

Port of Oswego Authority
General Terms and Conditions
Commercial Customers
(Version April 20, 2020)

These General Terms and Conditions for Commercial Customers apply to all services provided by the Port of Oswego Authority to commercial vessels, carriers, truckers, shippers and consignees. By docking at the Port of Oswego, the CUSTOMER accepts these General Terms and Conditions.

Definitions. The following terms used in these General Terms and conditions have the meaning set forth below.

ACT: Title 2 of Article 6 of the New York Public Authorities Law, as amended.

CUSTOMER: Carrier, vessel, trucker, shipper or consignee using the Port of Oswego and the PORT FACILITIES.

FACILITIES: Structures owned or operated by PORT within the PORT District consisting of, but not limited to, wharves, warehouses, covered or open storage spaces, cold storage buildings, grain elevators, cargo loading and unloading structures, landing and receiving stations, all as used in the transmission, care and convenience of cargo and/or passengers in the interchange between land and water carriers or between water to water carriers.

PORT: Port of Oswego Authority, New York public benefit corporation established under the Act.

PORT DISTRICT: The "Oswego port district," as such term is defined in the ACT.

Liability.

LIMITATION OF LIABILITY: Liability for loss or damage to cargo resulting from PORT's failure to exercise due and proper care in performing the services provided for herein, incurred during the handling, loading, unloading, receipt, delivery, or storage of cargo on the PORT DISTRICT at any time, including applicable free time, shall not exceed \$150.00 (US) per package or customary freight unit, unless the value of the cargo has been declared and other arrangements made with PORT prior to its taking custody of, or assuming responsibility for the cargo.

No provision contained in this General Terms and Conditions shall relieve PORT from liability for its own gross negligence (except to the extent a different standard is required under Federal law) nor require any user to indemnify or hold harmless PORT for liability to the extent of its own gross negligence (except to the extent a different standard is required under Federal law).

PORT shall be liable only for damage resulting from its gross negligence (except to the extent a different standard is required under Federal law) in performing the services provided for herein

and in the Aluminum Rates for Sows/T-Bars. In no case shall PORT be liable for a sum in excess of \$150.00 per package or per customary freight unit unless the trucker, shipper, cargo owner or consignee or their representatives, prior to the commencement of such services, declares in writing a higher value and pays to PORT, in addition to the other charges for such services as set forth herein or in the Aluminum Rates for Sows/T-Bars, a premium computed at one half of one percent (0.50%) of the declared value of each such package or customary freight unit, for damage resulting from its failure to exercise due and proper care in performing the services provided for herein and in the Aluminum Rates for Sows/T-Bars.

PORT shall not be liable for errors or deviations in load and stow plans provided by CUSTOMER.

In the case of work interruption caused by the breakdown of one or more cranes there will be no straight time charge to CUSTOMER during that guarantee period. Overtime differential charges, if any, during that guarantee period, are for CUSTOMER's account. In such case, PORT reserves the right to discontinue operations until repairs are completed. If CUSTOMER requests standby beyond the guarantee period when the breakdown occurred, all standby costs, both straight time and overtime will be for the account of the CUSTOMER. In any event, all overtime differential charges during the breakdown period or while the vessel is working, are for CUSTOMER's account.

Payments. Any company check returned for Non-Sufficient Funds (NSF) will be assessed a fee for each occurrence of \$75.00. Any CUSTOMER that has two (2) checks returned for NSF within a six-month period will be subject to cancellation of check acceptance privileges.

CUSTOMERS whose check acceptance privileges have been canceled will be required to pay by certified funds (certified check, cashier check, ACH, wire transfer, and money order).

No cash currency will be accepted for payments.

Disputed Invoices. In the event of a discrepancy or dispute of any invoice prepared by PORT, CUSTOMER shall pay the undisputed amount not later than 30 calendar days from presentation. CUSTOMER shall bring the disputed amount to the attention of PORT in writing as soon as noted for clarification or adjustment.

Scheduling. PORT shall determine in its sole discretion the dock schedule time slot for CUSTOMER. PORT shall not be responsible for costs or delays incurred by CUSTOMER arising from a CUSTOMER's failure to dock at the scheduled time.

Delays; Force Majeure. PORT will not be responsible for any delays whatsoever including without limitation caused by extreme temperatures, severe weather or delays resulting from the aftermath and cleanup required due to a severe weather occurrence. Additionally, PORT will not be responsible for delays caused by a disruption of power, telephone, shortage of containership line equipment, equipment malfunction, or data services such as those supplied to U.S. Customs, which are beyond the control of PORT. During inclement weather, PORT shall not be responsible for any standby or demurrage charges.

PORT shall not be responsible for delays or costs (including demurrage costs and labor costs) arising from the failure of CUSTOMER to arrive and dock at PORT FACILITIES at the scheduled time determined by PORT.

Should unusual conditions occur, including without any fault of PORT, including without limitation, damage or destruction to premises or facilities, including vessels or containers, by fire, flood, riot, earthquakes, tidal wave, wind, explosion, Acts of God, the public enemy or other casualty, or should the operation by PORT be suspended, abated, prevented, or impaired by reason of war, war-like operations, seizure, marine casualty, Governmental decree of regulation, strikes or other labor disputes, lockout or other work stoppage or by reason of any other condition beyond the control of PORT or vessel so as to render the PORT FACILITIES wholly or partially untenable or unfit for use or so as to make it impractical for the vessel or PORT to make reasonable or full use thereof, then PORT may suspend or reduce services without responsibility for any claim by any CUSTOMER, vessel or others arising out of such service suspension or reduction.

Notices. Notices to PORT, pursuant to these General Terms and Conditions shall be in writing (including electronic mail) and directed to the following address:

Executive Director
Port of Oswego Authority
1 East 2nd Street
Oswego, New York 13126
wscriber@portoswego.com

Disclaimer. Nothing contained in these General Terms and Conditions shall in any way modify or limit any rights PORT may have to apply and exercise any maritime or other liens that may exist under law (or which are set forth elsewhere in these General Terms and Conditions) and/or that may be applied against any vessel, component of a vessel (including cargo containers) or cargo.

Safety Rules. CUSTOMER shall comply and cause employees, agents and contractors using the PORT FACILITIES to comply with the safety rules established by PORT from time to time.

Hazardous Cargo Lists and Labels. CUSTOMER will provide hazardous lists and label cargo pursuant to International, Federal and Local regulations and will arrange that such cargoes be delivered to PORT FACILITIES not more than forty-eight (48) hours prior to arrival of vessel. CUSTOMER must assure that all hazardous cargo containers are properly placarded in accordance with existing IMCO International Maritime Dangerous Goods Code and/or U.S. Coast Guard regulations.

Insurance; Indemnification. PORT shall maintain insurance coverage and upon request, furnish to CUSTOMER certificates of insurance as set forth below:

- Workers' Compensation Insurance for its employees as required by applicable Federal and State Laws.
- Comprehensive General Liability Insurance in the amount of 1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury.
- Liability Insurance for loss of or physical damage to vessels, chassis, containers and cargo in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate.

Whenever CUSTOMER through its agents, employees or servants invite or permit persons who are not employees of CUSTOMER to enter PORT FACILITIES or board vessels at PORT FACILITIES, CUSTOMER agrees to defend, indemnify and hold harmless PORT from and against any and all claims, demands, actions, suits, proceeding costs, expenses, damages and liability, including attorney's fees, arising out of, connected with or resulting from said persons being permitted on PORT FACILITIES or board vessels at PORT FACILITIES. CUSTOMER's vendors will not be permitted access to PORT FACILITIES or board vessels at PORT FACILITIES without first complying with all of the insurance requirements herein.

CUSTOMER shall maintain insurance coverage and prior to PORT loading or unloading vessels or carriers, furnish to PORT certificates of insurance as set forth below:

- Workers' Compensation Insurance and insurance for liabilities arising under the Jones Act for its employees. Workers' compensation insurance shall have statutory limits as required by applicable Federal and State Laws. Jones Act Insurance shall have limits in an amount of not less than \$1 Million for each occurrence/\$2 Million aggregate.
- Comprehensive General Liability Insurance in the amount of \$1 Million per occurrence/\$2 Million aggregate for bodily injury with an endorsement for terrorism.
- Liability Insurance for loss of or physical damage to property in the amount of \$1 Million per occurrence/\$2 Million aggregate with an endorsement for terrorism.
- Auto Liability insurance to cover any owned, leased, borrowed or vehicle otherwise used by CUSTOMER's or its agents' employees in the amount of not less than \$2,000,000.

The above insurance policies shall remain in full force and effect and shall not be cancelled, allowed to lapse or allowed to expire without at least 30 days prior notice to the Executive Director of PORT.

Undelivered Cargo. Cargo which is undelivered and remains at PORT FACILITIES beyond the expiration of free time, may be placed in public storage at any time thereafter, at the option of PORT and at the risk and expense of CUSTOMER.

Cargo remaining on the PORT FACILITIES in excess of 30 days, will be considered as abandoned and sold for collection of demurrage charges due PORT unless covered under a storage agreement. At the time of sale, PORT makes no representation of the contents of a container. All bids are based on a view by the bidders of these contents. All bids are final. Thirty (30) days prior to such sale, a registered receipted letter or e-mail of notice will be sent to either

the carrier or the owner of record. Any monies received beyond the charges due, will be returned to the owner if claimed within one year of the mailed notice.

Notwithstanding the foregoing if PORT, in its sole discretion, shall determine that any cargo remaining on the PORT FACILITIES beyond the expiration of free time is: (i) subject to spoilage and/or (ii) subject to rapid devaluation due to the passage of time, then in either of such events such cargo may, at the sole option of PORT, be considered abandoned as of the expiration of free time and may be sold at any time thereafter by PORT without notice to the owner of record. Nothing contained in this paragraph shall require PORT to investigate the nature of cargo remaining on its terminal beyond free time, to take any special actions to preserve such cargo or to take any of the PORT FACILITIES contemplated in this paragraph. Nothing in this paragraph shall accord to the owner of record of any other person any right or claim against PORT for taking any actions permitted in this paragraph, for not taking any such actions or for delaying in the taking of any such actions.

Technology. CUSTOMER shall use reasonable efforts to contact PORT by email addressed to wscribe@portoswego.com for all purposes under these General Terms and Conditions and the Aluminum Rates for Sows/T-Bars including without limitation to receive a scheduled docking time slot, report delays and to provide insurance certificates, load or stow plans and project cargo requirements.

Instructions. CUSTOMER shall provide to PORT the following:

- At least one day before first docking slot time a load or stow plan and insurance certificates; and
- At the following times, prior notice to confirm date and time of arrival to PORT docks: 24 hours, 12 hours and 6 hours prior to the scheduled slot time determined by PORT.

Collective Bargaining Agreements. PORT is a party to the ILA Great Lakes District contract and adheres to start times and docking schedules as defined by this contract. Scheduling of dockage, loading and unloading, and labor charges are subject in all respects to this contract. CUSTOMER shall be solely responsible for all demurrage and standby time and costs under this contract.

Right to Load And Unload Trucks. Truck loading shall be performed solely by the agents, servants and employees of PORT in accordance with the rules, regulations and practices contained in these General Terms and Conditions. Such services shall be performed with the assistance, and under the supervision, of the driver of the truck.

Truck unloading shall be performed by PORT, its agents, servants and/or employees; provided that there is sufficient labor readily available to PORT to perform said services at the time of said request and provided, further, that the cargo is so situated on the truck that said services may be rendered by PORT in one continuous operation, without interruption, until completion of the desired services. Said truck unloading services shall be performed under the supervision of the driver of the truck.

Only trucks properly registered and licensed will be serviced by PORT. Equipment used for truck loading and unloading will be furnished exclusively by PORT; no lift trucks, cranes, etc., other than those supplied by PORT, will be permitted on the PORT FACILITIES. The motor carrier, shipper or consignee shall provide a vehicle, which is adequate and suitable for safe loading and unloading.

Other Services. After unloading, PORT shall weigh grain and aluminum and upon request other goods.

Miscellaneous. Nothing contained herein shall be construed as requiring PORT to perform, without charge, any service not specifically provided for herein or in the Aluminum Rates for Sows/T-Bars.

Any dispute arising under and in connection with these General Terms and Conditions or the Aluminum Rates for Sows/T-Bars and the services to be provided by PORT shall be governed by the laws of the State of New York and determined by the courts located within the State of New York both State and Federal. CUSTOMER states that it is not its intention to bind PORT to the forum selection clause in any of its bills of lading pursuant to cargo which moves through PORT FACILITIES.

In any case founded upon a tort, except an action for wrongful death, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against PORT and the provisions of section 50-e of the New York General Municipal Law shall apply. An action against PORT for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of Title 11 of Article 9 of the Public Authorities Law.

It is expressly understood that in the event any vessel fails to comply with the provisions of Public Law 91-596 (OSHA) or fails to have on board any other certificates required by law, all charges and penalties arising out of such failure shall be for the account of CUSTOMER.

In the event any provision of these General Terms and Conditions for Commercial Customers shall be held to be invalid or unenforceable, the remaining provisions of these General Terms and Conditions for Commercial Customers shall remain in full force and effect.

These General Terms and Conditions for Commercial Customers are incorporated by reference in and made a part of the Aluminum Rates for Sows/T-Bars in effect from time to time.