

# **STANDARD TERMS AND CONDITIONS OF BUSINESS**

1<sup>st</sup> Edition, July 2016



## **SABAH PORTS SDN BHD**

### **CONDITIONS OF OFFER**

Sabah Ports Sdn Bhd ("SPSB") is licensed by the Sabah Ports Authority to operate, maintain, develop, manage and provide services and/or facilities at Sabah ports.

This Standard Terms and Conditions of Business shall be deemed to be accepted by the user:-

- (a) Upon receipt by SPSB of application and/or notification from the user to berth a vessel at Sabah ports; or
- (b) Upon the user doing or transacting business with SPSB whether by Agreement or otherwise

All users of services and/or facilities shall comply with the Terms and Conditions together with all acts, ordinances, by-laws (including, but not limited to hazardous cargo by-laws), regulations, policies and operating standards as may from time to time be specified by the Authority, any other relevant government authorities, all international conventions ratified by the Government of Malaysia relating to port operations, and any directions stipulated by SPSB from time to time for the safe and convenient use of the wharfs and premises operated, maintained and managed by or for and on behalf of SPSB.

**TABLE OF CONTENTS**

**PAGE**

**PART I DEFINITIONS, STANDING OFFER, EXCLUSIONS AND APPLICABLE LAW**

1.	DEFINITIONS	1
2.	STANDING OFFER	4
3.	EXCLUSIONS	4
4.	APPLICABLE LAW	4
5.	WAIVER	5
6.	VARIATION AND AMENDMENT	5

**PART II ARRIVAL, DEPARTURE AND COMPULSORY PILOTAGE**

7.	OBEYING DIRECTIONS	6
8.	NOTICE OF ARRIVAL AND APPLICATION FOR BERTH	6
9.	INACCURATE INFORMATION	6
10.	HOISTING NATIONAL COLOURS AND SIGNAL LETTERS	6
11.	IMMIGRATION AND QUARANTINE SIGNALS	6
12.	PORT CLEARANCE	7
13.	COMPULSORY PILOTAGE	7
14.	ISPS CODE COMPLIANT	7

**PART III BERTHING AND UNBERTHING**

15.	ALLOCATION OF BERTH	8
16.	BERTHING AND UNBERTHING OF VESSELS	8
17.	MASTER IN CHARGE OF VESSELS	8
18.	ATTENDING MOORINGS	9
19.	BERTHING FLAG	9
20.	RAT GUARDS	9
21.	USE OF FENDERS	9
22.	GANGWAYS	9
23.	PLACING OF SHIPS GEAR ON WHARF	10

24.	GARBAGE ON WHARF	10
25.	DISCHARGE PIPES	10
26.	REMOVAL OF PROJECTIONS	10
27.	USE OF ENGINES	10
28.	VESSEL TO BE KEPT READY TO MOVE	11
29.	OVERSTAYING AT BERTH	11
30.	DAMAGE TO WHARF	11

**PART IV VESSEL AT ANCHOR**

31.	ANCHORING OF VESSELS	12
32.	RESTRICTIONS ON ANCHORING	12

**PART V LOADING AND UNLOADING, STORING AND TRANSPORT OF GOODS**

33.	VESSEL TO BE SECURE BEFORE DISCHARGE	13
34.	VESSELS TO BE READY TO WORK CARGO	13
35.	RESPONSIBILITY FOR PROPER LIGHTING OF VESSELS	13
36.	INDEMNITY WHEN USING CRANES	13
37.	LIST OF ALL GOODS IMPORTED	13
38.	HEAVY PACKAGES	14
39.	LIST OF ALL GOODS EXPORTED	14
40.	VESSELS TO BE WORKED WITH REASONABLE DISPATCH	14
41.	PRODUCTION OF DOCUMENTS	14
42.	DISCHARGE OF CARGO	14
43.	RECEIPTS OF CARGO	14
44.	REFUSAL FOR OBJECTIONABLE CARGO	15
45.	MASTERS TO SUBMIT OVER SIDE DELIVERY LISTS	15
46.	RELEASE OF GOODS FROM GODOWNS	15
47.	RECEIPT OF OUTSIDE CARGO	15
48.	REPAIR OF PACKAGES	15
49.	FIREARMS AND EXPLOSIVES	15

50.	ANIMALS	16
51.	RECEIPT OF CARGO SHIPPED	16
52.	CARGO FOR OTHER PORTS	16
53.	RECOVERY OF GOODS EX-VESSELS	16

**PART VI PORTS – GENERAL**

54.	COLLISION REGULATIONS	17
55.	MODERATE SPEED	17
56.	DAMAGE CAUSED BY WASH	17
57.	HARBOR CRAFT	17
58.	LAID-UP VESSELS	17
59.	OIL, SPIRIT OR INFLAMMABLE LIQUID	17
60.	TRANSFER OF LIQUID CARGO	17
61.	LOGS	18
62.	SMOKE OR SOOT FROM FUNNEL	19
63.	CHIPPING AND SCALING	19
64.	SINKING, STRANDING	19
65.	BUOYS AND MOORINGS	19
66.	DAMAGE TO PROPERTY	19
67.	EXCESSIVE USE OF SIREN	19
68.	MISCELLANEOUS	20
69.	ENTRY TO PREMISES	20
70.	LICENSES OF TRADE	21
71.	VEHICLES	21
72.	DELIVERY OF NOTICES	22
73.	LABOUR	22
74.	WORKING HOURS	22
75.	FIRE ON BOARD VESSEL	22

**PART VII DANGEROUS AND OBNOXIOUS GOODS**

76.	DANGEROUS GOODS	23
77.	OBNOXIOUS GOODS	25

**PART VIII LIEN, RIGHT TO REMOVE OR SELL CARGO AND POWER TO DETAIN**

78.	LIEN FOR UNPAID DUES AND CHARGES	26
79.	REMOVAL OF CARGO	26
80.	RIGHT TO SELL GOODS	27
81.	POWER TO DETAIN	29

**PART IX LIMITATION AND EXCLUSION OF LIABILITY**

82.	SPSB IS NOT A COMMON CARRIER	30
83.	NO RESPONSIBILITY TO EFFECT INSURANCE	30
84.	MASTERS IN CHARGE OF VESSELS	30
85.	NO RESPONSIBILITY FOR FAILING TO NOTE DAMAGE	30
86.	USERS RESPONSIBILITY FOR PROPER SORTING OF CARGO	30
87.	LIABILITY FOR GOODS DELIVERED BUT NOT TAKEN OUT	30
88.	DELAYS AND DETENTION	31
89.	STEVEDORAGE	31
90.	MOORING	31
91.	MAINTENANCE OF WATER DEPTH	31
92.	HIRE OF CARGO HANDLING GEAR	31
93.	LIABILITY IN RESPECT OF LOADING OR DISCHARGING OPERATIONS	32
94.	GOODS DEPOSITED FOR LIGHTERAGE OR SHIPMENT	32
95.	FORCE MAJEURE	32
96.	SPSB'S LIMITED LIABILITY	33
97.	INDEMNITY	35
98.	CONSOLIDATION OF CLAIMS	35
99.	LIABILITY FOR LOSS UNDER CONTRACT	36

100.	LIMITATION PERIOD	36
------	-------------------	----

**PART X TARIFF AND OTHER CHARGES**

101.	TARIFF AND OTHER CHARGES	37
102.	ENTERING INTO VESSEL TO ASCERTAIN AMOUNT OF PORT CHARGES	37
103.	ADMINISTRATIVE CHARGES	37
104.	CREDIT FACILITY ACCOUNTS	37

**PART XI GENERAL RULES**

105.	USER TO COMPLY WITH LAWS, POLICIES AND OPERATING STANDARDS	39
106.	POWER TO INSPECT DOCUMENT	39
107.	DUTY TO OBEY SPSB'S DIRECTION WITHOUT COMPENSATION	39
108.	REFUSAL TO HANDLE GOODS AND OR PROVIDE SERVICE	39
109.	LIABILITY TO PAY FOR SERVICE ORDERED	39
110.	DAMAGE CAUSED BY OVER-WEIGHT OR OVER-SIZED VEHICLES, EQUIPMENT OR MACHINERY	39
111.	RECOVERY BY CIVIL PROCEEDINGS	40
112.	COSTS INCURRED IN COMPLYING WITH GOVERNMENT REGULATIONS	40
113.	CONTRACTUAL OBLIGATIONS	40
114.	USER TO PROCURE COMPLIANCE WITH TERMS AND CONDITIONS OF BUSINESS	40
115.	TERMS AND CONDITIONS OF BUSINESS EXCLUDE OTHERS	40
116.	SPSB TO BE INDEMNIFIED BY USER FOR CLAIMS ARISING FROM BREACH OF TERMS AND CONDITIONS OF SERVICE	41
117.	CONSTRUCTION	41

PART I

DEFINITIONS, STANDING OFFER, EXCLUSIONS AND APPLICABLE LAW

1. DEFINITIONS

In these Terms and Conditions of Business and in any arrangement, dealings and or contract entered into by SPSB which includes these Terms and Conditions of Business by reference, the following words and expression shall, unless the context otherwise requires, have the following meanings:

“**administrative charges**” means any administrative charges that may be imposed by SPSB from time to time for additional services or extra cost incurred by SPSB;

“**approaches to a port**” means the limit of the port or any area so declared under section 3 of the Enactment;

“**authority**” means Sabah Ports Authority and includes its employees and agents;

“**authority wharf**” means a wharf, dock, pier, landing place sub-leased by the Authority to Sabah Ports Sdn Bhd (SPSB) and operated and managed by SPSB;

“**cargo**” includes livestock, minerals, wares, vehicles, passenger luggage and effects, merchandises and articles of every kind and description whatsoever whether containerised, in bulk or breakbulk or otherwise, and includes any part thereof. For the purpose of this Terms and Conditions of Business, the word ‘cargo’ shall be interchangeable with ‘goods’, wherever the context permits;

“**charges**” means any charges, toll or rent levied or is leviable by SPSB but does not include port dues;

“**completion of works**” means the period where the vessel is in a state of readiness to unberth and no further unmooring work is required;

“**container**” shall mean any box or article of transport equipment (including tanks, flats and reefers) having a permanent character and being specially designed for the transportation of cargo by one or more modes of transport, without intermediate reloading and fitted with devices permitting its ready handling by mechanical equipment, particularly its transfer from one mode of transport to another;



**Part I**  
**Definitions, Standing Offer,**  
**Exclusions & Applicable Law**

**"dangerous goods"** means any of the goods listed under the International Maritime Dangerous Goods Codes and or defined as dangerous or hazardous by any Statute, Statutory Instrument or Order, any Regulation or Recommendation made by the Government or the relevant authorities or by any local by-law relating to the handling, storage or carriage of goods; likewise all goods which although not so defined, are known to have properties likely to endanger life or property;

**"Enactment"** means Sabah Ports Authority Enactment 1981, as amended from time to time and including all and any rules and regulations made thereunder;

**"goods"** includes but is not limited to liquefied gas, petroleum and petroleum products, chemicals and petro-chemical products, palm oil, silica sand, sawn timber, minerals, wares, vehicles, livestock and merchandise of every description whether containerised or otherwise and includes any passenger luggage and effects;

**"harbour craft"** means any vessel which plies within a port for any purpose of trade or business;

**"Line"** shall include any person (including without limitation shipping companies, ship owners and charterers) having an interest in a vessel and may include a person who is an operator;

**"master"** includes every person except a pilot, having for the time being command or charge of any vessel;

**"operator"** shall include any person who directly or indirectly enters into any arrangement, contract or agreement with SPSB in relation to the transport, storage or distribution of cargo or containers including break-bulk cargo or any matter connected therewith and includes without limitation exporters, importers, consignors and consignees thereof and may include, if appropriate, a person who is a Line.

**"owner"** when used in relation to goods, includes any consignor, consignee, shipper or agent of the owner for sale; custody, loading, handling, discharge or delivery of such goods; and when used in relation to any vessel, includes any port-owner, charterer, operator, consignee or mortgage in possession thereof or any duly authorised agent of any such person;

**Part I**  
**Definitions, Standing Offer,**  
**Exclusions & Applicable Law**

**"persons"** includes businesses and corporations whether aggregate or sole;

**"Prohibited Anchorage"** means the designated areas in Kota Kinabalu and Tawau as specified in the Second Schedule of the Port Regulations

**"port"** means the various existing area or areas and facilities operating as a or is gazetted as a port or terminal under the operation and management of SPSB;

**"port dues"** means any port dues levied under the provisions of the Enactment;

**"port premises"** shall mean SPSB's premises and shall include all places administrated, leased, owned, managed or occupied by SPSB at Sabah Ports and appropriated by it including but not limited to for the landing and shipping of goods including all land at any time vested in, belonging to or managed or administered by SPSB and any portion of the bank of the river so administered, leased, owned, managed or occupied which has been improved to facilitate such landing and shipping and any foreshore so owned or occupied and used for such purposes;

**"Sabah Ports"** means Sabah Ports within the limits declared under Section 3 of the Sabah Ports Authority Enactment 1967 (repeal and re-enact by Sabah Ports Authority Enactment 1981);

**"Scale of Dues and Charges"** shall mean the Sabah Ports Authority (Scale of Dues and Charges) Regulations 1977 and the revised tariff enforceable from time to time

**"small ship"** means any vessel under fifteen tons and which is either eighteen feet or more in length; or being less than eighteen feet in length is used for the carriage of passengers for hire or reward, but does not include a seagoing tug;

**"SPSB"** means Sabah Ports Sdn. Bhd. and includes its employees and agents;

**"towage"** has the meaning assigned to it in Regulations 2 of the Ports and Harbours (Towage) Regulations 2008;

**"User"** means the owner, part owner, master, charterer, or mortgagee in possession of a vessel including a person who is a Line, and or their respective agents or employees which uses the services of SPSB and or any person, firm or corporation which uses the

**Part I**  
**Definitions, Standing Offer,**  
**Exclusions & Applicable Law**

services of SPSB, including a person who is an operator, and or the owner of the cargo, consignee, shipper or agent for the sale, custody, shipping or landing of such goods or any persons transacting business or entered into a contractual obligation with SPSB;

**"vehicle"** includes a carriage traveling on its own wheels or runners and used or intended to be used for the conveyance or carriage of persons, animals or goods;

**"vessels"** includes barges, lighters, and any mechanically propelled ship or boat or any seagoing or inland water craft including any floating objects used in navigation for the carriage of goods or passenger;

**"wharf"** includes a quay, pier, jetty, ramp, landing place and any wall and building adjoining the foreshore, seabed or river bed which belongs to, or is under the immediate control of SPSB.

**2. STANDING OFFER**

2.1. These Terms and Conditions constitute a standing offer upon which SPSB makes its facilities and services at the Port available to the User.

2.2 The Standing Offer shall be deemed to be accepted upon:

- (a) Receipt of notification from the User of intention to SPSB or its agents of the intention to use and or engage any of the facilities and or services at the Port; OR
- (b) the User doing or transacting any business with SPSB or the engagement of SPSB by the User for its services, whether by agreement or otherwise.

**3. EXCLUSIONS OF LIABILITY**

All business conducted by SPSB is subject to the exclusions and limitations of liability as set out hereafter, particularly Part X. The liability of the User and SPSB under these Terms and Conditions shall be deemed to operate in addition and in no way derogates from any liability which but for these conditions would have arisen by contract, in tort, by statute or otherwise on the part of the User or SPSB.

**4. APPLICABLE LAWS**

The contents of the Terms and Conditions derive and comply to the laws of the State of Sabah and Government of Malaysia which includes but is not limited to Sabah Ports Authority Enactment 1981, Port Regulations 1968, Sabah Ports Authority (Scale of Dues

**Part I**  
**Definitions, Standing Offer,**  
**Exclusions & Applicable Law**

and Charges) Regulations 1977 and its amendments. However, the Term and Conditions shall be independent of such laws which shall be used as a guide only for the interpretation of this Term and Conditions. Such laws are intended for the regulation of the Authority of the operation and management of the Port by SPSB.

**5. WAIVER**

No failure on the part of SPSB to exercise, and no delay on its part in exercising any right or remedy under the Terms and Conditions shall operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

**6. VARIATION AND AMENDMENT**

SPSB shall have the absolute power and discretion to amend and or vary the Terms and Conditions as it deems fit from time to time with written endorsement by the Authority.

**PART II**  
**ARRIVAL, DEPARTURE AND COMPULSORY PILOTAGE**

**7. OBEYING DIRECTIONS**

The User shall obey the directions of SPSB as to the berthing, mooring and anchoring of the vessel.

**8. NOTICE OF ARRIVAL AND APPLICATION FOR BERTH**

8.1 The User, except owner or agent of every vessel other than a small ship, intending to call at a port shall, as soon as possible, and in any case not later than thirty six (36) hours prior to the estimated time of arrival of the vessel, give notice in writing to the SPSB of such arrival and, if so desired, the requirement for berth at wharf.

8.2 Such notice under this clause shall be in a form prescribed by the SPSB and shall contain full particulars regarding the cargo to be discharged and loaded, the embarkation and disembarkation of passengers, heavy lifts, special or perishable cargo, hazardous and dangerous goods (whether to be discharged at the port or not), and any other matters of importance relating to the safety or working of the vessel in the port.

**9. INACCURATE INFORMATION**

Users providing inaccurate information as regards to draughts, cargo and container details of vessels or any other documents which is requested or authorised to be made by SPSB which may lead to changes in the berthing schedules or delays other vessels may be penalised in the manner as determined by SPSB from time to time.

**10. HOISTING NATIONAL COLOURS AND SIGNAL LETTERS**

The master of every vessel entering or leaving a port between sunrise and sunset shall cause to be hoisted the national colours and the signal letters, if any, of the vessel. The national colours shall be exhibited from 8.00 a.m. to sunset whilst the vessel remains in port.

**11. IMMIGRATION AND QUARANTINE SIGNALS**

11.1 The master of every vessel arriving from outside the State of Sabah shall exhibit the Immigration and Quarantine signals contained in the First Schedule and shall also at the request of a customs officer hoist the Customs signals. Such signals shall remain exhibited until the appropriate officer has given permission for them

**Part II**  
**Arrival, Departure**  
**& Compulsory Pilotage**

to be lowered.

- 11.2 No vessel shall approach within six hundred (600) feet of any other vessel exhibiting the Immigration, Health or Customs signals.
- 11.3 No person other than a pilot may board or disembark from any vessel until the vessel is cleared inwards and the Immigration, Quarantine and Customs signals have been lowered.

**12. PORT CLEARANCE**

No vessel shall leave any port unless in possession of a valid Port Clearance issued by or on behalf of the Director of Marine and if applicable, Customs Department.

**13. COMPULSORY PILOTAGE FOR SPSB WHARVES**

- 13.1 In accordance with the Ports and Harbour Enactment 2002, it shall be compulsory for all vessels entering and departing SPSB oil jetties to arrange for the use of pilotage. SPSB shall determine the effective date of compulsory pilotage for SPSB wharves from time to time.
- 13.2 SPSB does not provide pilotage service and does not and shall not be deemed to give any warranty or representation that the vessel will not ground while approaching, leaving or lying alongside the jetty.
- 13.3 The User shall indemnify SPSB for any claim, damage and loss caused and in connection to the pilotage service and each vessel approaching or leaving and while lying alongside the wharf does so at the sole risk of the User.

**14. ISPS CODE COMPLIANT**

- 14.1 Each vessel intending to call at the port shall be ISPS Code compliant and shall not less than forty eight (48) hours prior to entry, furnish to SPSB together with her notification of arrival the ISPS form and all information as required under the ISPS Code.
- 14.2 SPSB reserves the right to take action as provided under the ISPS Code for non-compliant or high security risk vessel.
- 14.3 SPSB shall not be liable whatsoever for any loss, damage, claims, costs, proceedings and or suits from the User or any third party arising as a consequence of any action by SPSB under this clause.

PART III  
BERTHING AND UNBERTHING

15. ALLOCATION OF BERTH.

- 15.1 The allocation of a berth shall be entirely at the discretion of SPSB.
- 15.2 A vessel may be allocated berth based on the berthing procedures issued by SPSB or otherwise in the order of arrival in port. It shall be at the discretion of SPSB to vary the order of berthing if it considers it advisable to do so from time to time.
- 15.3 No vessel shall be berthed or unberthed or placed alongside a wharf without the authority of or contrary to the directions of a competent official of SPSB and no vessel shall occupy a berth other than the berth allocated to the vessel.
- 15.4 SPSB reserves the right to order a vessel to vacate a berth at the sole discretion of SPSB and any of the expenses incurred in complying with such an order shall be borne by the vessel concerned.

16. BERTHING AND UNBERTHING OF VESSELS

- 16.1 A vessel shall be berthed and/or unberthed by the User at the sole risk and responsibility of the User but wharf staff may be in attendance on the wharf to render assistance under instructions issued from the vessel in taking ashore, making fast or casting off wire hawsers or ropes or in doing any other similar thing, and on leaving a berth, similar assistance can be rendered on due notice being given to SPSB.
- 16.2 SPSB will accept no responsibility in the carrying out of any movement of any vessel and shall not be responsible for any loss or damage caused to such vessel by or attributable to any act or omission of its employees.
- 16.3 SPSB shall not be responsible for the insecure or improper mooring of any vessel, or for any defective mooring or appliance, or for any damage or consequence arising there from.

17. MASTER IN CHARGE OF VESSELS

Every vessel shall be in the charge of and her safety be at the sole risk of the master and owner. No instruction or direction given by or act performed by the employees or agents

**Part III**  
**Berthing & Unberthing**

of SPSB shall place any responsibility upon SPSB with respect to the safety and security of such vessel.

**18. ATTENDING MOORINGS**

- 18.1 Every vessel lying at a wharf shall have at all times sufficient hands on board to attend to her moorings and to cause them to be slackened or hove in as may be necessary.
- 18.2 No rope shall be fastened ashore except to the dolphins, buoys, mooring posts or bollards placed for that purpose.
- 18.3 No chain cable shall be used for mooring alongside except in connection with the use of an anchor or by permission of SPSB.

**19. BERTHING FLAG**

The International Code Letter 'N' will be shown at the wharf at the particular berth which the vessel is to occupy and will indicate the approximate position of the vessel's bow after mooring.

**20. RAT GUARDS**

For vessels lying alongside a wharf, the User shall provide rat guards on her mooring lines or other adequate means to prevent the passage of rats between the vessel and the wharf.

**21. USE OF FENDERS**

- 21.1 Every vessel lying alongside a wharf shall provide and use suitable and adequate fenders of such material that will float.
- 21.2 Any fenders provided by SPSB shall not be lifted or removed from the quay wall.

**22. GANGWAYS**

- 22.1 The User shall provide one or more adequate and proper gangways between a vessel lying alongside a wharf and such wharf which:-
- (i) shall have double rails, or stanchions with ropes rove taut through the same, of which the top rail or rope shall not be less than three feet three inches above the foot walk of the gangway;
  - (ii) shall be securely fastened at one end of the vessel,
  - (iii) shall be adequately lit between the hours of sunset and sun rise; and
  - (iv) where such gangway is intended for the use of passengers, shall have a



**Part III  
Berthing & Unberthing**

safety net slung there under between the wharf and the side of the vessel.

22.2 Where a vessel is lying alongside a wharf, no person shall embark or disembark, or attempt to embark or disembark, on or from such vessel otherwise than over a gangway provided under this clause.

**23. PLACING OF SHIPS GEAR ON WHARF**

No boat, spar, anchor, cable or other article of ship's gear, dunnage, loose box or other article belonging to any vessel shall be placed or remain on a wharf without the prior permission of SPSB and placement of such shall subject the same to rental charges at the rate set by SPSB from time to time.

**24. GARBAGE ON WHARF**

No dirt, ashes, cargo spillage or rubbish of any description may be landed on a wharf and the User shall be responsible for wharf clean up failing which, the User shall bear all costs, wholly or in part, for any required clean up carried out by SPSB.

**25. DISCHARGE PIPES**

25.1 Exhaust steam, water and other discharges from a vessel lying at a wharf shall be led down the side of the ship to below the level of the wharf by a hose or other effective appliance.

25.2 All water and steam pipes of a vessel lying at a wharf shall be effectively screened.

25.3 No refuse, filth or excreta shall be discharged from any discharge pipe, water closet or latrine upon any portion of a wharf.

25.4 The cost involved by any non-compliance shall be recoverable by SPSB from the User.

**26. REMOVAL OF PROJECTIONS**

The User with its boats swung outwards or with anchors or other projections from the vessel's side or deck which may interfere with the vessel or another vessel loading, discharging or berthing, including berthing alongside the first vessel, shall remove such projection or other obstruction when required by SPSB to do so.

**27. USE OF ENGINES**

No vessel shall try her main engines or turn her propellers when lying alongside a wharf

**Part III**  
**Berthing & Unberthing**

unless permission to do so has been obtained from SPSB.

**28. VESSEL TO BE KEPT READY TO MOVE**

28.1 Every vessel lying alongside a wharf, pier or dock entrance, or within any dock, in a port shall be kept so equipped, provided and loaded or ballasted as to enable her to be removed with safety whenever it is required by SPSB.

28.2 No vessel within a port shall, without the written permission of SPSB, carry out engine repairs or other work which may render the vessel unable to move when required to do so.

28.3 No vessel shall, without the written permission of SPSB, reduce main steam or power below a level adequate for moving the vessel when required.

28.4 If a vessel is unable to move when required by SPSB, SPSB may perform or direct to be performed, at the vessel's risk and expense, all such work as may be necessary to enable the vessel to move.

**29. OVERSTAYING AT BERTH**

The vessel shall vacate berth within the prescribed period which may be determined by SPSB from time to time, failing which shall subject the User to the applicable charges.

**30. DAMAGE TO WHARF**

The User shall be responsible for any loss and damage to SPSB's wharf and to SPSB's premises, equipment, tendering or mooring bollards and other property belonging to third parties, caused during or arising from the act of berthing or unberthing whether by reason of incompetency or negligence of SPSB's officer or pilot in charge or as a result of insecure or improper mooring of the vessel whilst lying alongside SPSB's wharf and shall hold SPSB fully indemnified by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage.

PART IV  
VESSEL AT ANCHOR

31. ANCHORING OF VESSELS

SPSB may:

- (a) direct where any vessel may be anchored and the method of anchoring, within a port or the approaches to a port; and
- (b) direct the removal of any vessel from any anchorage to another anchorage and the time within which such removal is to be effected within a port or the approaches to a port.

32. RESTRICTIONS ON ANCHORING

32.1 No vessel shall anchor in a Prohibited Anchorage area. No vessel shall use an anchor in a Prohibited Anchorage area except for the purpose of assisting in berthing alongside or unberthing.

32.2 No vessel shall anchor, berth, moor, or lie-

- (a) in the direct approaches to any port;
- (b) in any principal fairway within a port;
- (c) in such manner as to obstruct the approach to any anchorage or wharf used by other vessels;
- (d) in any special anchorage as specified in the Second Schedule of the Port Regulations 1968 except in the circumstances specified in such Schedule;
- (e) in a position which is likely to foul a vessel which is anchored, moored or made fast to a buoy.

**PART V**  
**LOADING AND UNLOADING, STORING AND TRANSPORT OF GOODS**

**33. VESSEL TO BE SECURED BEFORE DISCHARGE**

Every vessel entering the port shall be anchored or efficiently secured to a wharf before commencing the loading or discharging of cargo and or the embarkation or disembarkation of passengers.

**34. VESSELS TO BE READY TO WORK CARGO**

Every vessel, on completion of mooring alongside a wharf, shall have all her working hatches and her cargo gear ready to commence working cargo.

**35. RESPONSIBILITY FOR PROPER LIGHTING OF VESSELS**

The User shall provide proper lighting in those parts of a vessel where work is going on which is in any way connected directly or indirectly with the use of a wharf or other property under the control of SPSB, or when, owing to want of sufficient light, injury might result to life, limb or property from such work being in progress.

**36. INDEMNITY WHEN USING CRANES**

When cranes are hired for use from third parties, SPSB shall require the hirer to indemnify SPSB against all risks involved.

**37. LIST OF ALL GOODS IMPORTED**

37.1 The User shall sign and deposit at the office of SPSB at the port concerned thirty six (36) hours before the arrival of the vessel, two (2) true copies of the inward manifest in English as being complete containing all particulars as to -

- (a) the gross weight, measurement, marks, numbers and contents of each package; and
- (b) the names of consignees according to the bills of lading or the names of the person actually paying the freight for such goods.

37.2 SPSB may refuse to allocate a berth to a vessel unless two (2) copies of the manifest have been deposited.

37.3 A certified statement of any alterations made in the manifest, by reason of re-measurement of goods included therein or for whatever reason, shall be furnished to SPSB immediately on completion of discharge of cargo.

Part V  
Loading & Unloading, Storing  
and Transport of Goods

38. **HEAVY PACKAGES**

No vessel shall discharge any package or lift exceeding 6,000 pounds (approximately equivalent to 2,721 kilograms) gross weight without prior written permission from SPSB.

39. **LIST OF ALL GOODS EXPORTED**

The User shall prepare and sign two (2) full and accurate manifests in English, of all goods exported by such vessel containing all particulars as to:-

- (a) the gross weight measurement marks, numbers and contents of each package;
- (b) the names of the shippers according to the bills of lading and shall deposit such manifests at the office of SPSB either before or within forty-eight hours after the departure of the vessel.

40. **VESSELS TO BE WORKED WITH REASONABLE DESPATCH**

40.1 Every vessel shall discharge or load her cargo with reasonable despatch, and, where she occupies a berth which is or will shortly be required or appears to be required for another vessel, will work such overtime as may be required by SPSB.

40.2 If a vessel fails to effect such despatch or work such overtime as SPSB may require, SPSB may order the vessel to vacate the berth and the master shall obey such order.

40.3 A vessel which vacates her berth pursuant to such order will be re-berthed solely at the discretion of SPSB.

40.4 Any expenses incurred in complying with any order under this clause shall be borne by the vessel concerned.

41. **PRODUCTION OF DOCUMENTS**

The User shall produce to SPSB any necessary document which may be required in connection with the landing or shipping of her cargo.

42. **DISCHARGE OF CARGO**

The User shall discharge cargo by marks, and SPSB may impose such charges as it may think fit for sorting cargo not so discharged.

43. **RECEIPTS OF CARGO**

Any receipt given by SPSB for cargo shall be based solely upon the outward appearance

of the packages.

**44. REFUSAL FOR OBJECTIONABLE CARGO**

SPSB may prohibit the landing of or refuse to accept for export any cargo which, in its opinion, may imperil the safety of persons in the port, or damage the flooring of the storage areas, wharves or any part of the premises of SPSB or injuriously affect any cargo in the custody of SPSB.

**45. MASTERS TO SUBMIT OVERSIDE DELIVERY LISTS**

The master of a vessel shall submit to SPSB a list of all deliveries and loadings outside and all direct deliveries to and shipments from the wharf in such detail and at such time as SPSB may require.

**46. RELEASE OF GOODS FROM WAREHOUSE**

46.1 Goods shall only be released from the warehouse of SPSB on production by the consignee of an original copy of an Integrated Import Document (IID) issued by the agents of the vessel concerned and duly endorsed by the Royal Customs for release

46.2 SPSB only undertakes the release of cargo by marks and numbers provided in the IID.

**47. RECEIPT OF OUTSIDE CARGO**

Goods shall not be laid on any wharf before the vessel is ready to receive them or on any storage area or roadway without the permission of SPSB.

**48. REPAIR OF PACKAGES**

To safeguard the contents of damaged packages and facilitate their storage in WAREHOUSE, SPSB may at any time repair damaged bags or packages of goods, irrespective of survey, and the cost of such repairs shall be a charge upon the goods.

**49. FIREARMS AND EXPLOSIVES**

All cases containing fire-arms, ammunition or explosives shall be clearly marked for identification and at least twenty-four hours, prior to arrival of any vessel carrying such cargo for landing, written notice shall be given to SPSB of the intention to land such cargo and such notice shall contain full particulars of the cargo, and shall be accompanied by any permit or licence required by the provisions of any written law in respect of the importation of such goods.

**Part V**  
**Loading & Unloading, Storing**  
**and Transport of Goods**

**50. ANIMALS**

No animals shall be landed or brought into a port except for shipment by direct delivery and the User shall be entirely responsible for the animals and their actions and shall bear the costs of clean up, damage and loss caused by the animal as set out by SPSB from time to time.

**51. RECEIPT OF CARGO SHIPPED**

51.1 No cargo will be shipped for which a clean receipt cannot be granted by the ship or her agent.

51.2 Receipts for all cargo shipped by SPSB shall be given to SPSB before the vessel leaves her loading berth.

**52. CARGO FOR OTHER PORTS**

SPSB may prohibit the landing of cargo destined for any other of its port or outside of Sabah at the discretion of SPSB.

**53. RECOVERY OF GOODS EX-VESSELS**

When a vessel is alongside a wharf, any material including cargo, stores or equipment that has fallen from the vessel or the vessel's slings overside shall be recovered by the User or firm arrangements for such recovery shall be made to the satisfaction of SPSB before the vessel may be permitted to depart. The costs of recovery, damage to wharf or other works, cargo or any other place or thing shall be the liability of the User whether the act is due to negligence or not.

**PART VI**  
**PORTS - GENERAL**

**54. COLLISION REGULATIONS**

Every vessel whether lying at anchor or navigating within a port shall exhibit the respective lights and shapes prescribed by the International Collision Regulations.

**55. MODERATE SPEED**

Mechanically driven vessels under way shall proceed with due caution and at a moderate speed. A moderate speed means a speed at which all way can be taken off a vessel in as short a time as possible having regard to the prevailing circumstances.

**56. DAMAGE CAUSED BY WASH**

Any vessel causing damage by her wash shall be held primarily responsible for such damage in the absence of any contributory negligence on the part of the owner or person in charge of the property or vessels so damaged.

**57. HARBOUR CRAFT**

Harbour craft shall not cross the bows or otherwise impede the movements of any sea-going vessel under way in the limits of the port and shall give such vessel as wide a berth as possible. The master of a sea-going vessel shall also be under a duty to prevent a collision or accident wherever possible.

**58. LAIID-UP VESSELS**

58.1 The person in charge of every laid-up vessel shall anchor in a position directed by SPSB and shall ensure that such vessel is securely anchored or moored as to not swing outside such limits as directed and clear of all other vessels and fishing stakes during all conditions of wind and tide.

58.2 Every laid-up vessel shall have at all times on board a sufficient number of men competent to tend the anchor lights, veer, cable, let-go and anchor, and to take appropriate action in case of emergency.

**59. OIL, SPIRIT OR INFLAMMABLE LIQUID**

No oil, spirit and or inflammable liquid shall be pumped or discharged from any vessel, or place on land into the sea and the cost of clean up shall be borne by the User.

**60. TRANSFER OF LIQUID CARGO**

No transfer of liquids shall be carried out either between two vessels anchored in a port or the approaches to a port or between one vessel lying alongside a wharf and another



**Part VI**  
**Ports - General**

lying alongside such a vessel without the permission of SPSB.

**61. LOGS**

- 61.1 Except with the previous permission in writing of SPSB, no logs or timber shall lie afloat unattended within the limits of any port except alongside a vessel loading such logs or timber, or within a properly constructed log enclosure approved by SPSB.
- 61.2 Log enclosures shall -
- (a) be situated clear of all wharves, mooring buoys, special anchorages, harbour channels and their approaches;
  - (b) consist of at least six-inch diameter piles driven securely at intervals of not more than fifty feet with a boom of floating logs between them securely attached to each vertical pile by wire or chain cable, or such other suitable scheme approved by SPSB;
  - (c) be maintained to the satisfaction of SPSB.
- 61.3 Any log or raft found adrift or beached within any port except in accordance with this clause may be impounded by SPSB and any log or raft found adrift or beached within any harbour may be impounded by SPSB or disposal by the Receiver of Wreck.
- 61.4 No rafts of logs or timber shall exceed 700 feet in length or sixty feet in breadth without the permission of SPSB.
- 61.5 SPSB may restrict the length and breadth of lograft in any port should it be considered necessary.
- 61.6 Rafts when being towed shall be moved with reasonable dispatch and shall not be towed through any of the special anchorages.
- 61.7 All log-towing vessels shall carry conspicuously a black diamond shape at least two feet in diameter by day and at night three lights vertically.
- 61.8 Every launch or tug used in the towing of rafts shall be of sufficient horse-power to hold her tow in control under all tidal and normal weather conditions.
- 61.9 All launches or tugs with rafts in tow shall, unless it is unsafe or impracticable to do so, leave the main channels in any port or approach, clear for shipping.

**62. SMOKE OR SOOT FROM FUNNEL**

No vessel shall emit smoke, soot, ash, grit or oil from the funnel in such quantity as to be a nuisance.

**63. CHIPPING AND SCALING.**

No vessel shall, without the written permission of SPSB, carry out any chipping or scaling of metal within a port except to any vessel undergoing construction or repair in a recognized shipway or shipyard.

**64. SINKING AND STRANDING**

Where a vessel, raft or float from any cause whatsoever, sinks, strands, capsizes or catches fire in a port, the User shall be held responsible for all consequences arising therefrom and shall remove such vessel, raft or float when called upon to do so by SPSB.

**65. BUOYS AND MOORINGS**

No private buoy or mooring shall be laid in any port or harbour without the permission of SPSB and in accordance with such condition as SPSB may think fit and all such moorings and buoys shall be kept and maintained in good condition and in the correct position by the owners thereof at their own expense, and SPSB may inspect the same, and direct repairs or the relaying or removal thereof.

**66. DAMAGE TO PROPERTY**

66.1 No person shall remove, alter, deface, destroy, damage or otherwise any property belonging to or under the control of SPSB or hinders or prevents such property from being used or operated in the manner in which it is intended to be used or operated or interfere with any notice placed on any vessel in a port or upon any of the premises of SPSB. SPSB may take any legal proceedings open to it in law before any court having jurisdiction for the recovery of the full amount of damage caused by such person.

66.2 In every case in which any damage is done to any property of SPSB by any vessel or float of timber or by any person employed in or about the same, the cost of making good such damage may be recovered by SPSB from the User.

**67. EXCESSIVE USE OF SIRENS**

No steam whistle, siren or other like instrument shall be used in a port otherwise than as a signal of danger or for signals properly essential to give notice of the vessel's maneuvers.

**68. MISCELLANEOUS**

No person shall –

- (a) smoke, or carry or ignite any naked flame, on any part of the premises of SPSB except in such places, and under such conditions, as may be expressly permitted by SPSB;
- (b) fish or bathe from or at any part of the premises of SPSB;
- (c) ease himself on any part of the premises of SPSB except in such place as may be set aside for the purpose;
- (d) without due authority, tamper with any machinery, water appliance, electric fitting or equipment of whatever kind on the premises of SPSB;
- (e) knowingly permit or cause any animal to be on the premises of SPSB otherwise than with the permission of SPSB and shall be kept on a lead, chain or appropriate enclosure.

**69. ENTRY TO PREMISES**

- 69.1 No person shall enter or remain on any of the premises of SPSB unless he is in possession of a valid pass issued by SPSB.
- 69.2 No person shall bring any vehicle into the premises of SPSB unless he is in possession of a valid pass issued by SPSB in respect of such vehicle.
- 69.3 All vehicles entering the port premise must be in possession of the appropriate licence and
- 69.4 The person in charge of a vehicle on the premises of SPSB shall at the request of an SPSB employee or a police officer allow such employee or officer to make an examination of such vehicle and its contents or to check the weights thereof.
- 69.5 Any person on the premises of SPSB shall, if so required by an SPSB employee or a police officer, identify himself and present his valid pass and state his true business and shall leave such premises if so required by such employee or officer.
- 69.6 No person or vehicle shall enter or leave the premises of SPSB otherwise than from or to a vessel or by the entrances and exits designated by SPSB.

**70. LICENCES OF TRADE**

No person shall carry on any trade or business or vendor of goods or refreshments, or solicit customer for any trade or business whatsoever, from any harbour craft in a port, or from any vessel along-side a wharf or upon the premises of SPSB unless he has the written permission of SPSB and complies with the provisions of any licensing law for the time being in force.

**71. VEHICLES**

- 71.1 All vehicles shall adhere to clause 69.3 hereinabove.
- 71.2 Vehicles shall be driven with due care within SPSB's premises and shall observe such speed limits and regulations as may from time to time be imposed by SPSB.
- 71.3 Drivers of all vehicles within SPSB's premises shall keep a look out for trains and mechanical equipment and shall take all precautions to avoid collisions.
- 71.4 No vehicle shall be taken or driven along, or upon any wharf, dock or pier, or inside any shed or warehouse without the permission of SPSB.
- 71.5 All persons shall obey all order given by a police officer, or an officer or servant of SPSB for the purpose of regulating traffic within SPSB's premises.
- 71.6 No vehicle shall park on or obstruct, any passage or gangway leading to or from any wharf, dock, shed, warehouse or pier or any railway line.
- 71.7 No motor lorry, tractor engine or craft on SPSB's premises shall be left unattended.
- 71.8 No fuel shall be allowed to leak or overflow from any vehicle within SPSB's premises.
- 71.9 No vehicle shall be refueled without the permission of SPSB and except under such conditions as may be imposed.
- 71.10 Where, in the opinion of the competent officer of SPSB, any vehicle should be moved from any place on SPSB's premises, it shall be lawful for him, any police officer or servant of SPSB to direct the driver to move such vehicle to such place as he may direct and, in the absence of such driver or his failure to comply with such direction, it shall be lawful for any such officer or servant to move such vehicle.

**Part VI**  
**Ports - General**

**72. DELIVERY OF NOTICES**

Any notice or other document relating to the arrival of any vessel, or the details of working of its cargo, or to the delivery of any goods on to the premises of SPSB, which is required by any of the provisions of these Terms and Conditions of Business to be given to SPSB, and any application for any licence or permission to be issued or granted by SPSB under these Terms and Conditions of Business, shall be given or made to a senior officer of SPSB at the port concerned.

**73. LABOUR**

No person other than one directly employed by SPSB, shall work as a stevedore on or about any vessel in the port or as a wharf labourer within SPSB's premises without written permission of SPSB.

**74. WORKING HOURS**

Port working hours, delivery hours, office hours, holidays and the like shall be as declared by SPSB from time to time.

**75. FIRE ON BOARD VESSEL**

75.1 In the event of fire breaking out on board any vessel in a port, SPSB may order its officers to board such vessel with such assistance and persons as seen fit, and may give such necessary orders for scuttling such vessel, or for removing such vessel or any other vessel, to such place as to prevent danger to other vessels and the taking of any other measure that appear expedient for the protection of life and property.

75.2 If such orders are not forthwith carried out by the User, SPSB's officer may himself proceed to carry them into effect.

75.3 Any costs and expenses incurred by SPSB as a result of actions taken under this clause and include any related damage, loss and or claims shall be recoverable by SPSB from the User concerned as a civil debt.

PART VII  
DANGEROUS AND OBNOXIOUS GOODS

76. DANGEROUS GOODS

76.1 Dangerous Goods means any of the following cargoes, whether packaged, carried in bulk packagings or in bulk within the scope of the following regulations:

- (a) oils covered by Annex I of MARPOL 73/78;
- (b) gases covered by the Codes for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;
- (c) noxious liquid substances/chemicals, including wastes covered by the Codes for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk and Annex II of MARPOL 73/78;
- (d) dangerous, hazardous and harmful substances, materials and articles including environmentally hazardous substances (marine pollutants) and wastes, covered by the International Maritime Dangerous Goods Code; and
- (e) solid bulk materials possessing chemical hazards and solid bulk materials hazardous only in bulk (MHBs), including wastes, covered by Appendix B of the Code of Safe Practice for Solid Bulk Cargoes.

76.2 The term dangerous goods included any empty uncleaned packagings (such as tank-containers, receptacles, intermediate bulk containers (IBCs), bulk packagings, portable tanks or tank vehicles) which previously contained dangerous goods, unless the packagings have been sufficiently cleaned of residue of the dangerous goods and purged of vapours so as to nullify any hazard or has been filled with a non-dangerous substance.

76.3 Dangerous goods shall not be presented to SPSB or be brought into any port in any vessel unless:-

- (a) prior written permission of SPSB has been first obtained; and
- (b) a notice is given by the User certifying that the Dangerous Goods has been packed, labeled and stored in accordance with either:-

**Part VII**  
**Dangerous and Obnoxious Goods**

- (i) the United Kingdom Carriage of Dangerous Goods in Ships Standing Adviser Committee Recommendations (The Blue Book); or
- (ii) the United States of America Code of Federal Regulations, Title 49, Chapter I: Interstate Commerce Commission, Parts 71-78: Explosives and other Dangerous Articles; or
- (iii) the Seefrachtordnung. Verordnung uber di Beforderung gefahrlicher Gegenstande mit Kauffahrteischiffer. Nach demStand vom Februar, 1935. (Pub. Reichsverlagsamt, Berlin, N.W. 40),are so packed, labeled and stored,

76.4 All dangerous goods presented to SPSB shall be subject to:-

- (i) the latest version of the 'Guidelines for the Handling of Packaged Dangerous Goods in Sabah Ports';
- (ii) Sabah Ports Authority Enactment, 1981 including subsidiary legislations made thereunder;
- (iii) Occupational Safety and Health Act, 1994 and Regulations;
- (iv) Factories and Machinery Act, 1967 and Regulations;
- (v) International Maritime Dangerous Goods (IMDG) Codes as per the latest amendment as adopted by Malaysia;
- (vi) recommendations on the safe transport of dangerous cargoes and related activities in port areas;
- (vii) other relevant written laws pertaining to Malaysia; and
- (viii) all provisions relating to the carriage of goods by road, rail or sea, contained in any Statutory Instruments or Order made pursuant to the above written laws or in any International Convention or Agreements or any recommendations made by the Government or other relevant authority or local by-laws,

76.5 The User shall be responsible for ensuring that all the provisions referred to in this clause hereof are complied with.

**Part VII**  
**Dangerous and Obnoxious Goods**

**77. OBNOXIOUS GOODS**

77.1 For the purpose of these Terms and Conditions "Obnoxious Goods" means any of the following kinds of goods which are not included in the category of Dangerous Goods:

- (a) Substances which can cause discomfort to or adversely affect personnel handling them;
- (b) Substances which will taint other cargo or containers in close proximity;
- (c) Substances which will damage other cargo by contact or by shifting e.g. carbons, graphite, white pigments, greases and other "dirty" cargo;
- (d) Hygroscopic or deliquescent cargo or cargo in a moist or wet condition such as hides;
- (e) Cargo liable to infestation by insects, mites, weevils or grubs or any other cause which might require fumigation;
- (f) Cargo of liquid or semi-solid nature and cargo liable to liquefy with a rise in temperature such as reasonably could be foreseen; or
- (g) Any other goods which in the opinion of SPSB are likely to adversely affect other cargo or containers or to present any special difficulties in handling.

77.2 Obnoxious Goods shall not be presented to SPSB unless its permission has first been obtained. For this purpose, application for permission shall be made by the User not less than thirty six (36) hours before the estimated time of arrival by submitting to the relevant Port Manager all the relevant details which may be required by SPSB or any lawful authority pertaining to the carriage of obnoxious goods.



PART VIII  
LIEN, RIGHT TO REMOVE OR SELL CARGO  
AND POWER TO DETAIN

78. LIEN FOR UNPAID DUES AND OR CHARGES

- (a) All goods, containers and all documents relating to goods and containers shall be subject to a particular and general lien respectively for outstanding dues and or charges payable to SPSB in respect of such goods and or containers from the User.
- (b) If any dues and or charges are not paid within sixty (60) days after notice requiring payment has been given to the User, then notwithstanding Part XI, the goods and or containers subject to such lien, may be sold without further notice and the proceeds will be applied in and towards satisfaction of the outstanding dues and or charges and the costs incurred by SPSB in such sale.
- (c) Any sale of goods and/or container by SPSB pursuant to this clause may be conducted by private treaty, public auction or otherwise in such manner as SPSB shall in its sole discretion determine and SPSB shall not be liable for any loss and damage to any person whatsoever as a result thereof.
- (d) The exercise of SPSB's right of sale under this clause shall be without prejudice to any other right or remedy of SPSB as provided under the law.
- (e) Any deficiency in the proceeds of sale shall be recoverable from the User by civil action.

79. REMOVAL OF CARGO

79.1 Convenient Use of the Port

SPSB shall, if the convenient use of the port premises so requires, remove any goods which have been landed or received in SPSB's custody to any storage area, or from one to the other at its discretion, and the removal charges shall be paid to SPSB by the User thereof.

79.2 Suitability

SPSB may store in the open any cargo which in the opinion of SPSB is not suitable by reason of its bulk or the nature of its contents for storage in godown or which is suitable for storage in the open.

**Part VIII**  
**Lien, Right To Remove Or Sell Cargo**  
**and Power To Detain**

79.3 Offensive Goods

For any goods that SPSB deems as offensive in nature, SPSB may after giving at least two (2) hours notice to the User or other person entitled to receive the goods, or if the User cannot be found, then without such notice, order the removal, and if necessary, the destruction, of the offensive goods. The cost of any such removal or destruction shall be charged to the User.

79.4 Contamination of Goods

If any cargo deteriorates which may contaminate any other cargo, SPSB reserves the right to remove the cargo within twenty-four (24) hours after notice has been given by SPSB to the User. If such notice is not complied with, SPSB may remove such cargo to open storage at the expense of the User, sell by public auction, destroy or otherwise dispose of such goods in such manner as it may think fit, and SPSB shall not be liable to pay any compensation for any goods so dealt with.

79.5 Lack of Storage

SPSB shall not be bound to find storage for any goods either in the godowns or in the open, and after notification to the User that accommodation for such goods is not available, SPSB shall not be responsible for any loss or damage that may accrue from whatever cause or reason to such goods and SPSB may remove such goods at the expense of the User.

79.6 Broken Goods

Goods which are broken shall be removed from SPSB premises by the User within seven (7) days from the date of landing and if not so removed they may be disposed of by SPSB and no claim in respect of such goods shall be entertained by SPSB. The User shall be liable to pay SPSB the costs incurred in disposing of under this regulation.

**80. RIGHT TO SELL GOODS**

80.1 Subject to the provisions of this Part, if any goods which have been placed in or on the premises of SPSB are not removed therefrom within a period of thirty (30) days from the time when the goods were placed in or on such premises, SPSB may, at the expiration of the said period of thirty (30) days, sell by public auction all or any of such goods:

**Part VIII**  
**Lien, Right To Remove Or Sell Cargo**  
**and Power To Detain**

Provided that -

- (a) in the case of goods for which a through bill of lading has been issued there shall be substituted a period of forty-two (42) days for the period of thirty (30) days referred to in this sub-clause; and
- (b) if the goods are of a perishable nature SPSB may direct their removal within such shorter period not being less than twenty-four (24) hours after the landing thereof as SPSB may think fit, and if not so removed, SPSB may sell, by public auction or otherwise, or dispose of such goods in such manner as it may think fit

- 80.2 For the purposes of item 3.1 of this clause, a sale shall not be rendered invalid by reason only that it takes place in or on premises or in an area to which the public is not admitted except on presentation of a pass.
- 80.3 Before making a sale under this section, SPSB shall give at least three (3) days notice thereof by advertisement in two (2) local newspapers circulating in the State, unless the goods are of so perishable nature as in the opinion of SPSB, to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case requires.
- 80.4 If the address of the owner of the goods or his agent has been stated on the manifest of the cargo or in any of the documents which have come into the hands of SPSB, or is otherwise known, and such address is in the State, notice shall also be given to the owner of the goods by letter delivered at such address or sent by post and notice shall in like manner be given to the agent of the discharging vessel.
- 80.5 The proceeds of any sale under this section shall be applied by SPSB as follows and in the following order:—
  - (a) firstly, in payment of any duty owing to the Government of Malaysia or the State;
  - (b) secondly, in payment of the expenses of the sale;
  - (c) thirdly, in payment of the charges and expenses due to SPSB in respect of the goods; and

**Part VIII**  
**Lien, Right To Remove Or Sell Cargo**  
**and Power To Detain**

- (d) fourthly, in payment of freight and other claims or liens of which notice has been given under the provisions of any law.

80.6 The surplus of the proceeds of sale, if any, after making the payments set forth in this clause, shall be paid to the person entitled thereto on demand, and, in the case no such demand is made within one (1) year from the date of the sale of the goods, by paying the surplus to the account of SPSB, whereupon all rights to the same by such person shall be extinguished.

**81. POWER TO DETAIN**

SPSB shall be entitled to:

- (a) detain possession of any cargo passing through or stored in SPSB's wharves or the port premises; and or
- (b) detain possession of and prohibit from leaving SPSB's wharves any vessel until payment of all port dues, charges and or for damages and loss caused to the property of SPSB

in respect of such goods or vessel, or any previous goods or vessel owned by the same User.

**PART IX**  
**LIMITATION AND EXCLUSION OF LIABILITY**

**EXCLUSION OF LIABILITY**

**82. SPSB IS NOT A COMMON CARRIER**

SPSB is not a common carrier and accepts no liability as such.

**83. NO RESPONSIBILITY TO EFFECT INSURANCE**

SPSB shall be under no obligation to effect insurance in relation to cargo or goods in its possession. It is strictly the duty of the User to ensure adequate insurance for their vessels, goods and cargo whilst it is in the port, the port premise and or in the custody of SPSB.

**84. MASTERS IN CHARGE OF VESSELS**

Every vessel shall, while using a wharf, be in the charge of, and her security and safety shall be at the sole risk of, the master and owner, and no instruction or direction given by, or act performed by, any officer or servant of SPSB shall place any responsibility upon SPSB with respect to the security and safety of such vessel.

**85. NO RESPONSIBILITY FOR FAILING TO NOTE DAMAGE**

85.1 SPSB shall not be responsible for failing to note any damage to any container or its contents or to any other cargo upon discharge from the vessel, receipt and handling, during SPSB's custody of the goods and or at any time whilst it is within the port, the port premise and or in the custody of SPSB.

85.2 Upon discovery of damaged or defective cargo, the same shall be surveyed by a representative of the ship or his agent and a representative of SPSB.

**86. USERS RESPONSIBILITY FOR PROPER SORTING OF CARGO**

SPSB shall not be responsible for the incorrect delivery of cargo consisting of goods which from their want of description or of proper distinguishing marks or because of insufficient or illegible marking may cause difficulty in delivering to the correct consignees.

**87. LIABILITY FOR GOODS DELIVERED BUT NOT TAKEN OUT**

SPSB shall not be held responsible or liable in any manner whatsoever for any losses or damages occurring to the User's cargo that have been issued delivery notes and or

**Part IX**  
**Limitation and Exclusion of Liability**

loaded onto User's transport and the same shall be considered delivered and risk duly transferred to the User, even if the said cargo has not been taken out of the port premises.

**88. DELAYS AND DETENTION**

88.1 SPSB shall not be responsible for delay in the shipment, discharge or delivery of goods owing to glut of cargo, congestion of vessels, or circumstances beyond the control of SPSB.

88.2 SPSB shall not be responsible for the detention or delay of any vessel or craft or for detention or delay in discharging or loading cargo arising from any cause whatsoever.

**89. STEVEDORAGE**

89.1 SPSB does not accept any responsibility as stevedores and, irrespective of the source of supply of labour for any stevedoring operation, such operation shall be carried on under the supervision of the User concerned who shall also be responsible for the lashing, unlash, fixing and releasing twist-locks, rigging, un-rigging, trimming and safe working condition of the cargo gear of such vessel.

89.2 Winchmen or crane men if supplied to the vessel shall be deemed to be servants of the User whilst working on board the vessel.

**90. MOORING**

SPSB shall not be liable in any manner whatsoever for any defects, latent or otherwise, in mooring bollards or posts, nor for any improper mooring of the vessel at SPSB's wharf.

**91. MAINTENANCE OF WATER DEPTH**

While SPSB undertakes regular hydrographic survey of port waters and its approaches including alongside SPSB's wharves and maintain them to a declared depth, without prejudice to the foregoing, each vessel when navigating in waters within the port limit and its approaches and while alongside SPSB's wharves does so at the sole risk of the User.

**92. HIRE OF CARGO HANDLING GEAR**

92.1 Cargo handling equipment hired from SPSB shall be deemed to be hired on condition that the entire liability rests with the hirer, who shall be required to indemnify SPSB accordingly.

**Part IX**  
**Limitation and Exclusion of Liability**

92.1 SPSB, while taking all reasonable precautions that the issued equipment is in sound and usable condition, shall accept no responsibility for any consequences which may arise owing to breakage or other unforeseen circumstances occurring during the period of hire.

**93. LIABILITY IN RESPECT OF LOADING OR DISCHARGING OPERATIONS**

SPSB shall not, without its actual fault or privity, be liable to damages-

- (i) in respect of personal injury or death caused to any person;
- (ii) for loss or damage to any goods, merchandise or other things whatsoever,

where such injury, death, loss or damage is caused to, by or arises out of the operation of loading onto or discharging from a vessel of goods or any work incidental thereto.

**94. GOODS DEPOSITED FOR LIGHTERAGE OR SHIPMENT**

Any goods, merchandise or other things, deposited with or placed in the custody of SPSB for the purpose of lighterage or shipment shall remain in the custody or control of SPSB at the sole risk and expense of the User.

**95. FORCE MAJEURE**

SPSB shall not in any event be liable for the loss or destruction of, or damage to, any goods arising from -

- (a) fire, or flood, unless caused by the actual fault or privity of SPSB;
- (b) an act of God;
- (c) an act of war or of public enemies,
- (d) seizure-under any legal process;
- (e) quarantine restrictions,
- (f) any act, omission or default of the owner or carrier of such goods,
- (g) strikes, lockouts or stoppages or restraints of labour from whatever cause, whether partial or general;
- (h) riots and civil commotion;
- (i) saving or attempting to save life or property;
- (j) insufficient or improper packing, defective or insufficient marks or leakage from defective drums, containers or packages;
- (k) inherent liability to wastage in bulk or weight, latent or inherent defect or natural deterioration,
- (l) any deficiency in the contents of unbroken packages, or
- (m) the dangerous nature of such goods.

**LIMITATION OF LIABILITY**

**96. SPSB'S LIMITED LIABILITY**

Unless otherwise expressly stipulated herein, the Port as a bailee, shall not be liable for any loss or damage, whether direct or consequential, or for any costs and expenses, injury or death of whatsoever nature and however sustained and whether to persons or property UNLESS it can be satisfactorily proved that such loss, damage, costs, expenses, injury or death as specified in this clause was caused by the sole negligence of SPSB or its employees or agents whilst the goods are in the custody and control of SPSB PROVIDED ALWAYS such compensation/liability, if so made, shall in no case exceed the financial limits set out hereunder.

**96.1 PHYSICAL LOSS OR DAMAGE TO A CONTAINER**

96.1.1 In respect of direct physical loss or damage to a Container in SPSB's custody which is attributable to SPSB, SPSB shall pay the depreciated value of the Container or the actual costs of repair, whichever is the lesser; PROVIDED ALWAYS that the liability of SPSB under this paragraph shall not exceed:

- (a) Ringgit Malaysia Four Thousand (RM4,000.00) for a 6.1 metre (twenty foot equivalent) dry Container;
- (b) Ringgit Malaysia Seven Thousand Five Hundred (RM7,500.00) for any other dry Container exceeding 6.1 metres;
- (c) Ringgit Malaysia Sixty Thousand (RM60,000.00) for a reefer Container

in respect of any incident or series of related incidents occurring in connection with, or consequent upon one event.

**96.2. PHYSICAL LOSS OR DAMAGE TO CARGO IN CONTAINERS**

96.2.1 Notwithstanding the limitation of liability contained in the Terms and Conditions, in the event SPSB is found to be liable for loss and/or damage to Cargo, SPSB shall, prima facie, be entitled to limit such liability in accordance with the terms and conditions contained within the



**Part IX**  
**Limitation and Exclusion of Liability**

Port User's bill of lading, or such other contract of carriage or, if applicable, the ship's limitation fund.

**96.3 PHYSICAL LOSS OR DAMAGE TO CARGO SHIPPED IN BULK OR BREAKBULK**

SPSB's liability shall not exceed 25 percent of the value of cargo as declared in the commercial invoice, per package or per tonne, whichever is the lesser, in respect of any incident or series of related incidents occurring in connection with, or consequent upon one event.

**96.4 PHYSICAL LOSS OR DAMAGE TO VESSEL AND ITS EQUIPMENT**

SPSB shall pay the depreciated value of such vessel or the reasonable cost of repair, whichever is the lesser, PROVIDED ALWAYS that the liability of SPSB under this paragraph:

96.4.1 shall not exceed RM250,000; and

96.4.2 that the sum of RM250,000 shall be inclusive of any liability of SPSB pursuant to the preceding paragraphs.

in respect of any incident or series of related incidents occurring in connection with, or consequent upon one event.

**96.5 PHYSICAL LOSS OR DAMAGE TO PROPERTY NOT OTHERWISE REFERRED TO IN THE PRECEDING PARAGRAPHS**

SPSB shall pay the depreciated value of such property or the reasonable cost of repair, whichever is the lesser, PROVIDED ALWAYS that the liability of SPSB shall not exceed the aggregate of RM25,000, in respect of any incident or series of related incidents occurring in connection with, or consequent upon one event.

**96.6 DEATH OR INJURY**

SPSB shall pay an aggregate sum which shall not exceed RM250,000 in respect of any incident or series of related incidents occurring in connection with, or consequent upon one event.

96.6.1 The limitation of liability under this Part shall relate to the whole of any losses or damages which may arise upon any one distinct occasion, although such losses or damages may be sustained by more than one person, and shall apply whether the liability arises at common law or

**Part IX**  
**Limitation and Exclusion of Liability**

under any written law and notwithstanding anything contained in such written law.

96.6.2 Where more than one person have sustained loss or damage upon any one occasion for which SPSB is liable and the aggregate amount of such loss or damage exceeds the amount to which SPSB is liable by virtue of the limitation contained liability of SPSB to each such person shall abate proportionally.

96.6.3 Notwithstanding anything to the contrary as contained in this clause and in relation to the Applications, SPSB shall not be liable to any physical and/or direct loss or damage suffered by the User unless such physical and/or direct loss or damage is proven conclusively to be caused by the gross negligence or wilful neglect on the part of SPSB in the maintenance of the Applications.

**97. INDEMNITY**

97.1 The Port User undertakes that no claim shall be made against any employee or agent of SPSB who imposes or attempts to impose upon any of them any liability whatsoever in connection with the Cargo, Containers or Vehicles, and if any such claim should nevertheless be made, to indemnify SPSB against all consequences thereof.

97.2 The Port User shall defend, indemnify and hold SPSB harmless against any and all actions, claims, proceedings, and demands whatsoever and/or by whomsoever made against SPSB and/or costs, liabilities, losses, damages, expenses incurred by SPSB directly or indirectly arising out of or in connection with the Contract and/or the Terms and Conditions regardless of whether any act or omission of SPSB, its employees, servants or agents contributed to the same. Without prejudice to the generality of Part X, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of SPSB, its employees and agents.

**98. CONSOLIDATION OF CLAIMS**

Where any liability is alleged to have been incurred by SPSB in respect of loss of life, personal injury or loss of or damage to vessels, trains, vehicles, animals, goods or other things whatsoever, and several claims are made or apprehended in respect of that liability, then SPSB may apply to the High Court, and the Court may determine the

**Part IX**  
**Limitation and Exclusion of Liability**

amount of SPSB's liability and may distribute the amount rateable among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and any proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to exclusion of any claimants who do not come in within certain time, and as to requiring security from SPSB, and as to payment of any costs as the court thinks just.

**99. LIABILITY FOR LOSS UNDER CONTRACT**

Notwithstanding the provisions of this Part, SPSB shall, on application made to it by the owner of any vessel or User, enter into a written contract with such User whereby SPSB shall accept liability for any loss caused by reason of short delivery by SPSB of any goods deposited with or placed in the custody or control of SPSB or any failure by SPSB to deliver or account for the same, and for the purpose of this section, SPSB may prescribed the terms and conditions of such contract PROVIDED ALWAYS that SPSB may in its discretion refuse to enter into such contract.

**100. LIMITATION PERIOD**

All claims in resepct of any loss, damage, costs, expenses, death or injury must be made to SPSB by the User in writing setting out particulars thereof within a reasonable period and the User shall use their best endeavour to do so within 72 hours from the time time of occurrence causing such loss, damage, costs, expenses, death or injury. In any event, SPSB shall be discharged from all liability in respect of such loss, damage, costs, expenses, death or injury unless the suit is brought within 1 year of the aforementioned occurrence.

**PART X  
TARIFF AND OTHER CHARGES**

**101. TARIFF AND OTHER CHARGES**

The User shall be responsible and liable to pay SPSB in Malaysian currency for:-

- (a) all dues and charges payable by the User to SPSB in accordance with the provisions of and as specified in the Tariff of Charges as set out in the Sabah Ports Authority (Scale of Dues and Charges) Regulations 1977 and revised tariff enforceable from time to time, EXCEPT for the following:-
  - (i) any vessel discharging cargo or disembarking passengers solely for the purpose of effecting repairs or of determining whether such repairs are necessary, whether or not such cargo is loaded or such passengers are re-embarked; and
  - (ii) any vessel or harbour craft belonging to the Government of Malaysia or to the Government of any of the States of Malaysia or to any Commonwealth or foreign government, other than such vessel loading or discharging cargo or embarking or disembarking passengers carried for freight or fares.

**102. ENTERING INTO VESSEL TO ASCERTAIN AMOUNT OF PORT CHARGES**

SPSB may enter into any vessel within the limits of any port or the approaches to any port in order to ascertain the amount of port charges payable in respect of the vessel.

**103. ADMINISTRATIVE CHARGES**

The User shall be responsible and liable to pay SPSB administrative charges as set by SPSB from time to time which may include but is not limited to penalties for provision of inaccurate information, late requests for amendment of particulars and or clean up services for dirt and rubbish landed on the wharf.

**104. CREDIT FACILITY ACCOUNTS**

104.1 the User shall maintain a credit facility account with SPSB.

104.2 The terms and conditions for opening a credit facility account with SPSB include the following:-

**Part X**  
**Tariff and Other Charges**

- (i) all accounts in respect of such credit facilities shall be settled within twenty-eight (28) days from the date of any bill(s) issued by the SPSB;
- (ii) all accounts in respect of such credit facilities, which are not settled within the period stipulated above, shall be subject to a surcharge of ten percent (10%) thereof;
- (iii) the User is required to provide SPSB with a Cash Deposit or Banker's Guarantee (BG) in the equivalent sum of two (2) times the expected volume of monthly business with SPSB and may be reviewed from time to time. If BG is provided, it shall be valid for one (1) year and must be renewed/ extended one (1) month prior to the date of expiry of such BG;
- (iv) SPSB reserves the right to claim against the User's BG should the User fails, refuses and/or neglects to inform SPSB of any termination or extension of the User's BG as required under sub-clause (b)(iii) to settle all or any outstanding account in respect of such credit facilities.
- (v) SPSB reserves the right to suspend the User's credit facility account and/ or claim against the User's BG if all or any of the User's account in respect of such credit facility account remains outstanding after fifty six (56) days from the date of any bill(s) issued by the SPSB; and
- (vi) SPSB shall also be at the liberty at any time terminate such credit facility account if the User fail, refuse and/ or neglect to make payment within the time stipulated in sub-clause (b)(i) (including surcharges) and/ or (b)(v) above and the right to recover the same by legal action or otherwise.

**PART XI**  
**GENERAL RULES**

**105. USER TO COMPLY WITH LAWS, POLICIES AND OPERATING STANDARDS.**

The User shall comply with statutes, by-laws, regulations, policies and operating standards as may from time to time be specified by Sabah Port Authority and any other relevant government authorities and with all International Conventions ratified by the Government of Malaysia relating to port or ports operation and including any other directions stipulated by SPSB from time to time for the safe and convenient use of SPSB's wharves.

**106. POWER TO INSPECT DOCUMENT**

SPSB shall be entitled to inspect all bills of lading, consignment notes, freight lists, manifest of cargo and any other documents whatsoever relating to any vessel, vehicle or cargo which have been, are, or will be present in SPSB's facilities or premises. Authorised SPSB officers may enter any vessel or vehicle using facilities in order to seek such documents or to inspect and assess any cargo.

**107. DUTY TO OBEY SPSB'S DIRECTION WITHOUT COMPENSATION**

The User or any person in charge of any vessel using SPSB's facilities or services or berthing at SPSB's wharves shall at all times obey the directions of authorised SPSB employees and shall shift or remove such vessel upon request without compensation.

**108. REFUSAL TO HANDLE GOODS AND OR PROVIDE SERVICES**

If in SPSB's sole opinion there are any circumstances which may prevent or hinder the safe handling, storage, loading, unloading or transport of any container, break-bulk cargo or other type of cargo, SPSB may refuse to handle the same and shall give notice of such refusal to the User and upon, receiving such notice the User shall remove or procure the removal of such container, break-bulk or other cargo as the case may be, from SPSB's wharf or port premises forthwith at its own risk and expense.

**109. LIABILITY TO PAY FOR SERVICES ORDERED**

If any services are ordered from SPSB and are cancelled other than because of default by SPSB, all fees from the same shall remain payable to SPSB and any refunds or credits shall be solely at SPSB's discretion.

**110. DAMAGE CAUSED BY OVERWEIGHT OR OVERSIZED VEHICLES, EQUIPMENT OR MACHINERY**

Before the User or any person brings on to the wharf vehicles, equipment or machinery of a weight or size which might cause damage such person must obtain permission in

writing from SPSB. The User shall be liable for any damage done to SPSB's wharf or property by such items.

**111. RECOVERY BY CIVIL PROCEEDINGS**

SPSB may recover by civil proceedings any unpaid port dues or charges and any costs or expenses incurred by and is due and payable to SPSB, which shall include any shortfall arising from sale of goods or cargo when the proceeds of sale are insufficient.

**112. COSTS INCURRED IN COMPLYING WITH GOVERNMENT REGULATIONS**

Any cost, expense or liability which may be incurred by SPSB in complying with Government regulations requiring the movement, treatment, removal, destruction of any cargo or container including but without limitation dutiable goods or dangerous goods, infested, contaminated or condemned cargo, or in the treatment of the port premises or equipment as a result of any infestation or contamination arising therefrom shall be the sole responsibility of the User and shall forthwith be reimbursed to SPSB by the User on demand.

**113. CONTRACTUAL OBLIGATIONS**

Every contractual obligation entered into with SPSB shall be, in so far as applicable, governed by these Terms and Conditions of Business and any ancillary conditions and provisions as in force and applicable at the time of publication and SPSB reserves the right without notice to alter such terms from time to time and such amendment shall be immediately operative upon publication.

**114. USER TO PROCURE COMPLIANCE WITH TERMS AND CONDITIONS OF BUSINESS**

114.1 The User shall procure that its employees, contractors, servants, agents and customers, with whom it has entered into any arrangement shall observe, comply with and be bound by these Terms and Conditions, the special conditions in the Tariff, and all rules and regulations applicable directly or indirectly in relation to any cargo and or container handled by SPSB for or on its behalf or at its request or which the User is instrumental in delivering to SPSB for handling.

114.2 Every contract incorporating the Terms and Conditions shall be governed by and construed and interpreted in accordance with the laws in force in Malaysia and the parties hereby submit to the jurisdiction of the Malaysian Courts.

**115. TERMS AND CONDITIONS OF BUSINESS EXCLUDE OTHERS**

115.1 These Terms and Conditions shall apply to the exclusion of any other written or oral terms and/or conditions and including without limitation any printed terms contained in printed forms or other documents of the Users Lines or Operators.

**Part XI**  
**General Rules**

115.2 No variation or waiver of these Terms and Conditions of any nature may be made by any employee of SPSB other than the Chief Operating Officer of SPSB who may vary them only in writing referring to these Terms and Conditions and addressed to the person, firm or vessel concerned.

115.3 Any requests for an explanation of the meaning of these Terms and Conditions or their application to any given circumstances shall be made in writing to the Chief Operating Officer of SPSB whose written reply shall alone be binding on SPSB.

**116. SPSB TO BE INDEMNIFIED BY USER FOR CLAIMS ARISING FROM BREACH OF TERMS AND CONDITIONS OF SERVICE**

Without prejudice to the generality of the foregoing, the Users, Lines or Operators shall indemnify SPSB from and against all claims, liabilities, loss, damage, cost and expense (including without limitation legal costs) suffered or incurred by SPSB arising directly or indirectly from :

- (a) any breach of these Terms and Conditions by the Users, Lines or Operators, its employees, servants, agents, contractors and customers, including consignors and consignees, with whom it has entered into any arrangements;
- (b) any matter or thing which it is provided herein shall be the sole responsibility or risk of the User, Line or Operator or for or in respect of which it is provided that the User, Line or Operator shall be responsible or liable.

**117. CONSTRUCTION**

117.1 In the construction of these Terms and Conditions no condition nor clause or paragraph of any condition shall be taken to derogate from the generality of any other condition, clause or paragraph. Acceptance shall be deemed to create a distinct contract in respect of each such clause or paragraph such that if any clause or paragraph shall be found void, unenforceable or otherwise bad, the same shall not affect any other paragraph of any of these conditions. Headings are for convenience and shall not affect the interpretation of these conditions.

117.2 Where the context permits, singular means plural and male gender includes female and neuter gender. Whenever in these conditions there is reference to more than one person it shall be construed as a reference to such persons or any of them.





