



**Long Beach Container Terminal**

**MARINE TERMINAL OPERATOR**  
**SCHEDULE NO. 1**  
**RATES / REGULATIONS / PRACTICES**

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## **1. BASIC AGREEMENT**

Other than as provided in this Schedule, all rules and regulations set forth in the Port of Long Beach Tariff No. 4, or its successor, shall apply (referred to herein as the “Port of Long Beach Tariff”).

In the event that an executed agreement with Rates does not exist between a Customer and Contractor or for agreements that do not address specific rules, regulations, Rates, charges, and/or fees contained herein, the provisions of this Schedule shall apply.

Use of the Terminal, wharves, other facilities, or property or the receipt of Services under the jurisdiction of or provided by Contractor shall constitute a consent to and acceptance of the terms and conditions of this Schedule and evidences an agreement on the part of all vessels, their owners, charterers and agents, or other users or recipients of Services (including cargo and equipment) to pay all applicable charges and abide by all rules and regulations of Contractor and abide by the rules and regulations of this Schedule.

Except as otherwise provided in this Schedule, the applicable Rates, charges and fees shall be those in effect at the time Services are rendered, plus any interest or additional charges or fees.

Except as otherwise provided in this Schedule, the applicable rules and regulations shall be those in effect at the time the rule or regulation is applied and enforced.

Contractor reserves to itself the right to interpret and determine the applicability of any of the Rates, charges, or fees provided for in this Schedule and to assess charges or fees in accordance with any such interpretation and determination. Contractor reserves to itself the right to determine the applicability of any rule or regulation of this Schedule and to enforce any such rule or regulation in accordance with any such interpretation or determination.

This Schedule does not include an expiration date.

This Schedule is published and made available to the public pursuant to the United States Shipping Act of 1984, as amended, and shall at all times be legally enforceable as between Customer and Contractor, including with respect to responsibility for and payment of demurrage as defined in 46 C.F.R. §541.3. All references to a tariff, schedule, Service, etc. of Contractor shall be deemed to refer to this Schedule and the Rates, regulations and practices, and terms and conditions, set forth herein.

This Schedule may be changed by Contractor from time to time without notice.

The marine facilities subject to this Schedule are subject to Maritime Transportation Security Plans as required by 46 U.S.C. §70103 et. seq., and the regulations promulgated thereunder.



## **2. SUBSCRIBING TERMINAL**

LBCT LLC  
1171 Pier F Ave  
Long Beach, CA 90802

## **3. DEFINITIONS**

“ACT” means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, the Coast Guard Authorization Act of 1998 and subsequent legislation.

“BULK CARGO” means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics.

“CHECKING” means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same.

“COMMISSION” means the Federal Maritime Commission.

“CONTRACTOR” refers to LBCT LLC which owns and/or operates the terminal facility located at 1171 Pier F Ave, Long Beach, CA, 90802 and the respective owners, shareholders, members, managers, directors, officers, employees and agents, all of whom shall be entitled to all benefits, defenses, exceptions, immunities and limitations upon liability available to Contractor hereunder, by law, at equity or otherwise.

“CUSTOMER” refers to any alliance, alliance member, vessel, vessel owner, carrier, agent, vessel operator, vehicle, conveyance, consignor, consignee, beneficial Cargo owner, person, Cargo, equipment, chassis, or any other person or entity, including but not limited to the agents, other providers, and other subcontractors (at any level) of any of the foregoing, who is provided with, benefits from, or receives any Services whatsoever, or person or business entity who owns or claims an interest in, right to, attachment, or lien regarding any vessel, vessel equipment, equipment, or Cargo.

“DOCKAGE” means 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” means the date a schedule or an element of a schedule becomes effective. 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” means the last day, after which the entire schedule or a single element of the schedule, is no longer in effect.

“GOODS” or “CARGO” refers to all cargo, goods, and other personal property items, including any equipment associated with or utilized by the foregoing, with respect to which Contractor is requested to and/or does perform any Services, and all packing, packaging, crates, cradles, pallets, tanks, platforms, flatbeds, trailers, containers, chassis, other equipment, and other items,



materials, and supplies associated therewith, and any goods or cargo that benefits from Services at the Terminal or utilizes the Terminal. The capitalized and non-capitalized words “Goods” and “Cargo”, as well as both the singular and plural versions of each, shall have the same meaning as Goods and Cargo in this definition.

“HANDLING” means the terminal service of physically moving goods.

“HEAVY LIFT” means the service of providing heavy lift cranes and equipment for lifting goods.

“LOADING AND UNLOADING” means the service of loading or unloading goods between a place of rest at the terminal facility and any vessel, rail car, trucks/motor vehicle or other conveyance.

“MARINE TERMINAL OPERATOR” means a person engaged in the United States 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 subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator includes, but is not limited to, terminals owned or operated by states 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.

“ORGANIZATION NAME” means an entity's name on file with the Commission and for which the Commission assigns an organizational number.

“PACKAGE” refers to the largest single unit used to transport the goods, such as a single container, flatbed, or trailer, etc., or a single machine or item of equipment, etc., and not the individual contents, pieces, boxes, parts or components thereon, therein or thereof.

“PERSON” includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

“POLB” or “PORT” means Port of Long Beach.

“PORT OF LONG BEACH TARIFF” or “PORT TARIFF” means The Port of Long Beach Tariff No. 4 or its successor.

“RATE” means a price quoted by Contractor in a schedule or otherwise for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a definite time frame.

“TERMINAL” or “TERMINAL FACILITY” means one or more structures comprising a terminal owned and/or operated by Contractor, including, but not limited to, docks, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, landings and receiving stations used for the handling, transmission, care and convenience of cargo in the receipt, interchange and/or delivery of the same between shippers, carriers and/or consignees.



“TERMINAL SERVICES” or “SERVICE(S)” includes checking, dockage, free time, handling, rehandling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined herein, as well as any other providing of, use of and/or access to a terminal facility whatsoever, including any providing of, use of and/or access to personnel, labor, services, materials, supplies, tools, equipment, personal property and real property at and/or associated with such terminal facility, and whether provided at such terminal facility or elsewhere.

“TERMINAL STORAGE” means the service of providing terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

#### **4. RATES, CHARGES, INVOICING AND PAYMENT**

##### **A. Rates and Charges**

Customer shall compensate Contractor for terminal services at the rates specified in Contractor's written quotation or other document, including this schedule, which quotation or other document from Contractor shall be deemed accepted by Customer 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 of Contractor whatsoever by or on behalf of Customer. Upon any such acceptance, Contractor's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Contractor's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.

##### **B. Other Charges**

Customer shall also be responsible for paying/reimbursing Contractor for any advances made respecting the goods, expenses incurred due to any act, omission and/or failure to perform by or on behalf of Customer, and expenses incurred with respect to the goods resulting in whole or part from any unforeseen or extraordinary circumstance.

##### **C. Recalculation**

Rates/charges based on inaccurate or incomplete descriptions, instructions or particulars may be recalculated at any time and without notice to Customer. Contractor shall have the right to inspect the goods and any manifests, bills of lading, receipts, cargo lists and other documents relating thereto in order to check, recalculate and/or confirm rates/charges hereunder, and Customer agrees to fully cooperate with Contractor to that end.



D. Invoice, Payment and Interest

Customer shall process and pay or dispute invoices submitted by Contractor within thirty (30) days from the date of the invoice. All payments by Customer shall be by payment method acceptable to Contractor in United States currency. If Customer disputes a part of an invoice, it shall pay the part not disputed, within this period. Any invoice not paid within this period will be charged a late payment charge of one and half percent (1.5%) per month or part thereof until payment has been received. Payment to apply to late charges first and remainder to invoice balance.

E. Invoice Disputes

Questions regarding the validity of any invoice, charge or penalty from Contractor must be submitted to Contractor in writing within thirty (30) days of presentation, failing which such invoice shall be deemed accurate, valid and accepted by Customer.

F. Collection

Should Contractor engage a collection agent and/or attorney to collect amounts due hereunder, Customer shall be responsible for paying/reimbursing Contractor for all fees and costs relating thereto, including legal fees and costs, in litigation or otherwise.

**5. CONTRACTOR'S LIEN RIGHTS**

Customer grants Contractor a lien on the goods while in the possession of Contractor and a lien against any vessel, container, chassis, etc. respecting such goods to provide security for the payment of amounts due Contractor hereunder. As additional security for said amounts due Contractor, Customer grants Contractor a consensual lien on all other goods, cargo and personal property of Customer subsequently in Contractor's possession. Contractor may assert its lien rights at any time, and in furtherance thereof may hold and/or store such goods, cargo and personal property until payment is received and/or sell such goods, cargo and personal property publicly or privately; in the event of sale, proceeds shall first be applied to sale costs, then to amounts due Contractor, with the balance, if any, to be remitted to Customer.

**6. INDEPENDENT CONTRACTOR**

Contractor shall be an independent contractor and not an agent or employee of the Customer, and all employees or laborers employed in the performance of services under this Schedule shall be employees of Contractor, or its subcontractors, at all times, and not of Customer.

**7. LIBERTIES AND PERFORMANCE**

Contractor shall perform services hereunder with due diligence but does not guaranty any particular speed or starting or completion dates or times. Contractor shall have liberty with respect to selection of equipment, procedures and methods utilized for its performance, except to the extent such matters have been specifically agreed otherwise. Contractor reserves the right to control and perform all weighing, sampling, measuring, loading, handling and discharging of



goods at the terminal facility, but shall not be obligated to receive, handle or deliver goods unless and until all proper documentation has been presented. Contractor may, at its option and without notice, refuse, reject, move within and/or remove from the terminal facility any goods which it believes may present a risk to persons or property, at Contractor's sole discretion and Customer's sole risk and expense.

## **8. SUBCONTRACTING AND EXTENSION OF BENEFITS**

Contractor may subcontract all or any portion of the terminal services at its discretion and without notice, including without limitation to related/affiliated entities, with all benefits, defenses, exceptions, immunities and limitations upon liability set forth in this Schedule to remain applicable whenever claim is made against Contractor and/or any servant, agent, contractor or any other whose services have been used to perform terminal services or otherwise respecting the goods.

## **9. COORDINATION ASSISTANCE**

Upon request from Customer and with Contractor's consent, Contractor may assist Customer with the coordination between Customer and federal, state and/or local governmental authorities, and/or between Customer and carriers, vessels, trucks and railcars, etc. involved in the handling or transportation of Customer's goods, to expedite the performance of terminal services and transportation of Customer's goods as contemplated, with any additional charges/expenses incurred with respect thereto to be paid/reimbursed to Contractor by Customer pursuant to section 4, above, if not otherwise specifically identified on Contractor's written quotation. No such assistance from Contractor shall increase Contractor's responsibilities or liabilities as set forth in this Schedule.

## **10. GOVERNMENT INSPECTION ASSISTANCE**

Unless otherwise specifically agreed by Contractor in its written quotation, any assistance with government inspections (Customs, USDA, Coast Guard etc.) from Contractor will be billed to Customer on a time, equipment and materials plus Contractor's standard overhead percentage basis, which standard overhead percentage shall be provided to Customer upon request. Customer shall be solely responsible for scheduling, paying/reimbursing all costs/expenses, and preparing, processing, completing, submitting and filing all documents associated with any such government inspection.

## **11. FORCE MAJEURE AND EXCEPTIONS FROM PERFORMANCE**

Contractor shall not be responsible for any delay or failure to perform resulting from any cause which is beyond Contractor's reasonable ability to control and/or which arises without the actual fault and privity of Contractor. This includes, but not limited to acts of God, acts of terrorism, riots, earthquakes, floods, fire or other casualty, or should the operation of Contractor be seized or the full utilization prevented or impaired by reason of war, civil commotion, governmental decrees, condemnation, strikes, lockouts, slowdowns or other bona fide labor disputes, epidemic, pandemic, quarantine, breakdown of communication facilities, breakdown of web host,





breakdown of internet service provider, loss of utility service(s), marine casualty, any act or omission of Customer or by reason of other conditions beyond the reasonable control of the Contractor.

## **12. CUSTOMERS DESCRIPTION AND TENDER OF GOODS**

Customer shall be solely responsible for providing Contractor with, and hereby warrants the completeness and accuracy of, all information, descriptions, particulars and instructions relating to the goods, including as to their nature, characteristics, markings, number, count, weight, dimensions, volume and quantity, as well as any special instructions or conditions applicable to the goods, their handling and/or transportation, upon all of which Contractor shall be entitled to rely. Customer shall be responsible for, and agrees to indemnify and hold Contractor harmless (including legal fees and costs) from and against, any loss, damage, expense, claim, liability, suit, fine and/or penalty resulting from any false, inaccurate and/or incomplete information, descriptions, particulars and/or instructions respecting the goods.

Customer shall tender goods to Contractor at the date, time and place agreed by Contractor 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 airplane, as applicable.

## **13. BILL OF LADING**

Customer agrees to issue its bills of lading containing a Himalaya clause extending the same exceptions from and limitations on liability provided for the benefit of the Customer to those providing stevedoring and terminal services under the Customer's bill of lading. Contractor has been provided with and acknowledges the adequacy of Customer's bill of lading in that regard; provided, however, if Customer issues bills of lading or other forms of transportation agreement without such Himalaya clause, Customer waives its rights to indemnity from and shall defend, indemnify and hold harmless the Contractor from and against any measure of liability for cargo loss or damage which would have been subject to such clause in Customer's bills of lading or other transportation agreement. Nothing herein shall be deemed to relieve Customer or Contractor of responsibility for its own negligence or fault.

Customer agrees to indemnify and hold Contractor harmless (including legal fees and costs) of and from its failure, in whole or part, to meet the requirements of this section 13.

## **14. RULES FOR PARTICULAR GOODS**

### **A. Containers**

Customer shall be responsible for assuring that all goods in containers are prepared, packaged, packed and secured so they do not shift or become damaged during handling and performance of other terminal services, and otherwise prepared, packaged, packed and secured sufficiently for safe transportation by motor vehicle, railcar and/or vessel, as applicable.



(1) No Duty to Inspect

Contractor shall have no responsibility or duty to inspect the contents of containers from Customer, and no such inspection, or request to inspect, shall increase Contractor's responsibilities or liabilities hereunder.

(2) Verified Gross Mass ("VGM")

Customer warrants that it is authorized by its shipper(s) as shipper's agent to use and verify Contractor scale weights as SOLAS compliant verified gross mass ("VGM") weights. CUSTOMER authorizes Contractor to use these weights and CUSTOMER hereby verifies such weights in the absence of a separately provided VGM.

(3) Non-Vessel Container Services

Contractor shall receive and/or deliver containers to/from the terminal facility and other-than-vessels as requested by Customer and agreed by Contractor, including but not limited to mounting/dismounting to/from motor vehicles, trailers, chassis and/or railcars, etc.

(4) Weighting

Upon request from Customer, Contractor may assist with the weighing of containers and reporting to Customer, carrier or vessel, in which event additional charges may apply if not otherwise identified on Contractor's written quotation.

(5) Equipment Inspection Reports and Interchange Documents

Upon request from Customer, Contractor may assist with the completion of equipment inspection reports or equipment interchange documents with respect to containers, in which event additional charges may apply if not otherwise identified on Contractor's written quotation.

(6) Over height, Over width, Over length Containers

If the goods are in a container which is not ISO fitted, over height, over width or over length, Contractor may use special rigging and/or equipment to handle it, at its discretion, in which event additional charges may apply if not otherwise identified on Contractor's written quotation.

(7) Damage

Except to the extent of its negligence, Contractor will not accept liability for concealed damage or loss, nor for the condition of the contents of containers received in damaged condition from vessel or inland carrier.



**B. Refrigerated Goods and Containers**

Customer shall give advance notice of any perishable, chilled, frozen or other goods requiring refrigeration, and shall be responsible for tendering such goods in appropriate refrigerated containers, properly stowed with thermostat set, and for providing Contractor with appropriate instructions and temperature settings relating thereto. Contractor shall not be responsible for freezing down or reducing the core temperature, nor for the long-term storage, of any such goods. Contractor shall plug/unplug refrigerated containers and/or check temperature settings to the extent specifically requested by Customer and agreed by Contractor. In the event of discrepancy between the temperature setting provided to Contractor and that observed on a given refrigerated container, Contractor may request that Customer verify the correct setting but has no obligation to do so. If no request for verification is given, or if Customer does not respond to such request, Contractor may set the unit according to information which has been provided to it or, if no information has been provided, Contractor may leave the unit at its current setting or adjust the setting to correlate with its setting upon arrival, at Contractor's sole discretion. Contractor shall not be liable, under any circumstances whatsoever, for any loss, damage, expense, claim, liability or suit relating to such goods when incorrect or inadequate information was provided to it, and/or when such goods were tendered with improper or inadequate temperature protection, or with improper or inadequate wrapping, packing, packaging, and/or with improper or inadequate stowage within the container.

**C. Specialty Goods**

Customer must secure Contractor's assent before tendering for any goods transported in other than conventional, ISO fitted, dry containers and/or which require any special protection, services or other measures (including but not limited to temperature and humidity control). Customer shall be solely responsible for providing complete and accurate information with respect to any such goods, including safety procedures and contact information, etc., prior to commencement of terminal services.

**D. Breakbulk and/or Unitized Goods**

The receiving and/or delivering of goods not in containers shall be performed during normal working hours and does not include the costs of truck loading/unloading unless specifically agreed by Contractor in its written quotation. All terminal services applicable to breakbulk shall be performed at the rates/charges contained in Contractor's written quotation or, if no rates/charges were included, at Contractor's current standard rates/charges therefor, which rates/charges shall be provided upon request. If materials such as skids, pallets, bands, etc., and/or special lift equipment for handling such goods, becomes necessary, at the discretion of Contractor, additional charges may be incurred without prior notice to Customer.



## **15. FACILITY SECURITY**

Contractor agrees to be in compliance with federal and local regulations (e.g., US Customs Service, US Coast Guard, and governing Port Authority, or other federal regulatory agencies) and Customs-Trade Partnership Against Terrorism (C-TPAT). Customer understands and acknowledges the importance of such matters, and agrees to fully cooperate with all MARSEC, Coast Guard and/or Operator security directives as well as all training, drills, exercises, screenings, sweepings, surveys, examinations and assessments of Operator, the Coast Guard and/or any law enforcement official at the terminal facility designed to identify, protect against, alleviate and/or eliminate threats to security.

## **16. MOTOR VEHICLE RULES**

Any truck/motor vehicle having business at the terminal facility, including its owner, Contractor and driver, shall be considered a Customer requesting and/or receiving access to and/or use of the terminal facility subject to the provisions of this Schedule, including without limitation the security provisions set forth in section 15, above, and the access and use provisions set forth in section 28, below. In addition, all such trucks/motor vehicles must abide by the following rules:

### **A. Registration, License and Insurance**

All trucks/motor vehicles, and their drivers, must be properly registered, licensed and insured as required by federal, state and local authorities, including without limitation the Department of Transportation, Federal Highway Safety Administration and Federal Motor Carrier Safety Administration, as applicable.

### **B. Safety Rules**

All trucks/motor vehicles, and their drivers, must abide by the following safety rules at all times while at the terminal facility:

- (1) the speed limit within the terminal facility is 10 MPH, unless posted otherwise;
- (2) come to a complete stop at all crossings/stop bars and yield at unmarked crossings/intersections;
- (3) terminal equipment has the right of way at all times;
- (4) do not try to pass behind rail equipment that is backing up;
- (5) no unauthorized pedestrian traffic is allowed on the terminal, drivers must stay close to their vehicles while in terminal and should be out of their vehicle only for actual operating needs, e.g. locking/unlocking twistlocks in the area near the in and out gates.
- (6) absolutely no passengers allowed in the vehicle without prior written approval from terminal management;



- (7) the wearing of a high visibility safety vest is required. Wear other personal protective equipment where required, including hard hats, proper footwear and proper clothing;
- (8) be aware of and yield to all train traffic;
- (9) do not use any electronic devices while driving;
- (10) NO cell phone use allowed while out on terminal and vehicle is moving. Cell phones may only be used when in vehicle is stopped even with hands free devices;
- (11) do not attempt to resolve a mis-seated container yourself. Proceed to the flip line or contact terminal management;
- (12) use of seat belts is required while vehicle is in motion;
- (13) do not open containers while in the terminals;
- (14) obey all posted signed and terminal rules;
- (15) If you experience any problems or have any questions, seek assistance at the terminal office or maintenance building, as applicable

C. Photography

Because of the security requirements at the terminal facilities, photography or video recording on or of the terminal facility that would intentionally violate an individual's privacy or endanger the security/safety of persons on the terminal facility is prohibited. This prohibition specifically applies to use of any monitoring device, such as a camera, phone or video recorder. Contractor is solely responsible for determining if Customer in any way violates this policy. Any photographs or video taken on or of the terminal facility must be turned over to Contractor upon request. A required Electronic Logging Device (ELD) is exempt from this policy provided it is not used in any way that would violate this policy or the marine terminal's security requirements.

D. Loss/Damage to Equipment and Property

Customer shall be responsible for, and shall indemnify and hold Contractor harmless (including legal fees and costs) from and against, all loss/damage to Customer's owned/leased equipment and personal property, including all of its owned/leased materials, supplies, tools, equipment, tractors, trucks, motor vehicles, trailers, containers, chassis, flatbeds and other equipment and/or personal property, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other fault of Contractor.



E. Loading/Unloading

Customer shall be responsible for assuring that all trucks/motor vehicles, and chassis, trailers, etc., are fit and suited for safe loading and unloading, and that the goods are situated such that loading/unloading can be performed continuously and without interruption. Unless otherwise agreed by Contractor in advance and in writing, all loading/unloading shall be performed by Contractor with the assistance and under the supervision of the truck driver/motor carrier. The truck driver/motor carrier is responsible for lining up to the container handling equipment when taking delivery of a container. If the driver/motor carrier does not so assist and supervise, additional charges may be incurred.

**17. CONTAINER TERMINAL DEMURRAGE RULES**

A. Definitions

(1) Line Demurrage

Line demurrage refers to fees charged by a carrier related to the storage of an intermodal container in the marine terminal yard. Line demurrage rates and the free time during which a cargo owner may retrieve its cargo without incurring any carrier demurrage are set by the relevant carrier. Contractor collects carrier demurrage on behalf of its carrier customers when requested to do so by the carrier. Contractor does not charge carrier demurrage, set carrier demurrage rates, or determine the amount of free time allowed under carrier demurrage rules.

(2) Line Demurrage Tariff

Line demurrage fees, rules and tariffs are established by the carrier. The Contractor is enforcing the tariff established by and as requested by the carrier. The carrier's line demurrage rules, fees and tariff details can be located for each respective carrier at: <https://www.lbct.com/Operations/DemurrageInfo> , under the applicable carrier section.

B. Information about the availability of a container in the yard for pick-up is available on Contractor's website, which is noted below.

C. Contractor requires line demurrage amounts be paid before a container may leave the terminal yard unless demurrage is guaranteed by the relevant carrier.

D. Parties that seek a waiver, refund, or other mitigation of port or line demurrage charges may refer to the following website for further information on the specific process and information required: <https://www.lbct.com/Operations/DemurrageInfo>.

E. Legal Requirements for Invoices Containing Ocean Carrier Charges. Pursuant to the Ocean Shipping Reform Act of 2022 ("OSRA 2022") effective on the later of June 17, 2022 or the effective date of the first publication of this Schedule No.1 containing this



provision, 17 E any demurrage and/or detention invoice governed by OSRA 2022 shall be subject to the following: (i) the Contractor acts as agent for the carrier, and relies upon the representations, warranties of and accuracy and completeness of information supplied by the carrier, as applicable, with respect to contents of carrier charges on each invoice, and (ii) Contractor may issue demurrage and detention invoices in accordance with existing practice on an interim basis, but Contractor expressly reserves the right to amend and/or reissue invoices as soon as technically practical to the extent additional information is required to be provided pursuant to OSRA 2022 or other changes in law or regulations. For the purposes of OSRA 2022, such invoices shall supersede and replace a previously issued invoice so long as such replacement invoice does not increase the aggregate carrier charges assessed on the original invoice. Any certification with respect to a carrier's compliance with OSRA 2022 or other law or regulation contained on an Contractor invoice is made solely on the basis of reliance on representations of the carrier. Further, as of June 17, 2022, the Contractor has requested, and expects but has not yet received confirmations and consents from all carriers concerning OSRA 2022 carrier statements and certifications, including as described in Sections 7(d)(2)(L) and (M) of OSRA 2022, and any such statement or certification contained in an invoice from the Contractor is therefore limited to the information and belief of the Contractor for the period of time that this provision remain in effect in this Schedule No. 1.

## **18. STORAGE CHARGES**

Effective January 31<sup>st</sup>, 2022, Contractor is implementing a storage charge in addition to the line demurrage charges on all import loaded containers, which shall be paid or caused to be paid by the Customer.

- A. Extended Dwell Time Fee – In order to recover increased operating, storage costs and to encourage increased velocity of long dwell import containers, the following fee (“Extended Dwell Time Fee”) will apply to all loaded import containers, in addition to existing line demurrage tariff fees:
- (1) No charges for free time (“free time” for the purposes of this rule is the time during which the importer of record or other person entitled to possession may retrieve its cargo without incurring the Extended Dwell Time Fee which shall commence in the manner outlined in POLB Tariff No. 4, Rule 34-D, Section 4, Item 402 (a) and Item 406 and ends five days thereafter). Refer to the POLB Demurrage and Storage Free Time Calendar:  
<https://thehelm.polb.com/download/381/demurrage-calendar/13177/2022-demurrage-calendar.pdf>
  - (2) \$45 per day for the next five days of storage thereafter (days 1-5 after free time);
  - (3) \$70 per day for the next five days of storage thereafter (days 6-10 after free time);
  - (4) \$110 per day for the next five days of storage thereafter (days 11-15 after free time); and



(5) \$160 per day for any days thereafter.

B. Empty containers and export loaded containers will not be subject to the Extended Dwell Time Fee. The importer of record in the shipping documents will be responsible for paying or arranging payment of the Extended Dwell Time Fee. If the Extended Dwell Time Fee is not paid with-in 45 minutes of a confirmed appointment, the appointment will be automatically cancelled in the appointment system. Waivers, refunds and appeals of the Extended Dwell Time Fee will be handled in accordance with the policies on the Company's website and as noted in Section 17 (D).

## **19. NO INSURANCE FOR THE BENEFIT OF THE CUSTOMER**

Contractor does not provide any insurance whatsoever for the benefit of Customer, nor any insurance whatsoever covering Customer's goods, property or personnel.

## **20. LOSS/DAMAGE TO GOODS (CLAUSE PARAMOUNT)**

The United States Carriage of Goods By Sea Act (46 U.S.C. §1300 et seq.) is fully incorporated into this Schedule and shall be applicable at all times the goods are, or are deemed, in the care, custody and/or control of Contractor. Contractor shall not be liable for any loss/damage to or in connection with the goods in an amount exceeding \$500 U.S. per package (as defined in section 3, above), or in the event of goods not in such packages per customary freight unit, unless a higher value for the goods has been declared in writing to Contractor prior to the commencement of any terminal services whatsoever and Customer has paid increased rates/charges resulting from such declaration of higher value. Contractor shall not be responsible in any event for any loss/damage to or in connection with the goods if the nature or value thereof has been knowingly and fraudulently misstated. Contractor shall not be liable to Customer or any other respecting the goods except as set forth in this section 20, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, and/or in tort, contract or other theory.

## **21. LIABILITY**

Contractor shall not be liable for any loss or damage to a container or cargo, death or personal injury to the extent that such loss, damage, death or injury is caused by or contributed to by defective protection or packing, latent or natural wastage or contamination of cargo, misdeclared cargo information, failure or malfunction of refrigerated container equipment or refrigerants or defective or malfunctioning twistlocks. In case of contributory negligence, the liability of Contractor shall be calculated on a pro rata basis. Contractor shall furthermore not be liable for any delay of a vessel, container or cargo. No provision contained in this Schedule shall relieve Contractor from liability for its own negligence nor require any user to indemnify or hold harmless Contractor for liability for its own negligence.

Contractor and Customer exclude all liability, except for liability which cannot be excluded under applicable laws, to each other for any loss or damage which is caused by and to the extent of a force majeure event.





## **22. NO CONSEQUENTIAL DAMAGES**

Contractor shall not under any circumstances be liable to Customer or any other for any indirect, consequential or special damages of any type or nature whatsoever, including, without limitation, any damages consisting of lost profits, lost income, lost business, lost business opportunity, interruption of business, loss or use and/or loss of ability to use undamaged component or system parts, regardless of whether such damages may have been foreseeable.

## **23. LOSS/DAMAGES CLAIMS**

The following are agreed to be conditions precedent to any recovery from Contractor for loss/damage to or in connection with the goods.

- A. There shall be no right to recover until all amounts due Contractor have been paid in full.
- B. The goods must be carefully inspected by Customer immediately upon completion of terminal services and delivery from Contractor, and any loss/damage evident at such time must be identified to Contractor in writing and with particularity.
- C. Unless written notice of loss/damage and the general nature thereof is given to Contractor upon completion of terminal services and delivery of the goods from Contractor, or within five (5) days thereafter if the loss/damage is not apparent at such time, delivery of goods from Contractor shall be prima facie evidence of delivery from Contractor in good order, count and condition.
- D. In the event of goods which have been delayed, lost or otherwise not delivered by Contractor as contemplated, Contractor must be given written notice of such delay, loss or non-delivery within fifteen (15) days from the date upon which the goods should have been so delivered.
- E. Contractor shall have a reasonable opportunity to inspect the goods, including their packing, packaging, etc., in the same condition as upon completion of terminal services and before any repair, alteration or destruction.

In any event, Contractor shall be forever discharged from liability for any loss/damage to or in connection with the goods unless suit is filed in the forum identified in section 32, below, within one (1) year after the date of delivery from Contractor or the date on which the goods should have been so delivered.

## **24. CLAIM DOCUMENTATION**

Customer's written notice of loss/damage to or in connection with the goods, as referenced in section 23, above, 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 goods, 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 goods; all correspondence respecting the goods and/or their



transportation; all inspections, surveys, photographs, claim bills, invoices and statement of losses respecting the goods 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 goods, the particulars of their transportation and/or the loss/damage being claimed.

## **25. DUTY TO ACCEPT GOODS**

Customer shall be responsible for accepting the goods, or having the goods accepted, from Contractor upon completion of services and any inspection thereof requested by Contractor, even if such goods are claimed to have suffered loss/damage. Customer shall not abandon any goods at the terminal facility or otherwise with Contractor for any purpose or under any circumstances whatsoever.

## **26. REFUSED/ABANDONED GOODS**

Contractor reserves the right to hold, lien, store, warehouse, sell (publicly or privately) and/or dispose of any goods which are abandoned and/or refused by Customer or any shippers, carriers, consignees, etc., after due notice has been sent to relevant persons known to Contractor and time for pick-up has passed, without further notice, at Contractor's discretion and Customer's sole risk and expense.

## **27. ASSUMPTION OF RISK AND INDEMNITY**

Customer specifically understands, acknowledges and agrees that any and all providing of, access to and/or use of the terminal facility and/or terminal services of Contractor by or on behalf of Customer shall be at Customer's sole risk and expense. Aside from loss/damage to the goods themselves, Customer assumes sole responsibility for, and agrees to indemnify and hold Contractor harmless from and against (including legal fees and costs), all other loss, damage, expense, claim, liability, suit, fine and/or penalty of any type or nature whatsoever which in any way arises out of and/or relates to any providing of, access to and/or use of the terminal facility and/or terminal services of Contractor by or on behalf of Customer, including, without limitation, those respecting any loss/damage to the property of Contractor, Customer or any other as well as those respecting the personal injury, illness and/or death claims of any person, including without limitation of any agent, employee, representative, guest, invitee, vendor and/or subcontractor of Contractor, Customer or any other, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other legal fault of Contractor. In furtherance of the foregoing, Customer shall waive any immunity from suit, exclusivity of remedy and limitation upon liability which would have otherwise been afforded pursuant to any workers compensation act or similar law.

## **28. ACCESS AND USE**

Contractor shall have the right to promulgate reasonable rules and regulations, and to amend and supplement the same designed for safety and security purposes, respecting the conduct of all



persons in and upon the terminal facilities, and Customer agrees to extend its best cooperation in enforcing such rules and regulations with respect to its agent, employees, servants, contractors, guests and invitees.

A. Compliance

Customer, including its employees, subcontractors and invitees, shall conform with all local, port, municipal, county, state and federal laws and regulations applicable to Customer's operations, including without limitation those promulgated by the EPA, OSHA, DOT, FMCSA, DHS and/or USCG, and shall be responsible for any violation of the same.

B. Safety and Other Rules

Customer shall be responsible for assuring that all of its employees, subcontractors and invitees learn and obey Contractor's safety and other rules, whether posted, given in writing, set forth herein and/or advised verbally, and that all such persons otherwise wear hard hats, safety vests and other personal protective equipment as required by Contractor.

C. Damage to Property

Customer shall be responsible for, and shall indemnify and hold Contractor harmless (including legal fees and costs) from and against, all loss/damage to Customer's owned/leased equipment and personal property, including all of its owned/leased materials, supplies, tools, equipment, tractors, trucks, motor vehicles, trailers, containers, chassis, flatbeds and other equipment and/or personal property (but not the "goods" as defined in section 3, above, the loss/damage of which goods is addressed in section 23, above, and elsewhere herein), howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other fault of Contractor. In addition, Customer shall be responsible for, and shall indemnify and hold Contractor harmless (including legal fees and costs) from and against, any loss/damage to the personal property of others at the terminal facility, including the personal property of Contractor, which in any way arises out of and/or relates to Customer's access and/or use of the terminal facility or terminal services. Customer agrees that in the event such loss/damage to the property of Contractor or others occurs, it shall immediately notify Contractor and, after obtaining Contractor's consent to proceed, repair/restore the damaged property to its pre-existing condition with no reduction for depreciation. If Customer fails to do so, Contractor may, in which event Customer shall pay/reimburse actual costs to accomplish this plus fifteen percent (15%).

D. Personal Injury

Customer assumes responsibility for any bodily/personal injury, illness and/or death of its employees (including those of its subcontractors), and agrees to indemnify and hold Contractor harmless (including legal fees and costs) of and from the same. In addition, Customer assumes responsibility for, and agrees to indemnify and hold Contractor



harmless (including legal fees and costs) of and from, any bodily/personal injury, illness and/or death of any other person at the facility which arises out of or is in any way connected with Customer's access and/or use of the terminal facility or terminal services. The foregoing indemnification shall be deemed to include any claim or suit by any employee (present or former) of Customer, and in furtherance thereof Customer waives any immunity from suit, exclusivity of remedy and limitation of liability under any workers compensation act or similar law.

E. Notification

Customer shall notify Contractor immediately of any bodily and/or personal injury, illness and/or death, or of any property damage, related in any way to its access to or use of the terminal facility or terminal services. Customer shall promptly provide Contractor with written accident reports and shall cooperate fully with Contractor with respect to any investigation, including allowing inspection of personal property and access to personnel.

F. Workers Compensation Insurance

Customer shall be responsible for maintaining workers compensation insurance, including coverage under the Longshore Act, on all of its employees (including those of its subcontractors and upon himself or herself if Customer is an individual), but neither Customer nor its workers compensation insurer shall have any right of action against Contractor for subrogation or reimbursement of any payments made pursuant to that policy (including within any policy deductible).

G. Public Liability Insurance

Customer shall also be responsible for procuring and maintaining public liability insurance for personal injuries and property damage with respect to Customer's access to or use of the terminal facility and/or terminal services, including contractual liability coverage for Customer's liabilities and obligations as set forth above. Such insurance must have limits of at least \$5,000,000 per occurrence, shall name Contractor as an additional insured and be endorsed to waive subrogation against Contractor and to be primary to any insurance of Contractor. Customer shall evidence this insurance by providing Contractor with a certificate of insurance prior to any access to or use of the terminal facility and/or terminal services.

H. Waiver of Sovereign Immunity

Customer, in partial consideration for the terminal services being performed, agrees to waive any right to claim and/or defense of sovereign immunity with respect to any monetary amount, loss, damage, expense, claim, liability, suit, fine and/or penalty due from Customer to Contractor hereunder.



## **29. EEO COMPLIANCE AND NON-DISCRIMINATION**

Contractor does not discriminate based upon race, color, religion, sex, age, national origin or any sensory, mental or physical disability, or upon any other basis prohibited by applicable law (including, as applicable, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments Act of 1972, and the Age Discrimination Act of 1975).

Contractor will take reasonable steps to provide meaningful access to persons with limited English proficiency.

Complaints of discrimination on the basis of race, color, national origin (including language), disability, sex, age, or religion may be made through the Company's website.

## **30. NOTICE REGARDING DISABILITY ACCOMMODATIONS**

Contractor is committed to providing individuals with disabilities an equal opportunity to participate in and benefit from Contractor's business and services. Individuals may request reasonable accommodations from Contractor that they believe will enable them to have such equal opportunity to participate in our business and services. To request reasonable accommodations, contact customer service at the terminal facility.

## **31. ELECTRONIC DATA INTERCHANGE**

Contractor shall provide an electronic data interchange ("EDI") link with the Intermodal Association of North America (IANA) to accept Uniformed Intermodal Interchange & Facilities Agreement (UIIA) data – Trucker Insurance and Line Authorized Trucker information.

## **32. LAW, DISPUTES, BINDING INDIVIDUAL ARBITRATION, AND WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS**

This Schedule shall be governed by the general maritime law of the United States or by the laws of the state of California in the event there is no applicable general maritime rule of law. It is agreed by the parties to this Schedule that any and all disputes arising between the parties that in any way concern the terms and conditions of this Schedule shall be submitted to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Arbitration shall be three-party arbitration, in that each party shall designate its own arbitrator and the two designated arbitrators shall then select a third, neutral arbitrator.

Thereafter, the decision of the three arbitrators shall be binding upon all of the parties and unappealable, except for allegations of fraud by the arbitrators. The arbitration of any such matter shall be held in Long Beach, California. Each party shall bear the costs of its designated arbitrator and equally share the cost of the third designated arbitrator. Each side shall be entitled to discovery sufficient to adequately arbitrate its claim, including access to essential documents and witnesses, as determined by the arbitrators. In any award issued by the arbitrators, neither side shall be entitled to an award for costs or attorney's fees. The parties agree that the laws of the State of California shall govern all such claims and disputes hereunder, including those in



law, admiralty, or equity, which may be the result of any allegations or claims of breach of the respective obligations of this entire Schedule. The award of the arbitrators shall be final and may be enforced in any court having jurisdiction over the parties. Further, to the fullest extent permitted by law, Customer and the Contractor agree that no class or collective actions can be asserted in arbitration or otherwise. All claims, whether in arbitration or otherwise, must be brought solely in Customer's or the Contractor's individual capacity, and not as a plaintiff or class member in any purported class or collective proceeding. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS. CUSTOMER AND CONTRACTOR FURTHER WAIVE ANY RIGHTS THEY MAY HAVE TO PURSUE OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION PERTAINING TO ANY ARBITRABLE CLAIMS BETWEEN THEM ARISING OUT OF THIS SCHEDULE.

A. Severability

If any provision of this Schedule shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of this Schedule shall not be affected and the remainder of this Schedule shall continue in full force and effect.

**33. CONSTRUCTION AND INTEGRATION**

This Schedule shall be construed neutrally, and for the mutual benefit of the parties, rather than for or against a party. If any provision of this Schedule is found to be legally unenforceable, it is agreed that such provision shall be deemed deleted from this Schedule as if never made a part hereof, with the remaining provisions of this Schedule to not be effected thereby and to remain in full force and effect.

Any failure of Contractor to enforce a provision of this Schedule shall not be deemed to waive such provision or any other provision in this Schedule.

Contractor may request that Customer sign a separate, written agreement for any one or more terminal services, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

This Schedule, together with Contractor's written quotation and any separate, written agreements between Contractor and Customer as identified directly above, represents the entire agreement between Contractor and Customer and supersedes all prior and contemporaneous agreements, written or oral.

**34. TRAFFIC MITIGATION**

Each piece of Equipment that enters or leaves the Terminal shall be subject to all of the Schedules published from time to time by West Coast MTO Agreement on behalf of its marine terminal operator members under authority of Federal Maritime Commission Agreement No.



201143. SEE: <https://www.pierpass-tmf.org/>, including but not limited to the assessment as applicable of a traffic mitigation fee (the “TMF”). For purposes of this Section 34, “Equipment” means: a container, laden or unladen, including dry cargo, ventilated, insulated, and refrigerated; flat racks; vehicle racks; liquid tanks; open top containers without chassis; vans; and any bare chassis.



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