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## **Marine Terminal Schedule No. 010599**

### **NAMING RULES, REGULATIONS AND COMMODITY RATES ON CARGO MOVING IN CONTAINERS/BREAKBULK**

This schedule is issued by Maher Terminals LLC hereafter referred to as "MTL" under authority of the Federal Maritime Commission and supersedes all previously issued schedules.

This schedule shall be applicable at any terminal facility within the Port of Greater New York and New Jersey and vicinity in which MTL operates.

Maher Container Terminal, Port Elizabeth  
Berths 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80

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## SECTION I

### RULES AND REGULATIONS

### SYMBOLS AND DEFINITIONS

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### DEFINITIONS:

A. **CONTAINER** – Refers to any fully enclosed, reusable freight container of rectangular configuration, used for the repeated shipping of a number of smaller packages or bulk material. Said container may be collapsible, rigid or mobile; however, it must be susceptible to being handled in transit as a unit, and must meet ISO standards.

B. **HEAVY LIFT** – Refer only to single packages weighing 10,001 lbs. or more; provided, however, that individual airplanes, boats, containers and metals shall not be deemed heavy lifts.

C. **INTACT CONTAINER** – A reusable non-disposable shipping container for intact movement requiring no stripping or stuffing of contents by the MTL.

D. **PIER CONTAINER** – A reusable, non-disposable shipping container requiring stripping or stuffing of contents by MTL or other agreed third party.

E. **TEMPERATURE CONTROLLED CARGO** – Refers to cargo that must be maintained at a specific temperature or range of temperatures.

F. **THE PORT OF GREATER NEW YORK AND NEW JERSEY AND VICINITY** – All of the geographical areas designated in “The Port of New York District” map issued by the Port Authority of New York and New Jersey.

G. **TON** – Refers to a net ton of 2,000 pounds.

H. **DRY RUN** – The failed attempt to pick up an import container due to the container being lost resulting with the trucker having to leave the terminal without a container.

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**RULES AND REGULATIONS**

**STRAIGHT TIME RATES AND OVERTIME CHARGES**

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The rates provided hereinafter are for work performed during the hours from 8:00 a.m. to 12 noon and from 1:00 p.m. to 5:00 p.m., Monday to Friday, inclusive. All ILA holidays specified in the collective bargaining agreement in effect in the Port of New York governing the employment of longshore labor being excepted.

Services performed by MTL for the convenience of the carrier, shipper or consignee outside the aforementioned hours and services performed on Saturdays, Sundays and ILA holidays specified in the collective bargaining agreement in effect in the Port of New York governing the employment of longshore labor, shall be subject to a surcharge on the applicable rate.

**RULES AND REGULATIONS**

**I.L.A. HOLIDAYS**

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**The following are the I.L.A. Holidays for the period 10/1/2010 – 9/30/2011:**

<b><u>Holiday</u></b>	<b><u>Date Holiday Observed</u></b>
1. Columbus Day	Monday, October 11, 2010
2. Election Day	Tuesday, November 2, 2010
3. Veterans Day	Thursday, November 11, 2010
4. Thanksgiving Day	Thursday, November 25, 2010
5. Christmas Eve	Friday, December 24, 2010
6. Christmas Day	Saturday, December 25, 2010
7. New Year's Eve	Friday, December 31, 2010
8. New Year's Day	Saturday, January 1, 2011
9. Martin Luther King's Birthday	Monday, January 17, 2011
10. Lincoln's Birthday	Saturday, February 12, 2011
11. President's Day	Monday, February 21, 2011
12. Gleason's Birthday	Thursday, March 17, 2011
13. Good Friday	Friday, April 22, 2011
14. Memorial Day	Monday, May 30, 2011
15. Independence Day	Monday, July 4, 2011
16. Labor Day	Monday, September 5, 2011

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## **RULES AND REGULATIONS**

### **LIABILITY**

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**“LIMITATION OF LIABILITY** Liability for loss or damage to cargo resulting from our 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 such cargo on the terminal at any time, including applicable free time, shall not exceed \$500.00 (US) per package or customary freight unit, unless the value of the cargo has been declared and other arrangements made with MTL prior to its taking custody of, or assuming responsibility for the cargo.”

No provision contained in this schedule shall relieve MTL from liability for its own negligence nor require any user to indemnify or hold harmless MTL for liability for its own negligence.

MTL shall be liable only for damage resulting from its failure to exercise due and proper care in performing the services provided for herein. In no case shall MTL be liable for a sum in excess of \$500.00 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 MTL, in addition to the other charges for such services as herein set forth, 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.

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## CREDIT/PAYMENT POLICIES

- A. Unless the shipper or consignee shall have made definite arrangements with MTL for the payment of loading or unloading charges, the motor carrier shall assume full responsibility for the payment of the charges for such service.
- B. Invoices are due and payable at the address shown on invoice no later than ten (10) working days after rendition of truck loading and/or unloading services. Failure to remit within the period above prescribed will result in withdrawal of credit. Thereafter and until such time as credit is re-established, all charges and/or invoices shall be paid by credit card (see Section G) or by certified funds (certified check, cashier check, wire transfer, COM check & money order) by the driver after completion of said services and before departure of the truck from the terminal facility. The driver shall be given a receipt for each such payment.
- C. If a motor carrier fails to pay the charges specified herein and/or if a motor carrier is extended credit pursuant to the above provisions, and fails to pay said charges, the shipper or consignee shall become liable for such charge.
- D. Existing credit listing maintained by MTL will continue to be recognized and companies listed thereon shall continue to be extended credit in accordance with the provisions of Paragraph B. above subject to revocation as provided therein.
- E. Companies not presently approved for credit by MTL may make application therefore in writing directly to MTL. Until such time as approval for credit is granted, all charges and/or invoices shall be paid by credit card (see Section G) or by certified funds (certified check, cashier check, wire transfer, COM check & money order) by the driver after completion of services and before departure of the truck from the terminal facility. The driver will be given a receipt for each such payment.
- F. Checks from companies having established credit with MTL will be accepted under the following provisions:
  - 1. Any company check returned for Non-Sufficient Funds (NSF) will be assessed a fee for each occurrence of \$68.00.
  - 2. Any company that has two (2) checks returned for NSF within a six-month period will be subject to cancellation of check acceptance privileges.
  - 3. Companies whose check acceptance privileges have been canceled will be required to pay by credit card (see Section G) or by certified funds (certified check, cashier check, wire transfer, COM check & money order).

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4. MTL may elect to establish a maximum dollar amount for any checks to be accepted. Payment in excess of this amount must be a certified check, cashier's check or wire transfer prior to release of cargo and/or providing services.

G. Credit card payments will be accepted at terminal clerical locations under the following provisions:

- 1) MasterCard and Visa are the only credit cards accepted.
- 2) No debit cards will be accepted.
- 3) \*Maher reserves the right to suspend credit card payment privileges for companies with histories of unsubstantiated credit card claims.

\*Note: Customers with questions pertaining to charges paid by credit card should contact our credit department. Our credit department can be reached at (908) 527-8200.

H. No cash currency will be accepted for payments. Acceptable forms of payment will be:

- 1) Company checks that fall within the provisions of Section F.
- 2) Credit cards that fall within the provisions of Section G.
- 3) Certified funds (certified check, cashier check or wire transfer)
- 4) Com checks
- 5) Money orders

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## **SECTION II**

### **RULES AND REGULATIONS**

#### **TRUCK LOADING AND UNLOADING**

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#### **1. DEFINITIONS**

- A. Truck Loading – Shall mean the service of moving cargo from a place of rest on the terminal facility, elevating the cargo onto the truck and stowing of the cargo in the truck, but shall not include, among other things, special stowage, sorting or grading of, or otherwise selecting, the cargo for the convenience of the trucker or the consignee, nor the loading of cargo onto consignee’s pallets.
- B. Truck Unloading – Such service shall consist of removing cargo from the body of the truck to a place of rest on the terminal facility designated by MTL. Truck unloading shall be performed by MTL at the request of the motor carrier.

#### **2. RIGHT TO LOAD AND UNLOAD TRUCK**

- A. Truck loading shall be performed solely by the agents, servants and employees of MTL in accordance with the rules, regulations and practices contained in this schedule. Such services shall be performed with the assistance, and under the supervision, of the driver of the truck.
- B. Truck unloading shall be performed by MTL only upon request of the motor carrier, its agents, servants and/or employees; provided that there is sufficient labor readily available to MTL 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 MTL in one continuous operation, without interruption, until completion of the desired services. Said truck unloading services shall be performed under the supervision and direction of the driver of the truck.
- C. Only trucks properly registered and licensed will be serviced by MTL. Equipment used for truck loading and unloading will be furnished exclusively by MTL; no lift trucks, cranes, etc., other than those supplied by MTL, will be permitted on the terminal facility.

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3. SAFETY

The motor carrier, shipper or consignee shall provide a vehicle, which is adequate and suitable for safe loading and unloading.

4. APPLICATION OF RATES

Rates are quoted in cents per 100 lbs., unless otherwise noted.

5. MISPLACED EQUIPMENT/CARGO BY A MOTOR CARRIER

Provide clerking, checking and draying services including equipment to locate and correct mis-parked equipment/cargo by a motor carrier .....\$140.00 per occurrence.

6. OTHER SERVICES

Nothing contained herein shall be construed as requiring MTL to perform, without charge, any service not specifically provided for herein.

7. HEAVY LIFTS

The handling of heavy lifts shall be limited to the capacity of MTL's equipment at that terminal facility. The schedule rates set forth herein for other than heavy lifts are applicable to single packages weighing 10,000 lbs. or less.

Heavy lifts will be handled only at the discretion of MTL. Heavy lifts on other than open flat bed truck (OFBT) will be charged at triple the heavy lift rate, except that heavy lifts on freely moving wheels will be charged at the rates shown for heavy lifts on OFBT.

8. PAYMENT OF DETENTION PENALTIES TO MOTOR CARRIERS DELAYED AT THE CONTAINER TERMINALS

The payment of detention penalties by MTL to a Motor Carrier is not a matter of right, but rather as a matter of contract. The rules governing detention at MTL are set forth in this Schedule. Maher has no obligation to pay claims for detention except as provided herein.

Effective March 1, 2007, electronic submission will be the only accepted method for filing trucker detention claims; paper invoices will not be accepted. Submission of claims for detention and acceptance of payments for detention from Maher constitutes acknowledgement by the claimant of actual knowledge of the rules governing detention by Maher including, but not limited to, the mandatory arbitration provision specified in said rules.

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1. Free-time:

This section of the Schedule is being revised to specifically encourage Motor Carriers to utilize the Second Shift gate hours in the Maher Container Terminal for the processing of containers.

A. Free-time at the Maher Container Terminal

Containers processed between 0600 and 1100 hours, 1300 to 1700 hours:

- Single Moves.....120 Minutes
- Single Move Requiring Roadability .....150 Minutes
- Double Moves.....150 Minutes
- Double Moves Requiring Roadability .....180 Minutes

Containers processed between 1100 and 1300 hours:

- Single Moves.....150 Minutes
- Double Moves.....210 Minutes

Containers processed between 1700 and 2200 hours:

- Single Moves.....60 Minutes
- Double Moves.....120 Minutes

B. Lost Containers

Lost containers on “Dry Run” only - \$100.00

*Note:* If driver elects to pick up another container single or double move – normal detention rules apply

2. Computation of Time:

Computation of time will be based upon the Motor Carrier’s arrival at the terminal, at the first point of processing. Terminal time will terminate when the Motor Carrier exits the outbound gate of the terminal, including Roadability.

3. Exclusions:

MTL will not be responsible for delays caused by severe weather, and/or delays caused by a disruption of power, telephone, shortage of containership line equipment, or data services such as those supplied to U.S. Customs, which are

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beyond the control of MTL. The force majeure exclusions will not include delays due to failure(s) of MTL's computer system.

Motor Carriers have an obligation to utilize all of the technologies and services which are made available by MTL to pre-check or pre-clear a shipment prior to dispatching a driver to the terminal.

MTL will deny payments of detention penalties to Motor Carriers who fail to ensure availability of cargo prior to the arrival at the terminal or follow terminal procedures which result in delays to themselves or other Motor Carriers.

Detention payments will not be paid to Motor Carriers arriving at the terminal facility with a bare chassis upon which they request a container that is already on a chassis, to be placed unless MTL has been given prior notification. All requests of this nature are to be submitted to the Container Yard, in writing, at least 24 working hours prior to the delivery of cargo.

Detention payments will not be paid with respect to any transaction if the Motor Carrier requests assistance from MTL's clerical service for such transaction, with the exception of transactions where assistance from MTL's clerical services is required for an issue that could not have been avoided had the Motor Carrier ensured the availability of cargo/equipment prior to dispatching a driver to the terminal facility.

If any employee, agent or representative of a Motor Carrier (or any other person with the actual or implied consent of the Motor Carrier) is found to have stolen, pilfered, or vandalized any chassis component(s) or other property belonging to MTL, its customers or other persons present on terminal with the consent of MTL, the Motor Carrier will be held fully responsible for the cost of repairing said equipment. The Motor Carrier will also forfeit its ability to submit any invoicing pertaining to trucker detention for 180 days. If a specific employee, agent or representative of a Motor Carrier is found to be involved with stolen, pilfered, or vandalized chassis components in a second instance, that individual will be permanently barred from submitting any claims to MTL for detention.

4. Payment of Penalties:

When the power vehicle is delayed beyond the allowable free time, MTL shall be charged at a rate of \$12.50 per 15 minutes or part thereof, or \$50.00 per hour.

However, there shall be no penalties paid for detentions of less than twenty-nine (29) minutes.

Claims shall be filed within twenty-one (21) calendar days from the date on which the claim arose or said claim shall be barred. All requests for payment of detention must be individually specified on such forms and in such a manner as may be specified by MTL.

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All decisions by MTL regarding the payment or non-payment of detention are final.

5. Settlement of Disputes:

All disputes arising pursuant to this provision shall be arbitrated pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

9. CONTAINERS FOR U.S. GOVERNMENT AGENCY INSPECTION AND OTHER INSPECTION/SAMPLING AND MISCELLANEOUS TERMINAL SERVICES

- A. Providing facility/security/clerical services during a tailgate inspection/sampling of full containers shall be charged \$180.00 per grounded container.
- B. Drayage by outside trucker to an off Terminal U.S. Government Agency Exam facility and returned \$248.00 plus associated grounding/mounting. \$78. (ea.)
- C. U.S. Government Agency Exams \$401.00 per unit, handled by Maher Terminals Personnel, including grounding and mounting. This rate does not include applicable off terminal warehouse exam charges overtime surcharge - weekday \$69.00, weekend and holiday \$109.00, and reefer plug/unplug charge of \$54.00 per container.
- D. ExpressRail Drayage originating at a Maher facility \$70.00 per unit.

10. PROJECT SHIPMENT RATES

Any interested party may contact MTL requesting special truck unloading and storage rates on large advanced shipments being consolidated for movement by water carrier. Requests must include as much information as possible; i.e., types of freight moving, amounts and weight of same and dates, to permit sufficient evidence on which to make a decision.

11. SCHEDULE OF RATES (FOR TRUCK LOADING AND UNLOADING)

(RATES ARE QUOTED IN 100 LBS. UNLESS OTHERWISE NOTED)

Cargo Not Otherwise Specified (NOS) is \$6.12 with the minimum charge for every truck entering the terminal to deliver or receive loose breakbulk cargo of \$530.00 per truck.

Boats – Individual .....	\$8.50
Boat wood cradle disposal minimum .....	\$360.00 per cradle
Boat metal cradle disposal minimum.....	\$1,732.00 per cradle
*Clerical processing fee .....	\$206.00

**\*Note:** Applicable for boats directly discharged from the vessel to the water only.  
Breakbulk cargo load/discharge to/from vessel directly from trucker's low boy.

Heavy Lift charges – OFBT Only

**See Item 11.** Not applicable on Airplanes, Boats, Containers and Metals. Pieces must be properly packaged and capable of being handled by forklift trucks. Rates for units designed to be lifted from the top, and or pieces insufficiently packaged to protect contents if handled by forklift, will be furnished on request.

	<u>1-24 pcs.</u>	<u>25-50 pcs.</u>	<u>Over 50 pcs.</u>
10,001-25,000 lbs.	\$2.21	\$1.79	\$1.24
25,001-60,000 lbs.	\$2.61	\$2.02	\$1.35

Rates apply when pieces are to or from one vessel for one consignee/consignor.

Rates for pieces over 60,000 lbs. furnished on request.

**RULES AND REGULATIONS**

**ROLLING STOCK**

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DRIVEABLE ROLLING STOCK – DELIVERING DRIVER IS RESPONSIBLE FOR DRIVING OFF.

The minimum gate charge will be \$90.00 per delivering carrier. (Driver Drive Offs)

75,000 lbs. and up.....	\$275.00 each unit
50,000 lbs. up to 74,999 lbs...	\$185.00 each unit
6,000 lbs. up to 49,999 lbs...	\$140.00 each unit

Vehicles with steel treads will only be handled by LIFT-OFF as they cannot be driven on the terminal. (Rubber tread can be driven off)

Privately owned passenger vehicles or commercial passenger vehicles individually driven for delivery or receipt to or from a terminal facility.

Per unit .....\$95.00

**RULES AND REGULATIONS**

**SCHEDULE OF HOURLY EQUIPMENT RATES**

**SCHEDULE OF HOURLY AND PER LIFT EQUIPMENT RATES**

Container Crane	\$1245.00
Straddle Carrier	\$330.00
Top Loader (60,000 lbs.)	\$215.00
Forklifts up to 10,000 lbs.	\$32.00
Forklifts, 10,001 lbs. to 15,000 lbs.	\$40.00
Forklifts, 15,001 lbs. to 25,000 lbs.	\$70.00
Stacker, 35,000 lbs. capacity	\$110.00
Hustler	\$81.00
Flatbeds	\$25.00
Empty handler	\$213.00
Portable Lights per unit per day	\$240.00

**SCHEDULE OF LASHING MATERIAL RATES**

Turnbuckles	\$32.56	each
Ratchet Belts	\$62.05	each
Wire 3/4"	\$1.33	per foot
Clips 3/4"	\$2.43	each
Wire 5/8"	\$0.87	per foot
Clips 5/8"	\$1.88	each
Shackles	\$15.18	each
Lashing Sticks	\$0.81	each
Wood Sticks	\$0.86	each
Rubber Corners	\$10.38	each
Sisal Rope 1/2"	\$ 3.13	Lb.
Polyethylene	\$139.72	Roll
Speedy Dry	\$11.67	Bag

**SCHEDULE OF LASHING LABOR RATES**

	<u>ST</u>	<u>O/T</u>	<u>D/H</u>
Lashing Foreman	\$107.76	\$139.62	\$167.29
Lashers	\$106.56	\$137.75	\$165.42

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**RULES AND REGULATIONS**  
**SCHEDULE E OF HOURLY EQUIPMENT RATES**

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**SCHEDULE OF CARPENTRY MATERIAL RATES**

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2X4X8	\$ 4.77	Per piece
4X4X8	\$15.26	Per piece
4X6X8	\$19.53	Per piece
6X8X8	\$25.19	Per piece
½" Plywood 4X8	\$34.03	Sheet
Nails	\$1.10	Lb.
620 Polyethylene	\$139.72	Roll
Sawdust	\$6.29	Bag
1- ½ Strapping	\$0.62	Ft.
1 - ½ Strapping Seals	\$0.39	Seal
1 - ¼ Strapping	\$0.44	Ft.
1- ¼ Strapping Seals	\$0.31	Seal
2" Strapping	\$0.70	Ft.
2" Strapping Seals	\$0.45	Seal
½ " Sisal rope	\$3.13	Lb.
Auto Chocks (4/Unit)	\$30.47	Unit
Duct Tape	\$9.34	Roll
Cartons	\$10.88	Each
Speedy Dry	\$11.67	Bag

**SCHEDULE OF CARPENTER LABOR RATES**

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	<u>ST</u>	<u>O/T</u>	<u>D/H</u>
Carpenter Foreman	\$107.76	\$139.62	\$167.29
Carpenter	\$106.56	\$137.75	\$165.42

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### **SECTION III**

#### **RULES AND REGULATIONS**

#### **FREE TIME AND DEMURRAGE ON EXPORT CARGO**

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##### 1. DEFINITIONS

- A. FREE TIME – The specified period during which cargo may occupy space assigned to it on a terminal facility free of demurrage immediately prior to the loading of such cargo on the vessel.
- B. DEMURRAGE – A charge assessed against the cargo remaining in or on terminal facilities after the expiration of free time.

##### 2. FREE TIME PERIOD

- A. Free time on export cargo shall not be more than five (5) days (exclusive of Saturdays, Sundays and ILA holidays ).
- B. On intact containers, free time shall not be more than five (5) days (exclusive of Saturdays, Sundays and ILA holidays).

##### 3. COMPUTATION OF FREE TIME PERIOD

Free time on export cargo shall commence at 12:01 a.m. on the day after the said cargo is received at the terminal facility and terminate at 11:59 p.m. on the final day of free time. Consolidation time on export cargo shall commence at 12:01 a.m. on the day following the last day of free time and terminate at 11:59 p.m. on the final day of consolidation time.

##### 4. SCALE OF DEMURRAGE CHARGES

At the expiration of free time period, or if consolidation time has been granted, the consolidation time period, demurrage shall be assessed in accordance with the following rates and provisions.

###### A. Breakbulk Cargo

1<sup>st</sup> Period Demurrage:

4 cents per 100 lbs. or 3 cents per cubic foot, whichever is greater, per day, or fraction thereof, for the first five (5) calendar days after the expiration of free time. Minimum charge \$25.00.

2<sup>nd</sup> Period Demurrage:

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6 cents per 100 lbs. or 4 cents per cubic foot, whichever is greater, per day, or fraction thereof, for the next five (5) succeeding days. Minimum charge \$40.00.

3<sup>rd</sup> Period Demurrage:

10 cents per 100 lbs. or 5 cents per cubic foot, whichever is greater, per day, or fraction thereof, for each succeeding day. Minimum charge \$55.00 per day.

B. House Containers

1. General cargo containers of all dimensions after the expiration of free time:

1 – 4 days	\$120.00 per calendar day
5 – 9 days	\$170.00 per calendar day
10 days and above	\$330.00 per calendar day

2. Temperature controlled containers of all dimensions after expiration of free time:

1 – 3 days	\$335.00 per calendar day
4 days and above	\$490.00 per calendar day

An additional charge of \$45.00 per container per calendar day after expiration of electricity free time for electricity usage.

C. Saturdays, Sundays and ILA holidays shall be included in computing demurrage. No demurrage shall be assessed after the vessel has commenced to load.

D. Except as otherwise provided in this section, demurrage shall be for the account of the cargo.

E. When the vessel for any reason fails to meet the announced date of sailing, any demurrage accruing after such date shall be assessed in successive periods for the account of the vessel until the vessel commences to load.

F. In the case of a vessel cancellation, cargo on free time, or if a vessel has been designated, cargo on consolidation time, on the announced date of sailing shall be subject to first period demurrage assessed against the vessel commencing on the day when the cargo was received at the terminal facility and terminating on the said announced date of sailing unless the export shipper on or before that date has another vessel designated for loading, removes the cargo from the terminal, or elects storage if same is provided.

G. If the export shipper takes none of the action mentioned in Paragraph F. of this item, demurrage charges in successive periods shall be assessed against the export shipper after the vessel's liability for demurrage has expired. Such demurrage shall likewise terminate upon the export shipper's action as aforesaid. For cargo on demurrage on the cancelled date of sailing, demurrage shall continue for the account of the export shipper until such time as he takes one of said actions. In the event the export shipper has another vessel designated, the provisions of

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2.A. above shall apply, with the free time for the other vessel commencing on the date that the export shipper has this other vessel designated.

- H. The announced date of sailing shall be that date(s) appearing in the Journal of Commerce or the Shipping Digest or any other appropriate publication of general circulation as, from time to time, may be designated in this schedule.
- I. When the loading of cargo into a vessel is prevented by any factor immobilizing the pier facility or facilities in all or in part, such as weather conditions, strike or work stoppage of longshoremen or personnel employed by MTL or water carrier, cargo affected thereby shall be granted additional free time of demurrage to cover the delay if the cargo is on free time or consolidation time when such condition arises. If cargo is on demurrage, first period demurrage charges shall be assessed against such cargo.
- J. At the time export cargo is received by the pier facility a receipt shall be issued evidencing receipt of the cargo, which shall show the date of receipt and shall identify the vessel on which the goods are to move. The identification of the vessel is made for the purpose of determining the application of the foregoing Paragraphs E. and I. of this section.

#### 5. TRANSFER OF OWNERSHIP OF CARGO FOR EXPORT

The transfer of ownership of cargo for export after said cargo has been received at a terminal facility shall not entitle such cargo to additional free time.

#### 6. REMOVAL OF EXPORT CARGO FROM TERMINAL FACILITY PRIOR TO LOADING INTO VESSEL

- A. Subject to the provision of Item 4, if export cargo is not loaded into a vessel and is, at any time, removed from the terminal facility, the said cargo shall be subject to demurrage rules and charges set forth above. Said charges shall be assessed from the day the cargo was received at the terminal facility to the day of its removal therefrom. Redelivery gate charge \$266.00 plus applicable grounding and mounting of \$78.00 each way.
- B. In addition, said cargo shall be responsible for the receipt and delivery labor costs incurred by MTL as a consequence thereof.

#### 7. RESPONSIBILITY FOR PAYMENT OF DEMURRAGE AND OTHER CHARGES

- A. Except as otherwise provided, demurrage and other charges specified herein, shall be for the account of the cargo.
- B. Demurrage and other charges shall be due and payable when service is provided.
- C. MTL has the right to require payment in full of any and all such charges before such cargo leaves the terminal facility.

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#### 8. CARGO RECEIVED PRIOR TO EFFECTIVE DATE OF SCHEDULE

All cargo for export which has been received prior, but still remains at a terminal facility on March 17, 2010, shall be deemed to have been received, as noted in the MTL equipment inventory computer system, for the purpose of applying this schedule as of said date and free time shall be allowed accordingly.

#### 9. EXPORT ON TERMINAL

- A. Cargo which is not loaded on a vessel and remains at the terminal beyond the expiration of free time, may be placed in public storage at any time thereafter, at the option of MTL and at the risk and expense of the cargo.
- B. Cargo remaining on the terminal in excess of 30 days, will be considered as abandoned and sold for collection of demurrage charges due MTL. At the time of sale, MTL makes no representation of the cargo. 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 shipper of record. Acknowledgement by the carrier and/or the shipper of record prior to the timeframe mentioned above overrides all mentioned requirements for the sale of the cargo. Any monies received beyond the charges due, will be returned to the shipper/carrier if claimed within one year of the mailed notice.

Notwithstanding the foregoing if MTL, in its sole discretion, shall determine that any cargo remaining on the terminal 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 MTL, be considered abandoned as of the expiration of free time and may be sold at any time thereafter by MTL without notice to the owner of record. Nothing contained in this paragraph shall require MTL 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 actions contemplated in this paragraph. Nothing in this paragraph shall accord to the owner of record of any other person any right or claim against Maher for taking any actions permitted in this paragraph, for not taking any such actions or for delaying in the taking of any such actions.

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## **SECTION IV**

### **RULES AND REGULATIONS**

#### **FREE TIME AND DEMURRAGE ON IMPORT CARGO**

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#### 1. DEFINITIONS

- A. **FREE TIME** – The specified period during which cargo may occupy space assigned to it on a terminal facility free of demurrage after discharge of such cargo onto the terminal facility.
- B. **DEMURRAGE** – A charge assessed against the cargo remaining in or on terminal facilities after the expiration for free time.

#### 2. FREE TIME PERIOD

##### A. Breakbulk Cargo:

Five (5) days free time exclusive of Saturdays, Sundays and ILA holidays will be allowed for the removal of import cargo discharged from vessels in the Port of New York, except that; green coffee beans in bags and cocoa beans in bags will be allowed ten calendar days and no free time will be allowed on cargo which is of a special nature as to require earlier removal because of local ordinances or other governmental regulations or because piers are not equipped to care for such property for such period, such as, but not restricted to:

- 1. Cargo in bulk
- 2. Oils and/or liquids in bulk, in ship's tanks
- 3. Animals and birds, live
- 4. Bullion and treasure
- 5. Dangerous and hazardous cargo
- 6. Jewelry, precious stones, etc.
- 7. Refrigerated Cargo

##### B. Containerized Cargo (house Containers):

- 1. Until further notice MTL at its discretion may honor a containership line's demurrage provisions as published in its tariff or service contracts. If the containership line's tariff provisions are not acceptable or do not provide appropriate coverage, then the following schedules will apply. Any extended periods of free time granted by a containership line's tariffs or service contracts will be at the responsibility and liability of the containership line and/or the cargo.

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2. General cargo containers and tank containers:

Four (4) days free time exclusive of Saturdays, Sundays and ILA holidays will be allowed for the removal of containers discharged from vessels in the Port of New York.

3. Refrigerated containers (House Containers)

Two days free time and electricity to power, exclusive of Saturdays, Sundays and ILA holidays will be allowed for the removal of containers discharged from vessels in the Port of New York.

4. Containers of green coffee beans in bags and cocoa beans in bags will be allowed ten days free time exclusive of Saturdays, Sundays and ILA holidays.

5. All cargo that is entitled to additional free time must be received by MTL one day prior to the arrival of a vessel (in the case of holidays and weekends, the last work day before).

3. COMPUTATION OF FREE TIME PERIOD

Free time on import cargo/containers shall commence at 8:00 a.m. on the first business day following completion of discharge of the vessel and will expire on the last day of free time (Saturdays, Sundays and ILA holidays excluded).

4. SCALE OF DEMURRAGE CHARGES

The following scale of demurrage rates and provisions will apply to cargo remaining undelivered after the expiration of free time:

A. Breakbulk Cargo

1<sup>st</sup> Period Demurrage:

4 cents per 100 lbs. or 3 cents per cubic foot, whichever is greater, per day, or fraction thereof, for the first five (5) calendar days after the expiration of free time. Minimum charge \$25.00.

2<sup>nd</sup> Period Demurrage:

6 cents per 100 lbs. or 4 cents per cubic foot, whichever is greater, per day, or fraction thereof, for the next five (5) succeeding days. Minimum charge \$45.00.

3<sup>rd</sup> Period Demurrage:

10 cents per 100 lbs. or 5 cents per cubic foot, whichever is greater, per day, or fraction thereof, for each succeeding day. Minimum charge \$55.00.

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B. Merchant Haulage Containers:

1. General cargo containers of all dimensions after the expiration of free time:

1 – 4 days	\$120.00 per calendar day
5 – 9 days	\$170.00 per calendar day
10 days and above	\$330.00 per calendar day

2. Temperature controlled containers of all dimensions after expiration of free time:

1 – 3 days	\$335.00 per calendar day
4 days and above	\$490.00 per calendar day

An additional charge of \$45.00 per container per calendar day after expiration of electricity free time for electricity usage.

5. UNDELIVERED CARGO

A. Cargo which is undelivered and remains at the terminal beyond the expiration of free time, may be placed in public storage at any time thereafter, at the option of MTL and at the risk and expense of the cargo.

B. Cargo remaining on the terminal in excess of 30 days, will be considered as abandoned and sold for collection of demurrage charges due MTL. At the time of sale, MTL 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. Acknowledgement by the carrier and/or the owner of record prior to the timeframe mentioned above overrides all mentioned requirements for the sale of the cargo.

Notwithstanding the foregoing if MTL, in its sole discretion, shall determine that any cargo remaining on the terminal 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 MTL, be considered abandoned as of the expiration of free time and may be sold at any time thereafter by MTL without notice to the owner of record. Nothing contained in this paragraph shall require MTL 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 actions contemplated in this paragraph. Nothing in this paragraph shall accord to the owner of record of any other person any right or claim against Maher for taking any actions permitted in this paragraph, for not taking any such actions or for delaying in the taking of any such actions.

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## 6. TRANSFER OF OWNERSHIP OF CARGO

The transfer of ownership of cargo after said cargo has been received at a terminal facility shall not entitle such cargo to additional free time.

## 7. RESPONSIBILITY FOR PAYMENT OF DEMURRAGE AND OTHER CHARGES

- A. Except as otherwise provided, demurrage and other charges specified herein, shall be for the account of the cargo.
- B. Demurrage and other charges shall be due and payable when service is provided.
- C. MTL has the right to require payment in full of any and all such charges before such cargo leaves the terminal facility.

## 8. EXTENSIONS OF FREE TIME AND DEMURRAGE PERIODS

### A. Cargo on Free Time:

In the event the consignee or owner of the cargo should make application for delivery of the cargo or portion thereof during the free time period and MTL should be unable for any reason within MTL control to make available to the consignee, or owner of such cargo, the cargo or a portion thereof, the free time shall be extended for a period equal to the duration of MTL's inability to make the cargo available.

### B. Cargo in first period or succeeding periods:

When the consignee is prevented from removing his cargo by factors beyond his control, such as, but not limited to, longshoremen's strikes, trucking strikes or weather conditions which affect the entire port area or a substantial portion thereof, or where a consignee is prevented from removing his cargo by a longshoremen's strike which affects only one pier or less than a substantial portion of the area; Then, in either event, cargo which is in the first period demurrage will continue to be assessed at the first period demurrage rates, and cargo which is in the second period demurrage or in any succeeding period after the second period demurrage, will revert to the first period demurrage charges for such time as the consignee is prevented from removing his cargo by such strike or factors beyond his control. If the terminal is open for fifty-percent of the day, this day will be considered a full service day.

### C. Following a longshoremen's strike of four (4) days or greater duration:

- 1. Cargo which is on free time at the commencement of the strike will be extended an additional free time **period of not less than four (4) days, exclusive of Saturdays, Sundays and ILA holidays** beyond the time at which the free time period would normally terminate; and

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2. Cargo which is in the first period demurrage at the commencement of this strike will be extended an additional first period demurrage of four (4) calendar days beyond the time at which first period demurrage would normally terminate. The extensions referred to in subparagraph (1) and (2) above shall apply only
  - a) If cargo is actually picked up with such extended time; or
  - b) If, pursuant to an appointment system adopted by both carriers and consignees, cargo is picked up within twenty-four (24) hours of advance notification that cargo is available for pickup and readily accessible, in which latter event time shall not be extended more than twenty-four (24) hours beyond the additional free time or the demurrage period.
  
3. Cargo which is on second period demurrage (or any succeeding demurrage period) at the commencement of the strike shall revert to such demurrage period at the conclusion of the strike.

D. Delays in delivery – Carrier errors or omissions:

In the case of an error or omission, which was solely caused by the steamship line, its duly appointed agent or authorized representative, excluding MTL, and said action or inaction prevented the consignee or owner of the cargo from taking or effecting delivery of cargo, an adjustment to demurrage may be made. These specific conditions must be completely documented and recorded. The adjustment will be limited to a period of no more than 30 calendar days following expiration of normal free time. The adjustment will be limited to the chart below per day per dry container for the said 30-day period. Thereafter, all cargoes remaining on terminal will be assessed in accordance with the prevailing tariff in effect.

Demurrage charges after the expiration of free time shall be charged by following rates:

1 – 4 days	\$ 90.00 per calendar day
5 – 9 days	\$129.00 per calendar day
10 days and above	\$248.00 per calendar day

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## 9. MULTIPLE CONTAINER RULE

Applicable only on dry containers provided all such containers are on one Bill of Lading from one Shipper to one Consignee, one port of loading to one port of discharge on one vessel and at least (12) containers are removed from the terminal within the free time period as defined in Section IV, Rule 2, Paragraph B, 2 “General Cargo Containers and Tank Containers.”

	<u>Free Time</u>
13 to 15 containers inclusive	5 days
16 to 18 containers inclusive	6 days
19 to 21 containers inclusive	7 days
22 to 24 containers inclusive	8 days
25 to 27 containers inclusive	9 days
28 and above	10 days

Demurrage will commence on the next business day after the expiration of free time.

Free time request under the Multiple Container Rule received after 8 a.m. the morning before the start of a vessel (in the case of holidays and weekends, the last work day before) will not qualify for the Multiple Container Rule.

## 10. TRANSSHIPMENT CARGO:

Transshipment cargo must be reported to the terminal before the arrival of each vessel. If no application is made at that time, demurrage accrued after normal free time will be for the account of the carrier/cargo.

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## **SECTION V**

### **RULES AND REGULATIONS**

#### **FREE TIME AND DEMURRAGE ON EMPTY CONTAINERS/CHASSIS**

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##### **1. PURPOSE**

The purpose of this part is:

- A. To define and set schedule rates and rules applicable to circumstances resulting from the cessation of transportation services by a user of MTL's facility. Cessation may occur for any reason, including, but not limited to bankruptcy, discontinuance of service, acts of God, acts of Government, force majeure.
- B. To insure MTL receives a fair charge for the use of his facilities, labor and equipment, when containers, and/or chassis are not being used for commerce.

##### **2. DEFINITIONS**

- A. A container is defined as a cargo carrying unit usually measuring from 20 feet to 45 feet in length by 8 feet in width and 8 or more feet in height or a platform 20 feet to 45 feet in length by 8 feet in width, designed for the purpose of direct transfer of the unit and its contents to and from sea going vessels. The unit may also be a tank for liquids mounted on a platform, a bin or a bolster used for similar purpose.
- B. A chassis is a vehicle designed and built to carry containers or platforms with facility for tractor coupling for transport.
- C. Free time is the specified period a container or chassis may occupy space assigned to it on a terminal free of charge.
- D. Demurrage is a charge assessed against a container and/or chassis after the expiration of free time.
- E. Terminal facility user is any person or entity, including but not limited to, vessel operator, vessel owner, container owner, container lessor or lessee utilizing a terminal facility, and services provided thereon or thereat or both.

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### 3. COMPUTATION AND NOTICE OF FREE TIME

- A. Free time on containers and/or chassis shall not be more than four (4) days (exclusive of Saturdays, Sundays and ILA holidays) and shall begin after notice has been mailed by certified mail or e-mail to the terminal facility users at their last known address, if known. Notice may also be given by publication in The Journal of Commerce.
- B. Notice shall set forth the fact that demurrage begins, the length of the first period and the time the second period of demurrage shall begin. The notice shall also set forth the conditions and the charges that must be paid before a container and/or chassis will be delivered.
- C. Free time on containers and/or chassis shall commence at 12:01 a.m. on the day after notice has been given the facility users or has been published in the Journal of Commerce.

### 4. SCALE OF DEMURRAGE CHARGES

The following scale of demurrage rates and provisions will apply to the containers and/or chassis remaining undelivered after the expiration of free time:

- A. Empty containers of which no dimension exceeds 20 feet, or chassis for 20 foot containers, a charge of \$60.00 each per day for the first (30) thirty calendar days after the expiration of free time and \$120.00 each per calendar day per container and/or chassis thereafter.
- B. Empty containers exceeding 20 feet in length or chassis in excess of 20 feet in length, a charge of \$90.00 each per day for the first (30) thirty calendar days after the expiration of free time and \$180.00 each per calendar day per container and/or chassis thereafter.

### 5. EXTENSION OF FREE TIME OR SUSPENSION OF DEMURRAGE

- A. When the removal of containers or chassis from a terminal is prevented by force majeure, including but not limited to weather conditions or work stoppage of longshoremen or personnel employed by MTL, such containers and/or chassis affected thereby shall be granted additional time free of demurrage to cover the delay period if the containers and/or chassis are on free time when such condition arises. If the container and/or chassis is in the demurrage period, first period demurrage charges shall be assessed against such containers and/or chassis.
- B. Following a longshoremen's strike of four (4) days or more:
  - 1. Containers and/or chassis which are on free time at the commencement of the strike will be extended an additional free time period of not less than four (4) days exclusive of Saturdays, Sundays and ILA holidays beyond the time at which free time would normally terminate.

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2. Containers and/or chassis which are in first period demurrage at the commencement of the strike will be extended an additional four (4) calendar days beyond the time first period demurrage would normally terminate.

C. The foregoing extensions or suspensions shall apply only:

1. If such containers and/or chassis are picked up within such extended free time, or
2. If, pursuant to an appointment system agreed upon by MTL and the terminal facility user, the containers and/or chassis are picked up within twenty-four hours of advance notification that such units are available for pickup and readily accessible.

D. Containers and/or chassis, which are in second period demurrage at the commencement of a strike shall revert to such demurrage period at the conclusion of the strike.

#### 6. UNDELIVERED CONTAINERS AND/OR CHASSIS

- A. Containers and/or chassis, which remain at a terminal beyond the expiration of free time may be placed in public storage at any time thereafter at the option of MTL at the risk and expense of the containers and/or chassis and the terminal users.
- B. Containers and/or chassis remaining on the terminal in excess of thirty (30) days will be considered as abandoned and may be sold at public auction for collection of charges due MTL. Thirty (30) days prior to such sale, a registered letter of notice will be sent to the terminal users or MTL will take other reasonable steps to advise those terminal users of whose interest in the equipment he is aware. Net proceeds of such sale less expense will be held in a separate fund established by MTL out of which MTL shall be paid its charges. Monies received beyond the charges due MTL will be returned to the owner if claimed within one year of the mailed notice.

#### 7. TRANSFER OF OWNERSHIP OF CONTAINERS AND/OR CHASSIS

The transfer of ownership of containers and/or chassis after receipt at the terminal shall not entitle such containers and/or chassis to additional free time.

#### 8. DELIVERY AND MOUNTING CHARGES

On delivery the terminal facility users shall be charged for gate services, mounting of containers on chassis or flat bed trucks and segregating containers from stack as applicable.

#### 9. RESPONSIBILITY FOR PAYMENT OF DEMURRAGE AND OTHER CHARGES

- A. Demurrage and other charges specified herein shall be for the account of the terminal facility users.

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B. Demurrage charges shall be due and payable when service is provided

C. MTL has the right to require payment in full of any and all charges before such containers and/or chassis are delivered from the terminal.

10. SCHEDULE OF RATES AND CHARGES

A. Gate Charge..... \$ 55.00 per unit

B. Mounting or grounding containers..... \$ 104.00 per unit

C. Segregating of containers..... \$104.00 per straight labor hour  
 \$155.00 per overtime labor hour  
 \$200.00 per mealtime labor hour  
 Machine hour rate per schedule Page 16.

11. CONTAINERS AND/OR CHASSIS RECEIVED AT A TERMINAL PRIOR TO THE EFFECTIVE DATE OF THIS SECTION V

All containers and/or chassis which have been received prior to, but still remaining at MTL on a terminal facility on March 17, 2010, shall be deemed to have been received, as noted in the MTL equipment inventory computer system, for the purpose of applying this Section V of this schedule, as of said date and free time will be allowed accordingly.



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## **SECTION VII**

### **RULES AND REGULATIONS**

#### **VESSEL OPERATIONS AND CARGO HANDLING AGREEMENT (IN ABSENCE OF INDIVIDUALLY NEGOTIATED AGREEMENT)**

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#### 1. PURPOSE

The purpose of this part is:

- A. To define and set rules, terms and conditions applicable to circumstances where MTL shall stevedore a vessel and/or receive, store and release cargo in conjunction therewith when a separate written agreement with the carrier operating the vessel does not exist, has lapsed or is otherwise not applicable for any reason, including, but not limited to bankruptcy, establishment of a new service or discontinuance of service.
  - B. To avoid ambiguity as to the rights and obligations of MTL and a carrier-vessel operator where no written agreement exists between MTL and the carrier-vessel operator.
2. **DISCLAIMER:** Nothing contained in the following rules, terms and conditions shall in any way modify or limit any rights MTL may have to apply and exercise any maritime or other liens that may exist under law (or which are set forth elsewhere in this Marine Terminal Schedule) and/or that may be applied against any vessel, component of a vessel (including cargo containers) or cargo.

#### 3. RULES, TERMS AND CONDITIONS

This **AGREEMENT** will apply where no fully executed agreement exists between the carrier (herein "**CARRIER**"), or vessel operator (herein "**CARRIER**"), and **MAHER TERMINALS, LLC** (herein "**CONTRACTOR**") as stated above.

#### **SECTION 1: UNDERTAKINGS AND CONSIDERATIONS**

For and in consideration of the covenants, undertakings and conditions herein mentioned it is mutually agreed between the parties hereto that **CONTRACTOR** will perform and **CARRIER** will pay for each service as provided for in the appropriate rate schedules and the Amendments if any which constitute an integral part of this contract, at **CONTRACTOR**'s terminal in Elizabeth, New Jersey, Port of New York (herein Terminal) for full and empty

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containers, and satellite facilities for empty containers to be loaded on or discharged from container vessels owned, chartered, and/or operated by **CARRIER**, or operating in any vessel or space sharing agreement, upon the terms, conditions and provisions herein provided for the **CARRIER'S** Service to the Port of New York/New Jersey.

1. The regular or normal working day for both stevedoring and terminal operations shall consist of eight (8) hours from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m., and the regular or normal working week shall consist of forty (40) hours made up of five (5) regular or normal working days from Monday through Friday, inclusive, except legal holidays as specified by the NYSA-ILA Agreement. Any other time in excess of the regular or normal working hours mentioned shall be considered overtime.

2. All employees or laborers employed in the performance of services under this **AGREEMENT** shall be employees of **CONTRACTOR**, or its subcontractors, at all times and not of the **CARRIER**, unless other arrangements are made.

3. Any slot charter arrangements made by **CARRIER** with third party carriers will necessitate a separate stevedoring and terminal agreement with the **CONTRACTOR**.

## **SECTION 2: STEVEDORING AND TERMINAL SERVICES**

Details and rates contained in appropriate rate schedules most recently presented to the **CARRIER** and/or vessel operator.

**CONTRACTOR** will provide the following services for the vessels carrying **CARRIER's** containers:

1. Berthing facilities for the container vessels of the **CARRIER** in Port Elizabeth, New Jersey.
2. Container gantry crane or cranes to handle containers and hatch covers of vessels.
3. Labor, yard hustlers and/or straddle carriers to transport containers to and from the yard and vessel.
4. Labor and supervision to perform the stevedoring operations.
5. Clerks to perform clerical functions.
6. Labor for handling of lines for docking and undocking of vessels.
7. The planning and stowage of containers in accordance with prestow instructions of **CARRIER**. Prepare and furnish to **CARRIER** appropriate container stowage plan and

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related documents, including container weights, refrigerated cargo, hazardous and uncontainerized cargo and exception lists, prior to vessel's departure. Refrigerated cargo and hazardous cargo lists to be provided to the vessel prior to loading such cargo.

8. After work actually begins and the men are thereafter prevented from working through no fault of the **CONTRACTOR**, the entire duration of all gang detention will be charged at the detention rate on a per gang basis.

9. In the case of work interruption caused by the breakdown of one or more cranes there will be no straight time charge to **CARRIER** during that guarantee period. Overtime differential charges, if any, during that guarantee period, are for **CARRIER's** account. In such case, **CONTRACTOR** reserves the right to discontinue operations until repairs are completed. If **CARRIER** 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 **CARRIER**. In any event, all overtime differential charges during the breakdown period or while the vessel is working, are for **CARRIER's** account.

### **SECTION 3: LANE AND YARD SERVICE**

**CONTRACTOR** will provide during straight time hours:

1. Labor, supervision, and equipment to perform yard services, and receiving and delivery of loaded and empty containers and chassis through the container lanes.
2. Labor, supervision and scale to weigh export container loads.
3. Labor and supervision to inspect containers either in the lanes or via remote video equipment for all containers entering or exiting the terminal through the automated container lanes and to record the condition of the container. **CONTRACTOR** will also provide labor and supervision to record all seal numbers, if seals are intact, or to notify security if seals are not intact or illegible. Roadability under the Federal Highway Act and the Federal Motor Carrier Safety Regulations continues to be the responsibility of the **CARRIER'S** trucking representative.
4. **CARRIER** authorizes **CONTRACTOR** to honor manifests, dock receipts, delivery orders or information submitted or electronically transmitted in mutually agreeable formats relating to cargo and containers for which **CONTRACTOR** performs service. Import

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containers shall be electronically freight released by the **CARRIER** or its representative to the **CONTRACTOR** for delivery. **CONTRACTOR** shall screen hazardous cargo documents to assure correctness.

5. Preparation and electronic transmission to **CARRIER** of all documentation incidental to the receipt and delivery of containers and cargo. Documentation shall include daily equipment status report, receiving and delivery records, all retrievable electronically when required by the **CARRIER**. The vessel stowage plan shall be delivered to the vessel upon completion of cargo work. Upon **CARRIER**'s request, **CONTRACTOR** will cooperate with **CARRIER** to provide each with an EDI stow plan in EDifact Baplie 1.5 or 2.0 format.

6. **CARRIER** will limit its receiving of export and empty containers to the first scheduled vessel.

#### **SECTION 4: DEMURRAGE, FREE TIME, TRUCK LOADING**

1. Free time and demurrage for import and export full containers and loose cargo shall be governed by the regulations and rates contained in this Schedule. Resulting charges for demurrage shall be collected and retained by **CONTRACTOR**.

2. All revenues for services provided in connection with the loading and discharging of railroad cars, lighters, barges, scows, and motor truck carriers, and any other service provided in this Schedule shall be collected and retained by **CONTRACTOR**.

#### **SECTION 5: WATCHING SERVICE**

**CONTRACTOR** will provide twenty four (24) hours per day of normal watching service, which provides for unarmed personnel.

#### **SECTION 6: OBLIGATIONS OF CARRIER**

1. Engage **CONTRACTOR**, as its exclusive contractor in the Port of New York area for the performance of any and all of the services enumerated herein in connection with all container stevedoring and terminal services provided for **CARRIER'S** service to the Port of New York/New Jersey.

2. Promptly remove its vessel from berth, weather permitting, upon request of **CONTRACTOR** if vessel has completed loading and/or discharging and berth is required by **CONTRACTOR**.

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3. Before operations commence, provide **CONTRACTOR** with all necessary information, instructions and forms covering vessel and container, including container load plan, loading, discharging, stowage, vessel's trim, reefer temperature control, hazardous containers, condition of containers, cargo requiring special handling and marking, routing, manifests, and billing instructions to enable **CONTRACTOR** to provide efficient and economical service.

4. Submit to **CONTRACTOR** all necessary documents pertaining to the discharge and loading of vessels as soon as possible but in any case not later than three (3) full normal working days prior to arrival of vessel.

5. Also undertake to deliver export FCL containers and documentation at the Terminal not later than one (1) full normal working day and LCL cargo no later than two (2) full normal working days before arrival of vessel.

6. The **CARRIER** will provide hazardous and label cargo lists pursuant to International, Federal and Local regulations and will arrange that such cargoes be delivered to Terminal not more than forty-eight (48) hours prior to arrival of vessel. The **CARRIER** 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. The **CONTRACTOR** will verify the proper placarding in accordance with the above regulations.

7. **CARRIER** agrees to provide three (3) weight categories (light, medium, heavy), as determined by the **CARRIER**, for the receiving and handling of export loads and to stevedore vessels within these weight parameters.

8. **CARRIER** agrees to sign NYSA/ILA Labor Agreement and/or be a member of the United States Maritime Alliance (USMX) and to pay the prevailing tonnage assessments and container royalties that may be due.

9. **CARRIER** agrees to pay all invoices as soon as possible but not later than fifteen (15) calendar days from presentation of invoice. In the event of a discrepancy or dispute of any invoice prepared by the **CONTRACTOR**, the **CARRIER** shall pay the undisputed amount not later than fifteen (15) calendar days from presentation. The **CARRIER** shall bring the disputed amount to the attention of **CONTRACTOR** in writing as soon as noted for clarification or adjustment.

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10. CARRIER agrees to limit its receiving of empty containers at **CONTRACTOR's** Marine Terminal to only those empties specifically booked for loading to the first scheduled vessel from date of empty container receipt. Empty containers not specifically booked for loading to **CARRIER's** vessel may be received at **CONTRACTOR's** designated satellite facility.

**SECTION 7: RESPONSIBILITY FOR DAMAGE OR LOSS**

1. The **CONTRACTOR** shall be legally liable for loss of or physical damage to the vessels and their equipment and appurtenances as well as containers and for loss of or physical damage to cargo, including loss of cargo oversee, through the negligence of the **CONTRACTOR**, its employees, agents or servants, provided that **CONTRACTOR's** attention is called to such loss or damage as soon as practicable but in case of damage to vessel, such notice must be given prior to vessel's departure. With respect to claims for loss or damage to cargo, the liability of the **CONTRACTOR** will be limited to physical damage or loss caused by the negligence of the **CONTRACTOR**, its employees, agents or servants and to such claims that result from fraud or breach of trust on the part of employees, agents or servants of the **CONTRACTOR** engaged in the delivery, receiving and watching of such cargo.

2. Containers furnished by the **CARRIER** for loading and/or unloading will be sound, watertight, seaworthy and in compliance with all legal and statutory safety standards, so that **CONTRACTOR** may safely use small forklifts inside the containers while mounted on chassis to perform the vanning and devanning operations. All containers and hatch covers to be hoisted must have **ISO** fittings. The **CARRIER** agrees to inspect the stowage of containers to ensure adequacy of stowage prior to the vessel's departure.

3. It is mutually agreed that the **CONTRACTOR** will not be responsible for:

- a. Claims due to spoilage to perishable goods carried in containers, unless the **CONTRACTOR** failed to render the services customarily required for such cargo, under proper information from the **CARRIER**.
- b. Loss of or damage to containers and/or cargo where it is found that the container is damaged, has holes, sprung doors, broken seals or locking

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devices, unless such damages to container are caused by the **CONTRACTOR**.

- c. Loss of or damage to cargo in containers found upon discharge not to have been properly blocked, chocked and/or secured.
- d. Clerical errors or omissions in the dispatch of the cargo.
- e. Loss of, or damage to, containers and/or cargo caused by a force majeure as defined in Section 9 hereof.

4. The **CARRIER** agrees to set forth its Bill of Lading a provision which will effectively make available to the **CONTRACTOR** all rights, protections and limitations of liability available to the **CARRIER** under the Carriage of Goods by Sea Act of the United States including but not limited to the \$500 package limitation. The **CARRIER's** Bill of Lading shall contain a proper "Custody Clause" (Period of Responsibility Clause) which will protect the **CARRIER/CONTRACTOR** from the time the goods are received at the port of loading until delivered at the port of discharge.

It is expressly agreed by the **CARRIER** that should such Bill of Lading provisions not extend the application of the COGSA defenses to the **CONTRACTOR**, the **CARRIER** will indemnify **CONTRACTOR** for those sums that it is liable for over and above the limitation of liability defenses.

When **CARRIER** accepts cargo on an ad valorem basis, the **CONTRACTOR** shall not be responsible for increased liability unless **CARRIER** gives written notice in advance to the **CONTRACTOR** in sufficient time for the **CONTRACTOR** to provide special handling and/or supervision; and extra charges therefore shall be agreed upon between the parties at the time such notice is given. Such notice shall include a description of the quantity, nature and location of the goods.

#### **SECTION 8: INSURANCE**

1. The **CONTRACTOR** shall maintain insurance coverage and furnish to the **CARRIER** certificates of insurance as set forth below:

- a. Workers' Compensation Insurance for its employees as required by applicable Federal and State Laws.

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- b. Comprehensive General Liability Insurance in the amount of \$20,000,000 for bodily injury.
- c. Liability Insurance for loss of or physical damage to vessels, chassis, containers and cargo in the amount of \$20,000,000.

2. Whenever **CARRIER** through its agents, employees or servants invite or permit persons who are not employees of the **CARRIER** to enter Terminal premises or board vessels at the Terminal, the **CARRIER** agrees to defend, indemnify and hold harmless the **CONTRACTOR** 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 the Terminal premises or on board vessels.

3. **CARRIER** shall maintain insurance coverage and furnish to the **CONTRACTOR** certificates of insurance as set forth below:

- a. 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 \$20,000,000 for each occurrence.
- b. Comprehensive General Liability Insurance in the amount of \$20,000,000 for bodily injury with an endorsement for terrorism.
- c. Liability Insurance for loss of or physical damage to property in the amount of \$20,000,000 with an endorsement for terrorism.
- d. Auto Liability insurance to cover any owned, leased, borrowed or vehicle otherwise used by the **CARRIER'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 Risk Management Department of **CONTRACTOR**.

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**SECTION 9: FORCE MAJEURE**

Should unusual conditions occur, including without any negligence or fault of the **CONTACTOR**, 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 the **CONTRACTOR** 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 **CONTRACTOR** or vessel so as to render the Terminal wholly or partially untenable or unfit for use or so as to make it impractical for the vessel or **CONTRACTOR** to make reasonable or full use thereof, then **CONTRACTOR** may suspend or reduce services without responsibility for any claim by vessel or others arising out of such service suspension or reduction. Under such circumstances, **CARRIER** will have the right to operate at a terminal other than **CONTRACTOR**'s terminal.

**SECTION 10: OVERTIME AND MEAL HOUR**

Overtime and meal hour time in the CY, Lanes and related outside depots when worked at the specific request and authorization of the **CARRIER** in writing, will be charged and paid at the rates set forth in the appropriate rate schedule. Vessel overtime, ILA deadtime in overtime or Meal Hour, will be paid at rates set forth in the appropriate rate schedule.

**SECTION 11: EXTRA LABOR**

Whenever **CONTRACTOR** is requested in writing by the **CARRIER** to supply extra labor and/or equipment, charges will be made as provided in the appropriate rate schedules.

**SECTION 12: PENALTY WAGES FOR THE HANDLING OF  
DISTRESSED CARGO**

Whenever penalty wages are to be paid pursuant to the provisions of the NYSA/ILA Agreement, such additional penalty costs shall be charged to the **CARRIER** in addition to the applicable rates together with the costs of protective accessories, gear and equipment.

**SECTION 13: ADJUSTMENTS**

The composite increase or decrease in labor elements such as fringe benefits, payroll related items, assessments, taxes and insurance, coupled with non-labor elements governed by

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changes in the annual Consumer Price Index (CPI) shall provide the basis for the yearly adjustment effective each October 1<sup>st</sup> to all rates.

Seventy percent (70%) of the container rate shall be subject to a labor cost increase or decrease. The remaining thirty percent (30%) of the container rate shall be subject to adjustment as per CPI Northeast Region as published annually by the U.S. Department of Labor.

All other rates shall be subject to an increase or decrease of one hundred percent (100%) of the combined net effect of the percentage between labor and non labor costs.

**SECTION 14: SAFETY REGISTERS AND CERTIFICATES**

It is expressly understood that in the event any vessel fails to comply with the provisions of Public Law 91-596 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 the **CARRIER**.

**SECTION 15: ROADABILITY REPAIRS AND MAINTENANCE AND REPAIRS**

**CARRIER** agrees to engage **CONTRACTOR** for all roadability repairs performed at the terminal upon **CARRIER**'s containers, as per terms, conditions and rates mutually agreed upon. **CARRIER** further agrees that it will engage only **CONTRACTOR** at **CARRIER**'S direction for any other repairs or maintenance performed at **CONTRACTOR**'S terminal. Maintenance and repair of **CARRIER**'s chassis is governed by the Cooperative Chassis Pool Agreement, unless other arrangements are made.

**SECTION 16: TERMINAL PREMISES RULES AND REGULATIONS**

To ensure safety and security **CONTRACTOR** has promulgated regulations governing persons and equipment on the Terminal and the **CARRIER** agrees to cooperate in enforcing such regulations with respect to its agents, employees, servants, contractors, guests and invitees.

**SECTION 17: PERIOD OF AGREEMENT**

This **AGREEMENT** is effective with the receiving of the first cargo for carrier's vessel or prior to ordering any labor for carrier's vessel and will remain in full force until a separate agreement with the carrier has been fully executed by all parties.

**SECTION 18: TERMINAL SECURITY**

In the event Governmental authorities impose security or other conditions which result in increased costs for the **CONTRACTOR**, **CARRIER** agrees to pay these security related surcharges, if any, in addition to the rates contained herein.

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**SECTION 19: FORUM SELECTION**

Any dispute arising under and in connection with this Stevedoring and Terminal Agreement shall be governed by the laws of the State of New Jersey and determined by the courts located within the State of New Jersey both State and Federal. The **CARRIER** states that it is not its intention to bind **CONTRACTOR** to the forum selection clause in any of its bills of lading pursuant to cargo which moves through **CONTRACTOR'S** marine terminal.