves the right to withhold the delivery of Cargo until all rates and charges related to Terminal Services (including all accrued stevedoring charges, terminal charges, overtime charges, special services charges, or storage charges) against said Cargo have been paid in full, or acceptable guarantee of payment has been arranged.

**D. Access to documents:** The Vessel, Vessel Interests, charterers, and agents, Grantees of Berth Privilege, the User, or in instances of outside operators functioning as set forth in this Schedule, shall permit the MTO access to all Cargo documents, including bills of lading, charter parties, contracts of carriage or affreightment, cargo manifests, delivery tickets, dray receipts, hatch lists, or invoices for services and furnish to the MTO such other documentation, reports or information as it may require, for purpose of audit so as to secure necessary data to permit correct billing for charges incurred under this Schedule. Failure to provide such information upon request will constitute cause for denial of use of Terminal Facilities.

**E. Advances:** The MTO may make advances or incur liabilities with respect to Cargo, such as storage, stevedoring, transportation, terminal charges, insurance, labor charges present and future, as well as expenses necessary for preservation of the Cargo, whether or not such advances are required or permitted by this Schedule. The User agrees to be responsible for all reasonably incurred advances regardless of whether Cargo is received by the MTO. The MTO may also advance such expenses reasonably incurred in the judicial sale of Cargo pursuant to law.

**F. Improper information from the User:** Rates and charges that are based on inaccurate or incomplete information, descriptions, instructions, or particulars may be recalculated at any time and without notice to the User.

**G. Disputed charges:** Any dispute regarding any invoice or any charges contained within an invoice from MTO must be submitted to MTO in writing within ten (10) Business Days of presentation of said invoice. Failure to give written notice in time shall constitute the User's acceptance that the invoice is accurate, valid, and accepted by the User.

**H. Collections:** In the event the User fails to pay any invoice when due, the MTO may engage a collection agent and/or attorney, or file suit to collect the amounts due and the User shall be responsible for all fees and costs incurred therefor, including Attorney Fees and Costs.

**I. Lien:** In addition to lien rights provided to the MTO by law, the User grants the MTO a general contractual lien on all Cargo, goods, and/or property (collectively referred to as "property" in this section) in the possession of the MTO as security for the payment of amounts due MTO hereunder. The lien rights shall include storage, transportation, demurrage and terminal charges, insurance, labor, or other charges, past, present or future, in relation to property against which the lien is asserted and/or arising from the MTO's provision of any previous services to the User, and for expenses necessary for preservation of the property or reasonably incurred in their sale. If the MTO elects to exercise its rights under this provision, MTO will provide written notice of that election to the User at the User's last known address. If the User fails to make payment of all amounts due or fails to post security to the MTO's satisfaction within 30 Days of the date MTO sends such notice, then the MTO shall have the right to sell such property at public or private sale or auction. The proceeds of any such sale or auction shall first be applied to the sale costs, including Attorneys Fees and Costs, then to amounts due to the MTO including all Storage charges, with the remaining net balance, if any, to be remitted to the User. The User shall provide notice to any other parties known to have an interest in the property of the MTO's lien rights and the exercise of those rights by the MTO. The User agrees that MTO shall be entitled to its Attorney Fees and Costs incurred in enforcing any lien rights hereunder.



**J. Payments:** For the purposes of this Schedule, payments shall only be considered received by the MTO once the funds have cleared the bank accounts of both the MTO and the User.

**K. Suspension or termination of Services:** The MTO reserves the right to suspend or terminate the provision of Services to User whenever the MTO, in its sole discretion, determines that User has materially breached any term of this Schedule. The suspension or termination of Services shall be without prejudice to any additional rights or remedies available to the MTO hereunder.

## **ITEM 11: INSURANCE**

**A. Stevedoring Services:** All rates quoted include the MTO's costs for worker's compensation and liability insurance, provincial unemployment insurance and other social taxes, if any, for Stevedoring Services.

**B. Property damage and public liability coverage:** The MTO carries property damage and public liability insurance covering liability for damage to property arising out of the MTO's negligence, along with public liability insurance related to injuries arising from the MTO's operations, including stevedoring.

**C. Motor Carriers:** User and Motor Carrier warrant and agree that Motor Carriers entering the Terminal Facilities shall maintain valid insurance coverage and may be required to furnish the MTO with a certificate of insurance.

**D. User's insurance obligations:** The User is not entitled to any benefits from insurance procured by the MTO hereunder.

1. The User shall procure and maintain worker's compensation insurance and employer's liability insurance, if required by federal or provincial law. Such insurance shall be provided in accordance with all applicable federal and provincial laws. Employer's liability insurance limits shall not be less than \$500,000 per occurrence and \$500,000 per employee for disease claims. The User and its worker's compensation insurer waive any rights of action against the MTO for subrogation or reimbursement of any payments made pursuant to immunity from suit, exclusive remedy provisions, and/or limitations of liability under any provincial or federal workers compensation act or similar law.
2. The User shall procure and maintain liability insurance for any and all claims for damages arising out of personal injuries, wrongful death and/or property damage with respect to, caused by, or arising out of the User's access to or use of the Terminal Facilities and/or Terminal Services, including contractual liability coverage for the User's liabilities and obligations as set forth in this Schedule. Such insurance includes policy(ies) of insurance for damage to persons, property, equipment, vehicles, and cargo. The User shall procure such insurance with limits of no less than \$5,000,000 per occurrence, naming and including the MTO as an additional insured, and including an endorsement to waive subrogation against the MTO.
3. The User shall procure any insurance required herein with an endorsement providing that it is primary with respect to any insurance carried by the MTO and that neither the MTO, or any

insurance coverage of the MTO, shall be called upon to contribute to the payment of any losses that would otherwise be paid by the User or covered or paid by the User's insurance.

4. The User shall provide proof of this insurance by providing the MTO with a certificate of insurance prior to any access to or use of the Terminal Facilities or Terminal Services. Such certificates of insurance shall be provided in a form and at a time acceptable to the MTO and shall show the policies include all coverages and endorsements required. If the User fails to procure or maintain such insurance or fails to name the MTO as an additional insured or obtain a waiver of subrogation on such insurance, then the User shall be liable to defend, indemnify and hold harmless the MTO for all claims, liabilities, judgments, and costs, including Attorney Fees and Costs, that would have been covered by said insurance if procured or maintained as provided for herein.

The failure of the MTO to request or obtain a certificate of insurance shall not excuse the User from obtaining such certificate or obtaining such insurance.

#### **ITEM 12: RELEASE OF CARGO**

**A. Documentation of ownership:** The User shall present proper documentation proving ownership of Cargo to the satisfaction of the MTO prior to the delivery of any and all Cargo. The MTO will accept responsibility for reasonable care and control of Cargo while in its custody; however, the MTO assumes no liability for the delivery or receipt of Cargo based on delivery or receiving papers subsequently found to be fraudulent or stolen.

**B. Pick-up and delivery orders:** The User (or its designated agent) shall present copies of pick-up/delivery orders for Cargo, in a form satisfactory to the MTO, at least seventy-two (72) hours prior to the arrival of a Vessel that must include the following:

1. Name of the Motor Carrier;
2. Description of Cargo, including identification of the Vessel, bill of lading, all identifying marks and numbers, quantity, and weights per bill of lading;
3. Notation indicating party responsible for payment of TTC's and Wharf Demurrage, if applicable, in a form satisfactory to the MTO. The notation of Motor Carriers and/or parties not on current credit list will not be acceptable as being responsible for these charges.

If the User fails to comply with this provision, then the MTO may, in its sole discretion, reject any such pick-up or delivery orders. In case of a rejection hereunder, delays and extra costs may be incurred in processing Cargo for delivery. All such delays and extra costs shall be for the account of the User and shall become payable immediately. The MTO is not in any way responsible for any such delays and/or extra costs.

**C. Shipping changes:** If any shipping variations or changes from the original pick-up/delivery order are received by the MTO subsequent to the seventy-two (72) hour requirement in this Section, the MTO may assess additional handling charges. All handling charges, and any reasonably related costs, shall be for the account of the User and become payable immediately.

**D. Inadequate packing list or markings:** If the User fails to provide an adequate packing list for Cargo at least seventy-two (72) hours prior to the Vessel's arrival, then the MTO shall not be responsible for any mis-deliveries of individual packages within a bill of lading. The MTO shall not be responsible for mis-deliveries of insufficiently marked Cargo.

**E. Customs and Border Protection fines:** The MTO is not responsible for any damage to Cargo, damage to equipment, fines, debts, fees, costs or related charges in any way arising out of or in connection with overages, shortages, breaking seals, opening containers, improper cargo releases and/or improper hold notifications placed on Cargo by the Canada Border Customs Services, unless and only to the extent that the User proves it resulted solely from the MTO's negligence.

### **ITEM 13: DAMAGE TO TERMINAL EQUIPMENT OR FACILITIES**

If the User, including any agents and contractors, causes or contributes to cause damage to Terminal Facilities or equipment, then the User and its agents or contractors shall be liable for such damage, jointly and severally, and must fully reimburse the MTO for any and all damage. The MTO shall be reimbursed for the total cost of restoration, repair, or replacement in the event damage is beyond repair. The MTO may detain any Vessel or other watercraft responsible for any damage to the Terminal Facilities or equipment until said Vessel or watercraft posts adequate security for all such damages in a form acceptable to the MTO. If payment is not made to the MTO hereunder, the User, or its agents or contractors, shall further be liable for costs of collection, including Attorney Fees and Costs, plus prejudgment interest from the date of the damage.

### **ITEM 14: TRUCK PICK-UP/DELIVERY**

**A. Motor Carriers:** User and its designated Motor Carrier agree to the following:

1. The Motor Carrier is authorized to provide transportation of property under contracts with shippers, receivers and/or brokers of general commodities;
2. The Motor Carrier has the requisite knowledge, experience, personnel and equipment required to load, unload and transport Cargo;
3. The Motor Carrier shall provide vehicles, trailers and equipment that is properly documented and permitted with federal, provincial and local governments, as required, and fit for the intended loading, securement, transportation and unloading of Cargo;
4. The Motor Carrier has and will maintain cargo, personal injury, property/cargo damage, public liability, motor vehicle liability (including hired and non-owned motor vehicles) insurance that covers all risks and associated risks related to carriage of Cargo hereunder;
5. The Motor Carrier shall be in compliance with all applicable federal, provincial and local laws relating to the provision of its services;
6. The Motor Carrier does not have an "Unsatisfactory" safety rating issued by any Canadian federal or provincial Motor Vehicle agency;
7. The Motor Carrier shall comply with all applicable laws and regulations relating to the transportation of Hazardous Materials to the extent that any Cargo constitutes Hazardous Materials; and
8. The Motor Carrier agrees to be bound by this Schedule.

**B. Required documents:** The User must ensure that every Motor Carrier has the following document(s) available for each and every pick-up/delivery, which the MTO may request and inspect at its sole discretion:

1. Truck pick-up order describing the Cargo, enumerating Vessel, bill of lading, identifying marks and numbers, driver's name, and commercial driver's license number, legal load limit, and tractor and trailer license numbers, in a form satisfactory to the MTO.
2. If a load of Cargo requires provincial permit(s) for motor carriage, then copies of such permits(s) (covering the entire route) must be presented prior to the loading of the Cargo onto a trailer.

**C. Loading or unloading:** The User warrants and agrees that it and its designated Motor Carrier shall be responsible for supervising and ensuring the safe and proper loading of Cargo onto, or unloading of Cargo from, its trailer or vehicle.

1. When picking up Cargo, the User warrants and agrees that it and its Motor Carrier has inspected the safe and proper securement of the loaded Cargo and further warrants that the Cargo is safely and loaded and secured at all times and in compliance with all safety regulations and applicable laws. The User understands and agrees that the MTO is not responsible for the loading and securing of Cargo, or any inspection thereof.
2. The User warrants and agrees that it and its Motor Carrier shall ensure that, prior to entering the Terminal Facilities, the truck and trailer are maintained and equipped to properly and safely load, unload, secure, and transport Cargo. The User and Motor Carrier further warrant that they have read and understood the safety measures in place at the Terminal Facilities and shall abide by such measures.
3. The User and Motor Carrier shall defend, indemnify and hold harmless the MTO, its officers, directors, employees, agents and servants and pay the MTO on demand for any claims, losses, causes of action, damages, fines, penalties, taxes or liabilities of any kind for damages to freight, personal injury, death and/or property damages (including, reasonable Attorney Fees and Costs) arising from or relating to (a) any failure of a Motor Carrier to comply with governmental regulations or applicable law, (b) any failure to properly secure or inspect a load, and (c) any claim of any kind or nature whatsoever made against the MTO, caused by, arising from or relating to a failure to properly secure or inspect the Cargo loaded or unloaded and/or any breach of these terms and conditions.

**D. Delays:** The MTO is not responsible for any delays caused by the User or Motor Carrier's failure to comply with any of the requirements herein.

**F. Dispatching:** The MTO is not responsible for dispatching trucks.

**G. Policy for truck loading sequence:**

1. Where practicable, all trucks will be loaded on a "first come, first served" basis. However, the MTO reserves the right to dictate another truck loading sequence in order to best service all customers in a productive manner, at the sole discretion of the MTO. The MTO shall make

- best efforts to avoid congestion, provide continuity, and best utilize manpower and equipment to maximize efficiency.
2. The User or its dispatcher must notify the terminal by 3:15 p.m., one Business Day in advance, for truck loading. The number of loads will be entered on a truck list, and any trucks not on the list will be turned away if the MTO cannot accommodate extra trucks.
  3. The Motor Carrier must pick-up a cargo pass from the traffic department and obtain instructions from the traffic department as to the location of their Cargo.
  4. Proper information is a must. The Motor Carrier shall know the Vessel's name, Bill of Lading marks, customer name, and release number if applicable.
  5. A commercial driver's license must be produced if requested by the MTO.
  6. Only one cargo pass will be given to a Motor Carrier unless the loading of the truck requires otherwise.
  7. Once a cargo pass is completed by a checker, the Motor Carrier responsible for the load must return to the traffic department with the pass and a valid driver's license in order to sign for a dock tally.
  8. Each Motor Carrier must have wood for blocking, dunnage, chains, coil racks, or binder, as may be required at the Motor Carrier's discretion. The MTO does not supply wood, dunnage, chains, coil racks, or binders, and the Motor Carrier may not remove any such supply/equipment belonging to the MTO from the MTO's Facilities.
  9. Motor Carriers may not use the driveways beside the Vessel when a Vessel is in port. The roads are reserved for cranes and lift trucks used for the unloading of the Vessel.
  10. Motor Carriers may not congregate in warehouse doorways or block forklift access to storage areas.
  11. The Motor Carrier must properly secure Cargo before moving the truck. The MTO is not responsible for inspecting or securing Cargo on trucks and trailers.

**H. Terminal rules must be followed:** The User, the Motor Carrier, and any party that instructs a Motor Carrier to enter the terminal for the purpose of pick-up or delivery of Cargo warrants that the Motor Carrier has knowledge of and abides by all rules of the terminal as well as any applicable Federal Motor Carrier Safety Regulations, OSHA regulations and any local, provincial or federal rules, regulations or laws governing the operation of motor vehicles. Any User, Motor Carrier and any party that instructs a Motor Carrier to enter the terminal for the purpose of pick-up or delivery of Cargo at the terminal shall defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, and all related entities and their officers, directors, employees and agents, for any and all claims, including claims for personal injury, including claims by the truck driver, claims for property damage, any breach of the Motor Carrier's responsibilities set forth herein, and all other liabilities, including Attorney Fees and Costs, arising from or related to the failure to follow the MTO's rules.

**I. Motor Carrier rules:** For their own safety and the safety of others, Motor Carriers must obey the following truck rules:

1. All Motor Carriers must remain not less than twenty (20) feet away from any truck, trailer and/or chassis while the truck, trailer and/or chassis is being loaded or unloaded.
2. All Motor Carriers must stay a safe distance (not less than twenty (20) feet) away from any area where loads are being suspended overhead.
3. All Motor Carriers must comply with posted speed limits within the Terminal Facility.

4. All Motor Carriers must come to a complete stop at all stop signs and yield at unmarked crossings and/or intersections.
5. Terminal equipment has the right of way at all times.
6. Do not attempt to pass, drive, walk, or stand behind terminal equipment that is backing up.
7. No unauthorized pedestrian traffic is allowed on the terminal. Drivers must stay close to their vehicles while in Terminal Facilities and should be out of their vehicle only for actual operating needs.
8. The use of mobile phones and other electronic devices while driving is strictly prohibited.
9. All Motor Carriers are required to wear the following personal protective equipment whenever they are out of the truck/motor vehicle:
  - A high visibility reflective safety vest;
  - Hard hat;
  - Safety glasses; and,
  - Steel-toed safety boots.
10. It is the responsibility of the User, the Motor Carrier and truck driver to properly secure Cargo on the trailer before moving the vehicle.

#### **ITEM 15: COMMENTS/COMPLAINTS**

Comments or complaints regarding rules, rates, and regulations in this Schedule must be presented in writing, with supporting documents, to the MTO.

#### **ITEM 16: LIMITATIONS OF LIABILITY OF THE MTO**

**A. No liability:** The MTO shall not be liable for any expenses, losses, or claims whatsoever caused by or resulting from: failure or delay in performance of services including stevedoring and/or Terminal Services; bursting of pipes; an act of God; epidemic; pandemic; fire; flood; storm; frost; heat; leakage; evaporation; sweat; moisture; loss of weight; breakage; insufficient cooperage, boxing, crating, car bracing, bagging, packing or wear and tear; inherent vice of the goods; insufficiency of packing; insufficiency of markings; failure of building; theft; rodents; insects; parasites, or other vermin; elements; strikes; walkouts; picketing; labor disputes; shortages of labor; acts of war; terrorism; riots; insurrections; the order of any governmental authority; necessities of war or disaster; unseaworthiness of any Vessel; errors in the navigation or management of any Vessel; port congestion; or any cause beyond the MTO's control. The MTO is not responsible for any delay in delivery of Cargo to or receipt of Cargo from carriers. All storage and handling charges must be paid on Cargo lost or damaged. Nothing herein above shall relieve the MTO of liability to the extent that the User proves such expense, loss, or claim resulted solely from the MTO's negligence.

**B. Cargo damage:** In all instances, the User shall accept liability, defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents and all related entities and their officers, directors, employees and agents, with respect to any and all claims for whatever loss or damage to Cargo, including Attorney Fees and Costs, except where, and then only to the extent that, the User proves such loss or damage resulted solely from the MTO's negligence and is not related to any apparent or hidden conditions of the Cargo before it comes into the custody of the MTO.

**C. Iron and steel:** Iron and steel rates are based on open-pier, uncovered handling and storage. The MTO will not be liable for any loss, expense, or damage, including rusting, pitting, etc., whatsoever, caused or contributed to by Cargo being partially or wholly unprotected during handling or storage. Acceptance for use of an open-pier by a the User is a recognition that Cargo landed on such dock is at the risk and expense of the User.

**D. Limitation of liability:** The MTO shall not be or become liable for any loss or damage to Cargo in an amount exceeding \$500 per unit or package or, if the Cargo cannot be unitized, per shipment unless, prior to the commencement of any Terminal Services, the User declares a higher value for the Cargo to the MTO and pays to the MTO a premium computed at 9% of the declared value of each package or unit in addition to the other charges for such services as herein set forth. If the User provides the MTO with a declared value for Cargo in accordance with these terms, then the declared value shall be only *prima facie* evidence of the true value of the Cargo and the MTO's liability, if any, shall be limited to the lesser of the declared value or the actual value. In no event shall the MTO be liable for any damage unless and only to the extent that the User proves it resulted solely from the MTO's negligence and not due to any inherent vice or condition of the Cargo, whether hidden or apparent. For the purpose of this limitation, an intermodal shipping container will be considered a single "package" and the contents therein will not be considered separate packages. For the purpose of this limitation, if the Cargo includes machine(s) or machinery(ies), the entire composite machine shall be deemed a single unit, regardless of how shipped or received. The User shall defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, and all related entities and their officers, directors, employees and agents, for liabilities incurred by the MTO for any and all claims for loss or damage to Cargo, including Attorney Fees and Costs, arising from or related to claims by Third Parties that exceed the limitations of liability provided in this provision.

**E. No liability for improper packing or concealed damage:** The MTO shall not be liable for damage in the loading, off-loading or unloading of Cargo not packed to meet import/export packing standards, nor for concealed damages and/or concealed shortage or overage, and all receipts issued are subject to these provisions. Cargo of a perishable nature, or other Cargo susceptible to damage through temperature changes, climate changes, atmospheric conditions or other causes incidental to either handling or general storage, will be accepted solely at the User's risk and the MTO shall have no liability therefor.

**F. Additional defenses:** In addition to any other defenses which the MTO may have, in all cases the MTO shall also be entitled to the benefit of all rights, immunities and defenses available to the Vessel, the Vessel Interests and the Motor Carrier under its bill of lading or contract of carriage. The User warrants that any bill of lading or other contract of carriage for Cargo involved in Terminal Services shall contain an express provision stating that the MTO is to be deemed a servant of the carrier and shall not be sued for any Cargo claim and as such to be entitled to rely on all of the rights, immunities and defenses available to the carrier under such bill of lading or other contract of carriage, and that this express provision and entitlement will extend to cover all Services provided by the MTO, including any services provided before loading and after discharge of the Cargo; and the User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO and its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from its failure to comply with this provision, including Attorney Fees and Costs incurred by the MTO therefor. If the additional defenses available to the Vessel under its bill of lading or other contract of carriage conflict with any other defenses available to the MTO, the MTO shall have sole discretion to choose which defenses it will assert.

**G. Supervision; Intended Cargo:** For Cargo carried by truck, the loading or unloading of Cargo shall be under the supervision and responsibility of the User, Motor Carrier and truck driver, free of any risk, liability and expense whatsoever to the MTO. The User and Motor Carrier must ensure to take delivery of its designated Cargo only. The MTO shall not be responsible for any trucking or related costs resulting from a Motor Carrier taking Cargo other than its designated Cargo from the Terminal Facilities.

**H. No special or consequential damages:** The MTO shall not be liable or responsible for special or consequential damages, including without limitation, damages for or arising from delay, extra expense, loss of sale(s), loss of contract(s), loss of charter, loss of hire, loss of profits, loss of market value, loss of business, interruption of business, dead freight, and loss of use whether resulting from negligence, breach of this Contract by the MTO, failure to or delay in discharging the Cargo, damage to Vessels, and any other cause, and even if the possibility of such special or consequential damages or damages from delay were foreseeable to the MTO or were made known to the MTO.

**I. Demurrage:** The MTO shall not be liable for Vessel, railroad car, or truck demurrage or for delays, including strikes, weather conditions, Act of God, failure of the railroad to spot or remove equipment in a timely manner, issues related to unloading from railroad equipment, or when unloading from trucks/trailers or when Cargo does not lend itself to being unloaded from railroad equipment or trucks to dock or shed awaiting arrival of a Vessel, unless and only to the extent that the User proves it resulted solely from the MTO's negligence in which case the MTO's liability for demurrage and/or delay shall be limited to the sum of \$50 per hour for a maximum period of 24 hours.

**J. Infestation:** The MTO shall not be liable for any infestation of Cargo. Any costs incurred in eliminating the infestation, including stand by, extra labor costs, extermination costs, governmental penalties, fines or corrective actions, will be for the account of either the Cargo owner, consignee of the Cargo or the User. The User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO and its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or related to infestation of Cargo, including Attorney Fees and Costs incurred by the MTO therefor.

**K. Spoilage:** The MTO shall not be liable for any spoilage of Cargo that is in the care, custody or control of the MTO, unless and only to the extent that User can prove that such spoilage was caused exclusively by the MTO. The MTO shall not be liable for any spoilage caused by electrical shortages, outages or the failure of the electrical outlet at the Terminal Facilities. If the User fails to provide the MTO with appropriate and properly operating equipment and adequate instructions, then the User shall be liable for any spoilage of Cargo.

**L. Notice of claim:** If User alleges a claim against the MTO for loss or damage to Cargo, then User must provide notice of such a claim to the MTO, in writing. The notice of claim must be received by the MTO within a reasonable time, but in any event within 30 Days from the date of delivery of the Cargo by the MTO to the Vessel (in the case of outbound shipments) or to the Motor Carrier (in the case of inbound shipments). The written notice must include the general nature of the loss or damage with sufficient detail to allow the MTO to investigate the claim and must include and attach copies of the following, as applicable: all bill(s) of lading, transportation agreement(s), receipt(s) and other document(s) identifying the Cargo, consignor, consignee, Vessel, voyage, shipping date, etc.; all manifests, packing lists, stow plans, loading/discharge reports, tally/count sheets, cargo receipts, etc.; all agreements, invoices and receipts respecting any sale of the Cargo; all correspondence respecting the Cargo and/or their



transportation; all inspections, surveys, photographs, claim bills, invoices and statement of losses respecting the Cargo and/or the loss/damage being claimed, including documents supportive of any mitigation, salvage, market analysis and disposition efforts; and all other documents, instruments, records, data, drawings, photographs and information of any kind or nature whatsoever which may be pertinent or helpful to an understanding of the nature of the Cargo, the particulars of their transportation and/or the loss/damage being claimed. Failure to include applicable items with the written notice of claim shall render the notice of claim invalid and unenforceable. The written notice of claim shall be a condition precedent to filing of any lawsuit against the MTO in any way related to loss or damage to Cargo. User agrees that its failure to provide a notice of claim in accordance with the provisions of this clause shall result in such claim being deemed waived and absolutely barred.

**M. Time for suit for Cargo loss or damage:** Notwithstanding the provisions under ITEM 16(L), the MTO shall in any event be discharged of all liability whatsoever and howsoever arising for loss or damage to Cargo, or claims in any way related to loss or damage to Cargo, unless suit is filed against the MTO, and a summons and complaint are served upon the MTO, within twelve (12) months from the date of delivery of the Cargo by the MTO to the Vessel (in the case of outbound shipments) or to the Motor Carrier (in the case of inbound shipments).

**N. Motor carriers:** Any Motor Carrier that transports Cargo to, or receives Cargo for transport from, the MTO's facility shall be deemed to be the agent of the User or the Consignee.

#### **ITEM 17: ADDITIONAL TERMS APPLICABLE TO VESSELS AND CARGO INTERESTS**

All Vessels utilizing Terminal Facilities for loading and/or unloading by the MTO are subject to, and agree to, the following additional terms and conditions. A Vessel's use of Terminal Facilities for loading and/or unloading by the MTO constitutes acceptance of these additional terms and conditions by the Vessel, along with its owner, charterer, operator, Vessel agent, and any User that contracts for cargo-related services for any Vessel (collectively referred to as the "Vessel Interests").

**A. Representations and warranties of the Vessel Interests:** The Vessel Interests warrants that its Vessel is in all respects seaworthy and properly equipped and fit for carriage of the Cargo and the loading/unloading of Cargo at the Terminal Facilities. All load and discharge operations, stevedoring services and equipment operations are to be conducted under the supervision and instruction of the Vessel's master. The Vessel Interests shall be responsible for any and all damage to Cargo or any other equipment, Vessel or object, or any person, sustained during loading and discharge, including cargo wetting, unless and only to the extent that the Vessel Interests proves such damage or injury resulted solely from the MTO's negligence. The Vessel Interests shall take all precautions prudent and necessary to prevent wetting to Cargo during load and discharge operations. User and the Vessel Interests shall be responsible for, and agree to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from its failure to comply with this provision, including Attorney Fees and Costs incurred by the MTO.

**B. Damage to Vessels:**

1. The MTO shall not be liable for any damage to Vessels in the loading, offloading and/or unloading of Cargo, and all handling incident thereto, unless and only to the extent that the User proves it resulted solely from the MTO's negligence. The User, the Vessel Interests, the shipper, consignor, consignee, and cargo owner shall be responsible for, and agree to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from its failure to comply with this provision, including Attorney Fees and Costs incurred by the MTO therefor. Without limiting the generality of the foregoing, the agreement to defend, indemnify and hold the MTO harmless shall include, but not be limited to cargo claims, claims for personal injury or death, claims for loss of or damage to Vessels, and claims for property loss or damage of any kind or description, including pollution or environmental damage.
2. The MTO's liability shall never exceed the lesser of the amount charged by the MTO for the stevedoring services or the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Vessel. In no event shall the MTO be liable for any damage to Vessels unless and only to the extent that the Vessel Interests (or other claimant) proves such damage resulted solely from the MTO's negligence. User agrees to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty (including third-party claims) arising from or in any manner related to liabilities incurred by the MTO in excess of those provided for in this clause.
3. Any claim against the MTO for damage to a Vessel must be provided to the MTO, in writing, before the Vessel departs from the Terminal Facilities in time for the MTO to investigate the alleged damage. The timely written notice of claim shall be a condition precedent to filing of any action against the MTO in any way related to loss or damage to the Vessel. If the Vessel departs from the Terminal Facilities without providing a timely notice of claim in accordance with the provisions of this clause, then any such claim shall be deemed waived and absolutely barred.
4. Any action for loss or damage related to a claim for damage to a Vessel must be brought against the MTO within four (4) months of the date of loading or discharge of the Vessel, and only if written notice describing the general nature of the loss or damage has been given to the MTO in accordance with ITEM 17(B)(3). Written notice as provided for herein shall be a condition precedent to the institution of any lawsuit against the MTO. User agrees to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty (including third-party claims) arising from or in any manner related to liabilities incurred by the MTO in excess of those provided for in this clause.

**C. Damages caused by the Vessel:** User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO and its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty arising from or in any manner related to the negligence of the Vessel, her officers and crew or the failure of the equipment, machinery, and appurtenances of the Vessel, including Attorney Fees and Costs incurred by the MTO therefor. Without limiting the generality of the foregoing, the agreement to defend, indemnify and hold the MTO harmless shall include, but not be limited to cargo claims, claims for personal injury or death, claims for loss of or

damage to other Vessels, claims for damage to the MTO's property and equipment, and claims for property loss or damage of any kind or description, including pollution or environmental damage. Nothing in this provision shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for the MTO's own negligence.

**D. Limitation on cargo claims when Vessel Interest contracts with the MTO for Terminal Services:**

When the Vessel Interest contracts directly with the MTO for Terminal Services, the User agrees to undertake that the Vessel Interests shall include terms in the contract of carriage and agreements with the consignee that limit the liability of the MTO for cargo damage to no more than \$500 per unit or package or, if the Cargo cannot be unitized, per shipment, as set forth in ITEM 16(D), above, unless the User, prior to utilizing the Terminal Services, declares a higher value to the MTO and pays to the MTO a premium computed at 9% of the declared value of each package or unit. The User agrees to defend, indemnify and hold the MTO harmless for any and all claims or damages beyond the \$500 per package limitation, including reasonable Attorney Fees and Costs.

**E. Additional Limitations of Liability Applicable to Vessels:**

1. The port is owned, operated, maintained, and controlled by the port authority, who is solely responsible for the condition of the port, including its approaches, breakwaters, berths, docks, dock walls, and fendering system.
2. The MTO does not own, operate, maintain, or control any part of the port and does not warrant or guarantee its safety for the Vessel. The MTO has no duty to inspect, dredge, identify, remove, or advise the existence of any obstruction or hazard in any part of the port, including its approaches, breakwaters, berths, docks, dock walls, and fendering system.
3. In the event the breakwater, if any, does not block all seas, the MTO is not responsible for loss of or damage to any Vessel or cargo resulting from wind, wave, sea, swell or weather conditions within the harbor.
4. It is the responsibility of the Vessel Interests to monitor the prevailing and forecasted weather conditions in and around the MTO at all times when its Vessel is or will be present at the MTO, and to take all action necessary to safeguard, reposition or otherwise protect the Vessel (and any cargo laden therein) at any time when weather conditions may pose a danger to Vessels. The MTO shall not be liable for any damages of any kind arising from or related to weather conditions, or the Vessel Interests' failure to take action to safeguard its Vessel, crew and laden cargo.
5. All Vessels delivered to the MTO shall be berthed at a location designated by the Port. The Vessel Interests are responsible for ensuring that the Vessel is properly moored at the designated location. Proper mooring includes ensuring that the Vessel is moored with sufficient lines in number and strength to withstand any weather conditions that might arise at any time the Vessel is berthed at the Port. Vessel Interests shall inspect the fendering system in the area where the Vessel is to be moored to determine that the fendering is sufficient to protect the Vessel and shall supplement the fendering system with additional protective devices, if necessary. The MTO is not responsible for inspecting or caring for any Vessel at the Terminal Facility, nor for securing, inspecting or watching any such Vessel. The

MTO is not responsible for providing any mooring lines, bumpers, fenders, or other gear used for berthing, does not accept the Vessel for storage and shall not otherwise be held responsible for the Vessel under bailment or any other legal theory. All responsibility for inspecting, watching, securing, and protecting the Vessel, and all liability for any loss or damage to the Vessel, shall rest solely with the Vessel, Vessel Interests, charterers and/or operators, and the User. The Vessel Interests and the User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or related to the Vessel's failure to perform its obligations under this provision, including Attorney Fees and Costs incurred by the MTO therefor.

6. An officer of the Vessel shall be in attendance at all times to monitor Vessel trim and stability, safe and proper cargo loading/unloading operations and to be notified of any accident or damage. The User shall be responsible for reporting any claim of MTO damage to the MTO's attending supervisor immediately and for acknowledging receipt of reports. If MTO has additional requirements for the Vessel to improve working conditions, the User and the Vessel shall fully cooperate.
7. In the event a condition develops that has the potential to jeopardize the safety of loaded Vessels or their Cargo at the terminal, the MTO may in its sole discretion, and without prior consultation with the User, exercise any means necessary to unload any such Vessel and, in the event the MTO incurs additional expenses, including overtime, in unloading any such Vessel, the User shall be liable for all such additional expenses. Any party that delivers a loaded Vessel to the MTO for unloading does thereby consent to this provision and to the imposition of any such additional expenses. Nothing herein shall be construed as imposing upon the MTO any duty to take any additional measures to unload Vessels.
8. The MTO will provide notice to the Vessel Interests of the time when loading or unloading of the Vessel has been completed. Notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed. The Vessel Interests shall pick up the Vessel and remove it from the terminal within two (2) Business Days from receipt of such notice.
9. At the conclusion of the two-day notice period stipulated in paragraph 8 above:
  - a. All duties or responsibilities of the MTO with respect to the Vessel or its Cargo shall terminate, and bailment of any Cargo shall be deemed to have ceased.
  - b. The Vessel Interests shall at all times have sole and exclusive responsibility for the Vessel, including, the duty to monitor the condition of the Vessel and its mooring lines, to ensure that the Vessel is adequately moored, and to take all action necessary to prevent the Vessel from breaking away from its moorings.
  - c. The MTO shall not be liable for any losses, expenses, damages or claims whatsoever related to the Vessel or its Cargo or caused thereby, including damage to Vessels or cargo or to any other property of any kind or description, pollution or environmental damage, personal injury or death. The User and the Vessel Interests shall be responsible for, and agree to defend, indemnify and hold harmless the MTO, its officers, directors, employees

and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from its failure to comply with this provision, including Attorney Fees and Costs incurred by the MTO therefor. Without limiting the generality of the foregoing, the agreement to defend, indemnify and hold the MTO harmless shall include, but not be limited to cargo claims, claims for personal injury or death, claims for loss of or damage to Vessels, and claims for property loss or damage of any kind or description, including, pollution or environmental damage arising from or in any matter related to the presence of the Vessel at the MTO or its breaking away from its moorings.

10. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for the MTO's own negligence.

**F. Suspension or termination of Services:** The MTO reserves the right to suspend or terminate the provision of Services to Vessel Interests whenever the MTO, in its sole discretion, determines that the Vessel Interests have materially breached any term of this Schedule. The suspension or termination of Services shall be without prejudice to any additional rights or remedies available to the MTO hereunder.

#### **ITEM 18: FREE TIME POLICY**

**A. Allowed Free Time:** Free Time is allowed for the User to assemble the Cargo on the pier prior to export and to schedule delivery of import Cargo to the Motor Carrier.

**B. Minimum Free Time:** The minimum amount of Free Time allowed is ten (10) Days. For import cargo, Free Time commences upon completion of discharge from the Vessel. For export cargo, Free Time commences, for the full manifested quantity, upon receipt of Cargo at Terminal Facilities and shall be pro-rated based on the date of arrival of individual pieces.

**C. Extensions of Free Time:** MTO reserves the right to extend Free Time, at its sole discretion, if requested by the User. Any agreement to extend Free Time will be confirmed in writing by the MTO to the User. Extensions of Free Time do not alter or amend any other terms or conditions of this Schedule, which shall remain in full force and effect. Free Time or extensions of Free Time herein shall not alter or affect the time of delivery under the Bill of Lading or contract of carriage.

**D. Transfer to storage charge:** Any Cargo remaining on Terminal Facilities after the expiration of Free Time shall be subject to a "transfer to storage" charge at the storage Rate schedule herein or, where applicable, a Port Authority's published Wharf Demurrage charges.

**E. No extended Free Time:** No extended Free Time shall in any event be allowed on Cargo remaining in storage for a period greater than four (4) months, counted from the commencement of Free Time.

#### **ITEM 19: LIMIT ON USE OF FACILITIES AND ABANDONED CARGO POLICY**

**A. Storage limits; notice:** All Cargo received in a given calendar year must be removed from the MTO within six (6) months of arrival at the MTO's facility, unless the MTO and the User have entered into a



written agreement to extend the time. The MTO will give written notice to the User of any Cargo that is subject to this provision and that has not been removed within such date.

**B. Equipment storage:** No equipment owned by User, or used to transport User's cargo, shall be stored at the Terminal Facilities unless agreed to by the MTO, in writing. Despite the foregoing, in the event that equipment owned by User, or used to transport User's cargo, is left at the Terminal Facilities, User assumes all risk of loss or damage to equipment. In addition, User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty in any way resulting from the presence of the equipment at the Terminal Facilities, including Attorney Fees and Costs incurred by the MTO therefor.

**C. Abandoned Cargo:** If the User fails to pick up Cargo from the Terminal Facilities within ten (10) Days of the MTO's issuance of the notice identified in ITEM 19(A), the MTO shall have the right to deem the subject Cargo abandoned. MTO's acceptance of storage charges on the Cargo after the date the Cargo is deemed abandoned shall not alter the Cargo's status as abandoned cargo. The MTO reserves the right to dispose of any such abandoned Cargo, in any manner whatsoever, including transfer of the Cargo, without regard to laws affecting property, without any further notice being given to the User.

**D. No responsibility for abandoned Cargo:** The MTO shall not be liable for any loss or damage to Cargo once it has been deemed abandoned in accordance with ITEM 19(B). In addition, the MTO shall not be liable for any expenses, losses, or claims whatsoever caused by or resulting from disposal of abandoned Cargo. The User shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty in any way related to abandoned Cargo, including Attorney Fees and Costs incurred by the MTO therefor.

#### **ITEM 20: LATE DOCUMENTS/IMPROPER FORMAT**

All documents must be provided to the MTO at least two (2) full Business Days prior to the Vessel's arrival, in excel or delineated format, failing which the MTO shall assess a late charge of \$750 per bill of lading.

If the MTO receives incorrect documentation that requires manual entry, the MTO shall assess a document fee of \$250 per bill of lading.

#### **ITEM 21: ENFORCEMENT OF THE SCHEDULE**

The User is presumed to have consulted FMT's website at [www.fmtcargo.com](http://www.fmtcargo.com) and used the same in its determination to use FMT's Facilities and Services, including being informed of the existence and content of this Schedule. Use of the Terminal Facilities shall constitute agreement to the terms and conditions of this Schedule and evidences an agreement on the part of the User to pay all applicable charges, be governed by all rules and regulations contained herein, and the acceptance of all limitations contained herein. A separate contract or agreement with the MTO shall only supersede this Schedule if the contract or agreement contains a written statement that the terms of this Schedule do not apply. In the event of



any inconsistency between any other agreement and this Schedule, the terms, conditions and limitations of this Schedule shall apply.

#### **ITEM 22: PORT SECURITY**

**A. Consent to screening and inspection:** By entering the MTO facility, all persons consent to screening or inspection of personal effects and/or vehicle. Any person that refuses screening procedures shall be denied entry to the Terminal Facilities.

**B. Suspicious activity:** While at the Terminal Facilities, we ask that everyone remain vigilant and immediately report any suspicious activity to the Facility Security Officer or to the Assistant Facility Security Officer.

**C. Port security costs:** All additional costs or services provided by the MTO beyond those specified in this Schedule related to Port security shall be for the account of the User. These costs may include costs associated with mandatory inspections, collecting samples for authorities, and workforce delays and standby time, any other costs incurred by the MTO related to port security.

**D. User certification of Cargo:** The User certifies that the Cargo has been inspected and contains no security risks. If the Cargo is found to be in violation of the Canadian Federal Marine Transportation Security Act and regulations, then the User shall be responsible for and agrees to defend, indemnify and hold harmless the MTO, its officers, directors, employees and agents, from and against any loss, damage, expense, claim, liability, suit, fine, and/or penalty arising from or in any manner related to any such violations, including Attorney Fees and Costs incurred by the MTO therefor.

**E. Port security charges:** The MTO reserves the right to levy a Port Security charge to Vessels and/or Cargo after providing sufficient notice, a minimum of two months, of the forthcoming charges.

**F. Port security fee for non-liner service:** Port security fee for non-liner services is \$50 per hour.

#### **ITEM 23: HOLIDAYS**

Holidays are determined in accordance with local customs and any Collective Bargaining Agreement. A holiday schedule is available upon request.

#### **ITEM 24: WAIVER OF WARRANTIES**

**A. No warranty of workmanlike service:** The MTO makes no warranties of any kind, express or implied, including the implied warranty of workmanlike service, and specifically disclaims the application to the MTO, its employees or agents of any duty or theory of breach of warranty, strict liability or absolute liability for loss or damage to Vessels, trucks, vehicles, Cargo, for Services performed, or claims for personal injury or death.

**B. No warranty related to the Terminal Facility:** The MTO makes no warranties whatsoever with respect to the Terminal Facility or the User's access or use thereof. Prior to access, the User shall conduct a thorough inspection of the Terminal Facility and the areas that it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for the User's intended access and use. If the User believes there is any problem as to safety or suitability, the User shall immediately notify the MTO. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to the User's satisfaction, the User shall cease all of its operations related to the Terminal Facilities. Once the User begins any access or use of the Terminal Facility whatsoever, or continues to conduct operations at the Terminal Facility, it shall be irrevocably presumed that the Terminal Facility was inspected and accepted by the User as both safe and suitable for its operations.

**C. Waiver of all warranties:** THE USER SPECIFICALLY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF WORKMANLIKE SERVICE, THE IMPLIED WARRANTY OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE, WITH RESPECT TO THE MTO'S PERSONNEL, PROPERTY, TERMINAL FACILITIES, TERMINAL SERVICES, TERMINAL STORAGE AND USAGE.

#### ITEM 25: DEFAULT

**A. Liability for Attorney Fees and Costs.** Upon any Default by the User, in addition to any other remedies available to the MTO under law or in equity, the User shall be liable to the MTO for: (a) all expenses, including Attorney Fees and Costs (i) incurred by MTO in curing or seeking to cure such Default or in exercising or seeking to exercise any of the MTO's rights and remedies with respect to such Default, and (ii) otherwise arising out of such Default, plus (b) Interest on all such expenses, all of which expenses and Interest will be due and payable by the User to the MTO upon written demand.

#### ITEM 26: LAW AND JURISDICTION

**A. Choice of law:** Canadian Maritime Law or, if applicable, the provincial law of the place where the Terminal Facilities are located, shall apply to the interpretation and/or construction of this Schedule.

**B. Jurisdiction and Venue.** Any suit brought to enforce any provision of or otherwise arising from or related to, directly or indirectly, this Schedule shall only be brought in the Federal Court in Canada, or, failing jurisdiction, in the provincial Courts where the Terminal Facilities are located. All parties further agree to waive any defense or objection based on lack of personal jurisdiction, improper venue, and/or inconvenient forum. The parties agree to accept service, in English or in French, if process is issued by the Quebec Courts, of any summons, complaint or other legal process in any such action, suit or proceeding commenced in accordance with this provision by registered or certified mail, postage prepaid, or courier service. All parties waive any right to a trial by jury.

#### ITEM 27: GENERAL PROVISIONS



- A. Changes to the Schedule:** This Schedule may be changed by MTO from time to time without notice. The current version of this Schedule is available at the Terminal's main office and on the internet at [fmtcargo.com](http://fmtcargo.com).
- B. Severability:** The provisions of this Schedule are separable and severable. If any provision of this Schedule shall be deemed unenforceable, in whole or in part, by any court of law or equity, the remaining provisions hereof shall continue in full force and effect to the greatest extent practicable.
- C. Entire agreement:** This Schedule, together with the Rate Quote and any separate written agreement between the MTO and the User, represent the entire agreement between the MTO and the User and supersedes all prior and contemporaneous agreements, written or oral. No waiver, modification, or amendment of the terms of this Schedule or any Rate Quote shall be of any force or effect unless made in writing, signed by the MTO and the User and/or the party claiming a waiver, modification, or amendment of the terms, and specifying with particularity the nature and extent of such waiver, modification or amendment.
- D. No waiver:** Any waiver by the MTO of any Default by the User or any other party shall not constitute a waiver of any other rights of the MTO hereunder, including the MTO's rights on subsequent Defaults by the User.
- E. Notice:** For any notice required by any provision(s) herein, notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed.
- F. MTO negligence:** Subject to the provisions contained herein, nothing in this Schedule shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for the MTO's own negligence.
- G. Interpretation and Construction:**
1. *No Contra Preferentem* Rule: There shall be no presumption that any ambiguity in this Schedule shall be resolved in favor of either of the parties.
  2. Division of this Schedule into parts, headings, and the table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Schedule.
  3. The expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Schedule and not to any particular portion of this Schedule.
  4. In the event of inconsistency, the Schedule shall prevail over the Rate Quote, and the Rate Quote shall prevail over any other written agreement between the MTO and the User.
  5. Unless specified otherwise or the context otherwise requires:
    - "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;

- words in the singular include the plural and vice-versa and words in one gender include all gender identities; and
- reference to any legislation, including statute, enactment, ordinance or other legislation or a section or provision of that legislation, includes any order, statutory instrument or regulation made or issued under that legislation and, unless otherwise specified, shall be construed as a reference to such legislation as replaced, re-enacted, rewritten, extended or amended from time to time.



**ANNEX A: FMT HAMILTON**

This Annex sets out the rates applicable to Terminal Services provided by Federal Marine Terminals, Inc. at the following location:

**FMT Hamilton**  
208 Hillyard Street  
Hamilton, ON L8L 6B6  
Phone: 905.528.8741

**ITEM A1: STORAGE RATES**

- 1. **Storage Rates:** The following storage rates apply to any Cargo to be stored in open storage or in transit sheds without temperature- or humidity-control.

	<b>RATE</b>	<b>UNIT</b>
Outside Storage	\$2.75	per MT or CBM per month
Inside Storage	\$3.15	per MT or CBM per month

- 2. **Calculating storage rates:** Storage rates are calculated at the greater of US dollars per metric ton per month or per cubic meter per month. A minimum charge of \$100 per month/per invoice shall apply.
- 3. **No heated and/or climate-controlled warehouses:** Storage rates for heated and/or climate-controlled warehouses may be requested. The MTO does not provide heated or climate-controlled warehouses unless agreed to in writing between the parties.
- 4. **Storage charges after Free Time:** Month 1 is that month in which Free Time expires. The storage charge for Month 1 will be prorated in accordance with the number of Days remaining in that month after the expiration of Free Time. In addition, a transfer to storage charge will be invoiced for Month 1, if applicable.
- 5. **Storage charges compounded monthly:** The Terminal Facilities and the included transit sheds are only for temporary storage of Cargo between modes of transportation and are not designed for or allowed to be used as long-term storage. Once Free Time expires, storage charges for all remaining Cargo shall be the monthly Rate calculated as per above, plus a fee of 25% per month, compounded monthly.
- 6. **Storage congestion:** During times when Terminal Facilities are congested, the MTO (in its sole discretion) may move Cargo to alternate storage at the User’s expense. Prior to moving any Cargo in accordance with this provision, the MTO shall provide written notice to the User.

**ITEM A2: EXTRA SERVICES**

- 1. **Re-banding:** Re-banding services to be billed at \$75 per band.

2. **Gang Cancellation Fee:** The MTO shall assess a gang cancellation fee of \$300 per gang per hour for gang supervisors (supervisors for stevedoring and/or warehouse labor) during their guarantee time. This charge will only apply for the time gang supervisors are hired and the gang has not been ordered or if the gang was knocked off prior to supervisors filling their minimum hourly guarantees.
  
3. **Sorting/Transfer/Terminal Extra Labor:** The MTO shall charge \$100 per man hour for straight time.
  
4. **Photographs/Additional Reporting:** The MTO shall charge a fee of \$25 for any additional reporting or paperwork beyond the issued dock tally. For photographs, the MTO shall charge \$2/photo (with a minimum charge of \$10).
  
5. **Environmental and Security Fees:**

	<b>RATE</b>	<b>UNIT</b>
Environmental Fee	\$ 0.05	per MT or CBM per month
Port Security Fee	\$ 55.00	per hour

The Environmental Fee is calculated at the greater of US dollars per metric ton per month or per cubic meter per month.



**ANNEX B: FMT THOROLD**

This Annex sets out the rates applicable to Terminal Services provided by Federal Marine Terminals, Inc. at the following location:

**FMT Thorold**  
1281 Old Thorold Stone Road  
PO Box 98  
Thorold, ON L2V 3Y7  
Phone: 905.528.8741

**ITEM B1: STORAGE RATES**

- 1. **Storage rates:** The following storage rates apply to any Cargo to be stored in open storage or in transit sheds without temperature- or humidity-control.

	<b>RATE</b>	<b>UNIT</b>
Outside Storage BULK	\$0.60	per MT per month
Outside Storage Break Bulk	\$2.75	per MT or CBM per month

- 2. **Calculating storage rates:** Storage rates are calculated at the greater of US dollars per metric ton per month or per cubic meter per month. A minimum charge of \$100 per month/per invoice shall apply.
- 3. **No heated and/or climate-controlled warehouses:** Storage rates for heated and/or climate-controlled warehouses may be requested. The MTO does not provide heated or climate-controlled warehouses unless agreed to in writing between the parties.
- 4. **Storage charges after Free Time:** Month 1 is that month in which Free Time expires. The storage charge for Month 1 will be prorated in accordance with the number of Days remaining in that month after the expiration of Free Time. In addition, a transfer to storage charge will be invoiced for Month 1, if applicable.
- 5. **Storage charges compounded monthly:** The Terminal Facilities and the included transit sheds are only for temporary storage of Cargo between modes of transportation and are not designed for or allowed to be used as long-term storage. Once Free Time expires, storage charges for all remaining Cargo shall be the monthly Rate calculated as per above, plus a fee of 25% per month, compounded monthly.
- 6. **Storage congestion:** During times when Terminal Facilities are congested, the MTO (in its sole discretion) may move Cargo to alternate storage at the User’s expense. Prior to moving any Cargo in accordance with this provision, the MTO shall provide written notice to the User.

**ITEM B2: EXTRA SERVICES**

- 1. **Re-banding:** Re-banding services to be billed at \$75 per band.

2. **Gang Cancellation Fee:** The MTO shall assess a gang cancellation fee of \$300 per gang per hour for gang supervisors (supervisors for stevedoring and/or warehouse labor) during their guarantee time. This charge will only apply for the time gang supervisors are hired and the gang has not been ordered or if the gang was knocked off prior to supervisors filling their minimum hourly guarantees.
  
3. **Sorting/Transfer/Terminal Extra Labor:** The MTO shall charge \$100 per man hour for straight time.
  
4. **Photographs/Additional Reporting:** The MTO shall charge a fee of \$25 for any additional reporting or paperwork beyond the issued dock tally. For photographs, the MTO shall charge \$2/photo (with a minimum charge of \$10).
  
5. **Environmental and Security Fees:**

	<b>RATE</b>	<b>UNIT</b>
Environmental Fee	\$ 0.05	per MT or CBM per month
Port Security Fee	\$ 55.00	per hour

The Environmental Fee is calculated at the greater of US dollars per metric ton per month or per cubic meter per month.