

United Bulk Terminals

TERMINAL RULES AND REGULATIONS

UNITED BULK TERMINALS, DAVANT
14537 HIGHWAY 15
DAVANT, LOUISIANA 70040

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1 GENERAL RULES AND REGULATIONS

1.1 USE OF TERMINAL

Use of the United Bulk Terminals (sometimes hereinafter “United Bulk Terminals” or “Terminal”) Terminal facilities and services covered by these Terminal Rules and Regulations shall constitute *evidence* of an agreement on the part of all Users of the Terminal to be covered by all the rules and regulations stated herein. Notwithstanding anything to the contrary herein, the rights of any User to utilize the Terminal facilities shall be subject to the prior approval of United Bulk Terminals.

1.2 AMENDMENTS

Amendments to these Terminal Rules and Regulations may be issued from time to time to cover changes. These Terminal Rules and Regulations are subject to change without notice. Any changes or revisions will be reflected in the online version of the Terminal Rules and Regulations which are available on the United Bulk Terminal’s website:

www.unitedbulkterminals.com

1.3 INTERPRETATION

United Bulk Terminals shall be the sole judge as to the interpretation of these Terminal Rules and Regulations.

1.4 LOCAL AUTHORITY

The Terminal is within the jurisdiction of the Plaquemines Parish Port Harbor and Terminal District. Users of the Terminal are subject to the applicable rules and fees issued by the Plaquemines Parish Port Harbor and Terminal District, and are responsible for remitting any such fees directly to the Plaquemines Parish Port Harbor and Terminal District.

1.5 HOURS OF OPERATION

The Terminal operates twenty-four (24) hours a day, every day throughout the year except for Holidays.

1.6 SAFETY AND SECURITY

All Vessels are to furnish at all times while in Berth, safe ingress and egress.

When a Vessel is berthing at any of the Terminal facilities, the Master shall be solely responsible for the safety of the Vessel and her crew. Any Vessel in berth shall at all times maintain appropriate officers and crew aboard the Vessel in order to maintain an alert watch and respond to emergencies. Moreover, Terminal’s written consent, as described more fully in [Section 4.11](#), shall be obtained before any crew or any other individual will be allowed on any Terminal Facilities, docks and/or buoys.

- a. The engineering plant and vessel trim must be maintained in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth.
- b. Guards must be installed to prevent ballast water from contacting personnel, equipment or the dock.
- c. All personnel shall wear life jackets, hard hats and all generally accepted safety equipment and gear while on the docks at all times. It is Vessel Party’s responsibility to provide life jackets, hard hats and all generally accepted safety equipment and gear. Vessel crew members shall adhere to this requirement when on the dock and when transiting the conveyor walkway system to and from the docks. Hazardous materials, substances or wastes, and cargoes which are of a highly flammable, radioactive,

explosive, noxious or dangerous nature, or reactive to personnel, will not be provided with any service of any kind except under advance arrangement with United Bulk Terminals accompanied by full disclosure of the hazardous characteristics, risks and special handling requirements of such cargo and in such case negotiated rates and charges shall be applied. It is the responsibility of the Shipper or other person tendering cargo to the Terminal (1) to fully disclose in writing and in advance all of the cargo's characteristics, risks and special requirements applicable to its safe loading, unloading, handling and storage in bulk and (2) to obtain all necessary special permits or permissions required by the Captain of the Port, U.S.C.G., and/or other state or federal authorities in connection with the loading, unloading, handling and/or storage at United Bulk Terminals.

- d. Simultaneous with the submission of the Berth Application, Users of Terminal facilities shall provide United Bulk Terminals with Material Safety Data Sheets on all commodities handled for their account.
- e. In compliance with United States Coast Guard, Department of Homeland Security directives, 33 CFR 105, United Bulk Terminals has developed a Facility Security Plan ("FSP"). According to United Bulk Terminal's FSP, certain areas of the Terminal's landside facilities and all of United Bulk Terminal's berths and fleets are considered restricted areas. Any unauthorized entry into restricted areas is considered a "Breach of Security" and the proper authorities will be notified. Anyone or anything entering into the Terminal is subject to screening, inspection and/or search according to the Terminal's FSP. Failure to consent will result in denial or revocation of authorization to enter.

1.7 COMPLIANCE WITH LAWS AND REGULATIONS

Prior to coming into the Berth, all Vessels shall have fully complied with all applicable U.S. Coast Guard regulations and all applicable local, state and federal laws and regulations in effect while the Vessel is in Berth at the Terminal. In no event shall Loading or Unloading of an Ocean Vessel, as the case may be, occur until such time as such Ocean Vessel has been cleared by U.S. Customs. If any Vessel fails to comply with all such laws and regulations, the Terminal may order the Vessel to vacate the Berth. If the Vessel does not vacate the Berth when so ordered, the Vessel will be subject to, in addition to the liquidated damages provided for in [Section 3.3](#), all costs (including, but not limited to, attorneys' fees) and expenses in connection with the moving of the Vessel, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Vessel and the Vessel Party.

1.8 RESPONSIBILITY FOR VESSEL OR CARGO DAMAGE, PERSONAL INJURY OR DEATH, AND POLLUTION

United Bulk Terminals shall not be responsible for marine loss or damage to Cargo and/or Vessels including, but not limited to: (1) damage to Vessel parts or Cargo arising by reason of concealed or inadequately protected fastening, attachments, covers, and parts of the Vessel projecting into bulk Cargo; (2) damages incurred as a result of Vessel configuration; and/or (3) damage to Vessel's gear, equipment or structures caused by the nature, characteristics or quality of the Cargo being Loaded or Unloaded.

The Vessel Party shall have the duty to be fully familiar with the environmental rules and regulations and laws in respect to the type and levels of all discharge allowed in United States rivers, coastal waters and air and for fully abiding by said rules, regulations and laws. The Terminal will report any observed act which is suspected to be a violation of any such obligation, rule, regulation or law to the appropriate governmental authority.

The Loading and/or Unloading of Cargo shall be under the continuous direction and sole responsibility of the Master or authorized representative. The Loading/Unloading plan should be such that the Vessel is maintained in trim and the engine is in a condition that it could leave the dock on short notice (less than 20 minutes).

All Vessels and Users of the Terminal hereby agree to indemnify, defend and hold harmless United Bulk Terminals and all persons, firms or other entities which may manage, own or control the operations of said Terminal, and their officers, directors, agents, insurers, and Vessels (collectively with United Bulk Terminals, the "UBT Indemnitees") from and against any and all claims, actions, damages, liability or expense, including court costs and attorney's fees, in connection with the loss of life, bodily injury, disease, or any other injury of any type whatsoever, involving anyone, including Visitors, and damage, contamination or loss of property, including the User's Cargo, incident to or resulting from their use of the Terminal facilities.

Vessels shall not violate any air emission standards in the vicinity of United Bulk Terminals facilities.

Additionally, such obligation of Vessels and Users to indemnify, defend and hold harmless the UBT Indemnitees shall include, but not be limited to, loss, penalty, fine, clean-up costs, natural resource damage, remediation costs, removal costs, demurrage, administrative costs and any and all other costs and liabilities that arise directly or indirectly from pollution caused by (a) Vessel Party or other master or crew of the Vessel, whether in Loading and/or Unloading Cargo, or in the operation or management of the Vessel; or (b) a spill of the Cargo, fuel or any other pollutant of the Vessel or of any other party at any time while said Cargo, fuel, or pollutant is on board the Vessel or when said Cargo, fuel, or pollutant is within the care, custody or control of Vessel Party or those for whom Vessel Party is responsible except where such damages, losses, costs or liability are caused by the sole negligence of Terminal. In the event of a pollution event arising directly or indirectly out of services being performed at the Terminal, Vessel Party shall, and shall cause its representatives and insurers, to immediately:

- a. Notify all local, state and federal authorities having jurisdiction of the pollution event.
- b. Notify Terminal of all details of the pollution event.
- c. Take all steps to eliminate the cause and/or source of the pollution.
- d. Take all steps to clean up the pollution.
- e. Take all steps required by law to restore the environment.
- f. Take all steps to mitigate damages of Vessel Party, Terminal and third parties.
- g. Promptly pay, and pay for, all fines, damages and losses of their parties, to the extent required by law, and for all costs and expenses of cleanup.
- h. If necessary, advance or pay monies and funds required to be paid to the appropriate regulatory agencies.
- i. Consult with Terminal and keep Terminal constantly informed of all steps taken and contemplated to comply with provisions of this paragraph.
- j. Cooperate with Terminal in issuing statements to government authorities and media representatives.

Whether or not Vessel Party has complied with the provisions of the foregoing, Terminal may, but shall not be required to, take over and manage all prevention, cleanup and restoration activities, all without derogation or diminution of Vessel Party's obligations under these Terminal Rules and Regulations, and with full reservation to Terminal of all rights against the Vessel, Vessel Party or its insurers for reimbursement of costs, expenses and attorneys' fees. In such event, Vessel Party shall, cause its insurers and any subcontractors, to make available to Terminal all Vessels, personnel and equipment used or planned to be used in such prevention, cleanup and restoration efforts, all at the sole expense of Vessel Party.

In the event Terminal takes over and manages such prevention, cleanup and restoration efforts, such action shall not be deemed a waiver, or constitute an estoppel by Terminal or an admission of fault or responsibility on the part of Terminal. Terminal may, but is not required to, utilize its own and/or contracted personnel, vessels and equipment in such prevention,

cleanup and restoration efforts, and may, at its discretion, allocate such resources as it, in its sole discretion, deems appropriate.

1.9 REMEDIES FOR ENFORCEMENT OF TERMINAL RULES AND REGULATIONS

United Bulk Terminals shall have all remedies available to it at law, in equity or under maritime law to enforce these Terminal Rules and Regulations, including, but not limited to, canceling a Vessel's Filing or ordering a Vessel from Berth. United Bulk Terminals shall also have all remedies available at law, in equity or under maritime law to collect liquidated damages, including, but not limited to, a maritime lien against the Vessel and cargo for such charges. In the event of any legal proceedings to enforce any provision of these Terminal Rules and Regulations, United Bulk Terminals shall be entitled to recover its expenses incurred in such proceedings, including, but not limited to, attorney's fees, court costs, expert witness fees and all other litigation expenses regardless of type.

1.10 SAFE BERTH

The master of the Ocean Vessel shall be solely responsible for determining if the depth of water (at any tide or river stage) is sufficient for the Vessel, the Terminal having no responsibility therefore and the Terminal shall not be deemed to warrant the safety of public channels, fairways, approaches thereto, anchorages or other publicly-maintained areas either inside or outside the port area where any Vessel may operate. Furthermore, the Terminal shall not be deemed to warrant the safety of any of the Berth's docks or midstream facilities, including the Terminal's mooring buoys.

1.11 ENTIRETY OF AGREEMENT

In the event of a conflict between these Terminal Rules and Regulations and any other agreement concerning the Vessel or the Cargo, the terms and conditions of these Terminal Rules and Regulations shall control. **Notwithstanding the foregoing, in the event of a conflict between these Terminal Rules and Regulations and any written agreement concerning the Vessel or the Cargo that is between Terminal and any of its customers (e.g. Bulk Cargo Transfer and Storage Agreement) ("Customer Contract"), the terms and conditions of the Customer Contract shall control.** In case any portion of any provision or any one or more of the provisions contained in these Terminal Rules and Regulations should be held or determined invalid, illegal, in conflict with a Customer Contract or unenforceable in any respect, the validity, legality and enforceability of the remaining portion of any such provision and the other remaining provisions or underlying rights and obligations referred to herein shall not in any way be affected, modified, or impaired thereby.

2 VESSEL FILING

2.1 NOMINATION AND FILING

a. NOMINATION

Nomination of the Ocean Vessel shall be furnished to the Terminal by facsimile transmittal ((504) 682-1388) or e-mail (ubt.traffic@unitedbulkterminals.com) between 7:30 a.m. and 4:00 p.m. Mondays thru Fridays, excluding Holidays, not earlier than thirty (30) days and not later than fourteen (14) days prior to the ETA of the Ocean Vessel.

Shipper is to provide Terminal, in writing, a ten (10) day laycan spread at least thirty (30) days prior to the date of the first day of the ten (10) day laycan spread. No later than fourteen (14) days from the date of the first day of the original ten (10) day laycan spread, Shipper is to identify in writing to Terminal a four (4) day load window within such original ten (10) day laycan spread. In each case mentioned above, the written

approval of the Terminal shall be required relative to the ten (10) day laycan and the four (4) day load window within the original ten (10) day laycan.

Acceptance by Terminal of a Nomination of a Vessel shall be evidenced by Terminal's confirmation by facsimile or e-mail transmittal to the Vessel Party.

b. FILING

All Ocean Vessels, their owners, operators, charterers or agents which intend to utilize the facilities and services of the Terminal shall file by facsimile transmittal ((504) 682-1388) or e-mail ubt.traffic@unitedbulkterminals.com a Berth Application for an ETA with United Bulk Terminals. An executed original of the Berth Application must follow by U.S. Mail. The Berth Application sent by facsimile or e-mail must be received by the Terminal between 7:30 a.m. and 4:00 p.m. Mondays through Fridays, excluding Holidays, and no later than seven (7) days prior to the ETA of the Ocean Vessel.

Acceptance by Terminal of a Berth Application shall be evidenced by Terminal's issuance to the Vessel Party of a Berth Application Acceptance. Any Ocean Vessel arriving and submitting a Notice of Readiness, as defined below, prior to the date booked will be worked at the discretion of the Terminal; otherwise, the Ocean Vessel shall wait for the period set forth in the Berth Application Acceptance. Ocean Vessels arriving or submitting a Notice of Readiness after the ETA set forth in the Berth Application Acceptance similarly will be worked at the discretion of the Terminal.

With respect to river barges, the Vessel Party shall provide the following information not later than seven (7) days prior to the ETA of the river barges, listing with respect to each such river barge the individual barge numbers, tonnage, loading drafts, name of carrier, ETA and the type of Cargo carried or to be carried, which report shall be subsequently updated on the Monday of each week until such river barges are received into the Terminal Fleet. All Users and their river barges utilizing the facilities and services of the facilities and services of the Terminal shall be subject to and shall abide by the terms and conditions of the Terminal Rules and Regulations.

With respect to any ocean going vessel expected to arrive at the Terminal for the loading of export cargo, such vessel shall, no later than 3 working days after the departure from the Terminal, provide the Terminal with a full and correct freighted copy of the bill of lading including shipper, consignee and notify party(s). Any bill(s) of lading, mate's receipt or other shipping document issued in connection with the transportation of the cargo shall have no effect or control over the services to be provided by the Terminal, it being the intention of the parties that the Customer Contract and these Terminal Rules and Regulations shall contain all of the terms and conditions agreed upon by the parties. The terms and conditions as included in the Customer Contract and these Terminal Rules and Regulations shall control and supersede any terms and conditions contained in any bill of lading, mate's receipt or other shipping document.

2.2 NOTICE OF READINESS

In the case of an Ocean Vessel to be loaded, issuance of the Notice of Readiness shall mean that the Ocean Vessel (1) has obtained all requisite governmental approvals, inspections and clearances, including, but not limited to, those required by the U.S. Customs Service and the Immigration and Naturalization Service; and (2) is located at the Berth or Closest Available Anchorage (as defined in [Section 2.5](#) below); and (3) is ready and suitable in all respects to receive the Cargo in all holds to be loaded; and (4) has confirmed with the Terminal that the Cargo to be loaded to Vessel is in storage at the Terminal or, if Cargo is to be direct transferred, is in barges in the Terminal's fleet; and (5) has determined that the Cargo is in a condition satisfactory to the Vessel Party and all regulatory authorities for shipment. Notice of Readiness shall be considered invalid unless the aforementioned five conditions are met. In addition, User specifically acknowledges that varying temperatures, moisture and weight changes and spontaneous combustion constitute inherent problems associated with the handling of coal,

petroleum coke and other Cargo. Prior to Loading or Unloading, User's surveyor shall determine that the temperature, moisture and condition of the Cargo is satisfactory.

2.3 AGREEMENT TO BE BOUND

The issuance by the Terminal of the Berth Application Acceptance, Shipper's identification of a load window as set forth in [Section 2.1.a](#) above or the berthing of any Ocean Vessel at the Terminal, shall constitute a contract between United Bulk Terminal and the Ocean Vessel, her owners, operator(s), charterer(s) and agent(s) and any other Vessel Party (jointly and severally) to abide by the provisions of, and to be liable for the charges of whatsoever kind or nature in these Terminal Rules and Regulations.

2.4 CERTIFICATION FOR FILING

In the case of an Ocean Vessel, the following certificates and documents must be presented to file for a Berth at the Terminal. Facsimile transmissions, alone, will not be accepted.

- a. Original Berth Application (the "Berth Application") signed by authorized representatives of the Vessel Party.
- b. A copy of the Notice of Readiness executed by authorized representatives of the Vessel Party.
- c. International tonnage certificate.
- d. A proposed stowage plan which includes Cargo cubic capacity for any Ocean Vessel to be loaded and Loading sequence or the actual plan for Cargo to be unloaded including the Unloading sequence.
- e. Additionally, should it be necessary for Vessel personnel or Visitors, including Vessel's agent, to leave or board the Vessel, twenty-four (24) hours prior written notification to Terminal must be provided and include a list of the: (a) name, (b) address, (c) telephone number and (d) reason for visit of each Visitor to the Vessel and Vessel Personnel leaving the Vessel. Each Visitor must have a form of identification acceptable to Terminal. Said list shall be supplemented as needed and furnished in advance of the visit to the Terminal in writing between 9:00 a.m. and 4:00 p.m. Mondays through Fridays and between 9:00 a.m. and 12:00 noon Saturdays, excluding Holidays as defined herein (the "Visitor List"). Any Vessel personnel leaving the ship shall be required to furnish the Terminal with a Crewman's Landing Permit – Form I-95 issued by the U.S. Immigration & Naturalization Service and a picture identification card.

2.5 CLOSEST AVAILABLE ANCHORAGE

Ocean Vessels filing a Berth Application to utilize the Terminal facilities normally will be required to anchor at Davant Anchorage (Mile 53.5-54.5 LDB), or the closest available anchorage to Davant, Louisiana.

Vessel Party acknowledges that any Vessel arriving at the Terminal with cargo on its deck may constitute a hazardous and unsafe condition, may be in violation of certain environmental compliance, regulations and laws and will render any Notice of Readiness invalid. Vessel Party agrees that if notified of such condition, it shall be the sole responsibility of Vessel Party to clean and remove any such product which renders the deck of any such Vessel hazardous to the safety of any person. Should Vessel Party fail to promptly clean and remove product from the deck of any such Vessel, the Terminal reserves the right, but not the obligation, to clean and remove the product from the Vessel's deck, which service will be solely for the account of the Vessel Party. Alternatively, Terminal may reject the Vessel and refuse to accept it at the Davant Anchorage. Any time used to clean and remove such product rendering the deck hazardous to the safety of any person shall not count against laytime.

Vessel Party shall coordinate and be solely responsible for all required inspections for cleanliness and compliance with all local, state and federal laws and regulations relative to the fitness of the Vessel. All run off reporting and other environmental compliance and reporting shall be Vessel Party's sole responsibility. Any EPA, regulatory or court imposed fines levied against Terminal as a result of Vessel Party's non-compliance and/or failure to report shall be for Vessel Party's account.

Whenever a Notice of Readiness has been issued, the Ocean Vessel shall be prepared to come to Berth and commence Loading or Unloading operations, as the case may be, upon three (3) hours notice. Upon assignment to a Berth, the Ocean Vessel shall remain prepared and be properly crewed to promptly carry out Cargo transfer operations within or between Terminal's Berths, and undock and vacate the Berth on order of the Terminal twenty-four (24) hours a day, seven (7) days a week, with any crew overtime being at the sole cost and expense of the Ocean Vessel. For purposes of these Terminal Rules and Regulations, "promptly" shall mean within thirty (30) minutes of notice being tendered by the Terminal.

In the event that the Ocean Vessel fails to comply with these requirements, Terminal management may, in its sole discretion, and without liability to anyone, bypass the subject Ocean Vessel. If the Ocean Vessel is ordered to Berth and a delay in delivery of the Ocean Vessel to Berth occurs in excess of three (3) hours from the time that the Ocean Vessel was ordered to Berth and such delay is due to circumstances or conditions within the control or due to the fault of the Ocean Vessel, its owner(s), operator(s), charterer(s), agent(s) or employee(s), then the Ocean Vessel, its owner(s), operator(s), charterer(s) and agent(s) shall be responsible, jointly and severally, for a dead Berth charge of \$5,000 for each hour or fraction thereof until the Ocean Vessel is moored in Berth, regardless of intervening circumstances of any nature, which charge shall be assessed as liquidated damages.

2.6 BERTH ASSIGNMENT

Terminal operations may be scheduled at Terminal's Berths and in any combination thereof. Prior to the issuance of the particular Berth assignment, the Vessel Party must provide a guarantee acceptable to the Terminal regarding payment of Dockage fees as provided for in [Appendix A](#).

2.7 REFILING

If any Ocean Vessel that has filed at Terminal is ordered to Berth by Terminal management and is unable or refuses to accept a Berth, due to any reason whatsoever, or otherwise fails to comply with these Terminal Rules and Regulations, the Terminal management may, at its sole discretion, cancel the Ocean Vessel's original filing. If filing is cancelled, the Ocean Vessel must refile and will be assigned a rotation in the Terminal lineup based on the new filing time.

3 LOADING AND UNLOADING

3.1 BERTHING AND SAFETY EQUIPMENT

Upon berthing, the Ocean Vessel shall immediately and at all times provide adequate lighting, equipment and appropriate officers and crew aboard to permit Loading or Unloading, as the case may be, of Cargo at any time of the day or night, including Saturdays, Sundays and Holidays. All Ocean Vessel officers and crews shall wear life jackets, safety glasses and hard hats while on the Terminal docks and when transiting the conveyor walkway system to and from the docks.

3.2 LINE HANDLING

The master and crew of every Vessel will provide assistance in handling lines and operating deck machinery. An English-speaking deck officer must be available to ensure timely response to directions of any representatives of the Terminal relative to handling of lines. Terminal

representatives will position lines on the shoreside. Line handling for docking and undocking of Ocean Vessels in Berth and at the buoys, shall be assessed at the rate provided in [Appendix A](#).

3.3 VACATING BERTH

Whenever an Ocean Vessel is unable or refuses to load or unload, or shift within or between anchorage sites, mid-stream transfer facilities, berths or docks, the Terminal management may order the Ocean Vessel to vacate the Berth after notice to vacate is delivered to the Ocean Vessel's master or agent. If an Ocean Vessel refuses or fails to vacate the Berth when ordered to vacate, United Bulk Terminal shall be entitled to charge and recover from Ocean Vessel and Vessel Party as liquidated damages the sum of \$5,000.00 per hour (with partial hours prorated) beginning one hour after delivery of the notice to vacate and continuing as long as the Ocean Vessel remains in Berth, regardless of any intervening circumstances of any nature.

Furthermore, United Bulk Terminals reserves the right to order, at its sole discretion, any Ocean Vessel to vacate the Berth. Should the Ocean Vessel fail to vacate the Berth when so ordered, a charge of \$5,000 per hour (with partial hours prorated) shall be assessed against the Ocean Vessel and Vessel Party as liquidated damages until the Ocean Vessel vacates the Berth, regardless of any intervening circumstances of any nature. If the Ocean Vessel does not vacate the Berth when so ordered, the Ocean Vessel will be subject to, in addition to the liquidated damages above, all costs, including but not limited to, attorney fees and expenses in connection with the moving of the Ocean Vessel, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Ocean Vessel and Vessel Party.

3.4 VESSEL ROTATION

The Terminal management may alter the turn of Ocean Vessels for Loading or Unloading, when, in Terminal's sole judgment, it is in the best interest of Terminal operations.

3.5 CONTINUOUS READINESS

Assignment of Berth under these Terminal Rules and Regulations is predicated upon Ocean Vessel's continuous readiness twenty-four (24) hours a day, seven (7) days a week to receive or discharge Cargo at Terminal's full normal rate, throughout the entire time in Berth and compliance with the directions of Terminal management, including shifting within or between anchorage sites or Berths. Any delay in Loading or Unloading by the Ocean Vessel or refusal to follow directions of Terminal management, including an order to vacate the Berth, shall subject the Ocean Vessel and Vessel Party to a charge of \$5,000 per hour (with partial hours prorated) of delay which shall be assessed as liquidated damages regardless of any intervening circumstances of any nature.

3.6 VACATING BERTH UPON COMPLETION OF LOADING/UNLOADING

Ocean Vessel shall vacate the Berth within one (1) hour of completion of Loading or Unloading. If an Ocean Vessel refuses or fails to vacate the Berth when ordered to vacate, United Bulk Terminal shall be entitled to charge and recover as liquidated damages from the Ocean Vessel and Vessel Party, the sum of \$5,000 per hour (with partial hours prorated) beginning one hour after receipt of the notice to vacate and continuing until vacation of the Berth occurs regardless of any intervening circumstances of any nature. If the Ocean Vessel does not timely vacate the Berth, the Ocean Vessel will be subject to, in addition to the liquidated damages above, to all costs (including but not limited to attorney fees) and expenses in connection with the moving of the Ocean Vessel, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Ocean Vessel and the Vessel Party.

3.7 WEATHER CONDITIONS

When, in the Terminal management's opinion, weather conditions threaten the safety of any moored or fleeted Vessel and/or the structural integrity of the Terminal facilities, transfer

operations will be suspended and any Vessel moored or fleeted at the Berth shall vacate the Berth immediately when requested by the Terminal management to do so and until such time as weather conditions permit it to return (irrespective of whether the order by Terminal to vacate the Berth precedes any similar order to vacate issued by the Plaquemines Parish Port Harbor and Terminal District). If any Vessel does not leave the Berth within three (3) hours of being ordered to do so, all costs (including but not limited to attorney fees) and expenses in connection with the moving of the Vessel and mooring or fleetings of same, as the case may be, shall be for the account of and at the full risk of the Vessel and Vessel Party. In no event shall Terminal have any responsibility for any Vessel, including, but not limited to, the cost of moving a Vessel that is ordered to vacate the Berth for any reason provided in these Terminal Rules and Regulations. Any damage to the Terminal facilities or other equipment shall be the responsibility of the Vessel Party and Vessel. Any Vessel calling at the Terminal shall be subject to the written guidelines and procedures relative to hurricanes adopted by Terminal.

3.8 USE OF TUGS

When an Ocean Vessel is entering or leaving the Berth, United Bulk Terminals shall provide tugs, the cost of which as set forth in [Appendix A](#) shall be at the sole expense of and for the account of the Vessel and the Vessel Party without refund or credit against any charges due and owing the Terminal. If, in the opinion of the Terminal management, the weather or other conditions so warrant, each Ocean Vessel upon entering and leaving or lying at Berth (including shifting within the Berth) may be required to make use of additional tugs, depending on the size of the Ocean Vessel, which additional tugs shall be at the sole risk and expense of the Vessel and the Vessel Party. A one (1) hour waiting period from the call-out time is allowed. Any additional time will be invoiced at the current standby rate. If called out and not used, the current reporting fee will apply. Charges for towage services will be assessed to the Vessel by United Bulk Terminals.

3.9 MOORING OF BARGES

United Bulk Terminals operates a closed fleet. All Vessel Parties shall obtain the prior approval of United Bulk Terminals before their Vessels enter United Bulk Terminal's fleet/berth/docks/buoys. No less than twenty-four (24) hours advance notice of the foregoing shall be provided by Vessel Parties to United Bulk Terminal's Logistics Manager. If such approval by United Bulk Terminals is granted, all Vessels, Visitors, personnel, and passengers are required to comply with United Bulk Terminal's prescribed safety rules and personal protective equipment requirements and follow United Bulk Terminal's Facility Security Plan. United Bulk Terminal reserves the right to levy a user fee. Any User delivering river barges to the Terminal shall be responsible for mooring the barges in accordance with these Terminal Rules and Regulations and any other regulations promulgated by the Plaquemines Parish Port, Harbor and Terminal District and United States Coast Guard.

All river barges or other Vessels that User brings into the Terminal Fleet must be jointly inspected by officials of the United Bulk Terminals' customer or User and United Bulk Terminals prior to being placed in the Terminal Fleet (such joint inspection may sometimes be hereinafter referred to as the "Joint Inspection"). The Joint Inspection may include:

- a. Check for water in all voids, including wing tanks, bow and stern compartments;
- b. Inspect above water areas for signs of recent and/or major damage;
- c. Inspect grain doors on covered barges to ensure that they are in the closed position;
- d. Inspect deck fittings to ensure all are present;
- e. Observe draft and trim of loaded barge(s) to determine that barge(s) are safe for fleetings; and
- f. Inspect all deck areas and walkways for cargo or other debris that may impede the safety of personnel.

A river barge moored to another river barge, a mooring or spar barge, a vessel, a wharf, or a pier, will be secured as near as practicable to each abutting corner of the river barge being moored by:

- a. Four part wire rope of at least 7/8" diameter with an eye at each end of the rope passed around the timberhead, cavel or button.
- b. A mooring line of natural or synthetic fiber that has at least 75 percent of the breaking strength of four part 7/8" diameter wire rope; or
- c. Fixed rigging that is equivalent to four part 7/8" diameter wire rope.

Any river barges arriving at the Terminal without lines, wire or stationary rigging meeting the requirements set forth above will not be accepted by the Terminal until such time as proper equipment is furnished. Upon arrival or departure from the Terminal, all Vessels are required to contact the Terminal harbor boats. The Terminal harbor boat operator in attendance shall have the right, although not the obligation, to determine if the river barges have been properly secured by the Vessel Party.

Vessel Party acknowledges that any river barge arriving at the Terminal with cargo on its deck may constitute a hazardous and unsafe condition. Vessel Party agrees that if notified of such condition, it shall be the sole responsibility of Vessel Party to clean and remove any such product which renders the deck of any such river barge hazardous to the safety of any person. Should Vessel Party fail to promptly clean and remove product from the deck of any such river barge, the Terminal reserves the right, but not the obligation, to clean and remove the product from the river barge's deck, which service will be solely for the account of the Vessel Party. Alternatively, Terminal may reject the river barge and refuse to accept it at the Terminal and in the fleet.

In the event User tenders a Vessel for placement into the Terminal Fleet which, based on United Bulk Terminals' sole discretion, is: (1) found to be in a leaking or otherwise damaged condition during the Joint Inspection whereby United Bulk Terminals believes such Vessel is not suitable or fit for fleeting, cargo handling operations and/or is otherwise unseaworthy; or (2) lacking adequate freeboard or otherwise improperly loaded with cargo such that fleeting operations and/or cargo handling operations may be unsafe, then United Bulk Terminals may refuse to accept such Vessel at the Terminal and in the fleet, or, alternatively, United Bulk Terminals may elect to "Conditionally Accept" such Vessel. In the event United Bulk Terminals agrees to "Conditionally Accept" a Vessel, United Bulk Terminals will provide notification to User by e-mail confirming United Bulk Terminals will accept the subject Vessel, but the acceptance of the Vessel shall be a "Conditional Acceptance." In the event United Bulk Terminals Conditionally Accepts a Vessel, the following allocation of risk, indemnity agreement and waiver of rights shall be in effect between the parties:

- a. User shall be responsible for the leaking, damaged, lack of freeboard and/or improperly loaded condition of the Vessel resulting in the Conditional Acceptance of the Vessel by the Terminal, and User shall be responsible for any sinking, loss of and damage to the Vessel and its cargo, regardless of fault, and even when the Vessel is in the care, custody and/or control of United Bulk Terminals;
- b. User shall be responsible for and shall assume all liability for damage and loss sustained to other property and for personal injury, illness and death claims which are caused in whole or in part by the Vessel's leaking, damaged, lack of freeboard and/or improperly loaded condition;
- c. User shall defend (including the payment of attorney's fees, court costs and all litigation expenses regardless of type), indemnify and hold harmless the UBT Indemnitees from and against any and all claims for: (1) damage to and/or loss of the Vessel and its cargo, regardless of the cause or causes thereof; and (2) for all other personal injury, illness, death and property damage which is caused in whole or in part

by the Vessel's leaking, damaged, lack of freeboard and/or improperly loaded condition; and

- d. User hereby agrees that notice of the Vessel's leaking, damaged, lack of freeboard and/or improperly loaded condition resulting in such Vessel being Conditionally Accepted by United Bulk Terminals shall be considered "privity and knowledge" by the User of the Vessel's condition so as to waive any right the User may have to limit liability pursuant to the Shipowner's Limitation of Liability Act, 46 U.S.C. 30501, et. seq. In addition, User hereby agrees the Vessel is being handled at the Terminal pursuant to a "Personal Contract", and it is the intention of the User and United Bulk Terminals that User shall not be entitled to limit its liability to United Bulk Terminals in any respect under the afore-referenced Shipowner's Limitation of Liability Act.

Vessel Party shall coordinate and be solely responsible for all required inspections for cleanliness and compliance with all local, state and federal laws and regulations relative to the fitness of the river barge. All run off reporting and other environmental compliance and reporting shall be Vessel Party's sole responsibility. Any EPA, regulatory or court imposed fines levied against Terminal as a result of Vessel Party's non-compliance and/or failure to report shall be for Vessel Party's account.

3.10 BARGE RELEASE

Once Loading or Unloading of a river barge has been completed, as determined by Terminal personnel, the river barge must be picked up within seventy-two (72) hours of Terminal's transmittal of notice to the Vessel Party that the river barge must be removed. In the event that a river barge is not removed within the time limit, Terminal management may, at its sole election, arrange either to have the river barge shifted to a commercial barge fleet or fleeted at the Terminal, to the extent that fleeting space is available, at the sole risk and expense of the Vessel Party. If the Vessel Party has been instructed to pick up its river barges and removal of the river barges is not accomplished within seventy-two (72) hours, an additional charge above the normal fleeting will be assessed. The fee will be assessed until the river barges are removed, and shall be assessed in accordance with the fee provided in [Appendix B](#). The Terminal will endeavor to send a facsimile or electronic transmittal for release of barges on a daily basis, but on days when Vessel Party does not receive such a notice, it is the Vessel Party's sole responsibility to check with the Terminal on status of barge loadings and unloadings. A Vessel Party's failure to receive facsimile or electronic transmittal notice of barge release will not result in the barge(s) remaining on placement.

3.11 STOWAGE

The Vessel Party shall be solely responsible for the stowage of the Cargo. Cargo shall be stowed within the Vessel only in areas where grabs and equipment spouts can reach, subject to Vessel design capability. Dozer work shall be provided to the Vessel Party at an additional charge agreed upon by the Terminal and Vessel Party prior to the Vessel coming into Berth. In any event, the loading sequence plan shall not exceed two (2) pass loadings and two (2) hold trims. United Bulk Terminal will allow each Vessel two (2) draft checks which are not to exceed a period of 30 minutes each. Any Vessel exceeding the allotted time for draft checks will also be assessed the detention fee of \$5,000 per hour (with partial hours prorated).

Any Vessel which is required to shift/warp within the berth will be responsible for any/all expenses pertaining to shifting/warping, including, but not limited to, line handling, pilot, and tug(s). Furthermore, any time utilized for shifting/warping will not count against any laytime.

3.12 SUITABILITY OF CARGO

Users acknowledge that Terminal only provides transfer facilities and outside ground storage of the Cargo at the Terminal. The Terminal reserves the right, without any responsibility for any loss, damage, or demurrage that may arise, to refuse any Cargo because in the sole discretion of the Terminal, such Cargo is unmerchantable or in an unfit condition for Loading,

Unloading, Storage, transfer or handling; or because of lack of space, facilities or equipment, or for any other reason based on the sole judgment of the Terminal. The Terminal shall not be responsible for any loss, damage or delay caused by varying temperatures, moisture and weight changes and/or spontaneous combustion of Cargo, frost, heating, flood, the elements, evaporation, natural shrinkage, wastage or decay or from insufficient notification, or from war, insurrection, Acts of God, or acts or failure to act of any Governmental entity, or for any consequences arising therefrom, or from concealed damage, leakage, variation in weights, or for losses in weights whether occurring while Cargo is in Storage or during Loading, Unloading or while otherwise being handled, or for failure to detect or remedy same. In addition, any extra time associated with the handling of wet Cargo will be deducted from laytime and demurrage calculations, and additional costs associated with the handling of wet Cargo will be billed to the Vessel Party.

3.13 VESSEL SUITABILITY

The Terminal reserves the right to refuse any Vessel considered unseaworthy due to damage, distribution of load, draft or lack of freeboard, lists or such other reason for which Terminal deems the Vessel not suitable for handling at the Terminal. The Vessel Party, at all times, shall remain responsible for the seaworthy condition of the Vessel. The berthing of any Ocean Vessel or delivery of any river barge to the Terminal shall constitute a warranty by the Vessel Party to United Bulk Terminals that there are no latent defects in the Ocean Vessel or river barge and that same is capable of either being loaded with the Cargo to be loaded by the Terminal or to be unloaded by the Terminal using the equipment normally employed by the Terminal. In no event shall the Terminal be responsible for the seaworthiness, maintenance, repair or service of Ocean Vessels coming into the Berth of the Terminal or river barges delivered to the Terminal, such responsibility being that of the Vessel Party. Notwithstanding the foregoing, should any Vessel develop any leaks, cracks or other conditions which, in the sole judgment of the Terminal, may result in damage to the Vessel and/or its Cargo, Vessel Party agrees to take whatever steps are necessary to protect the Vessel and/or its Cargo. Furthermore, in the event that any river barge develops any leaks, cracks, or other similar conditions, such river barge, at the election of Terminal, may remain in the Terminal Fleet subject to the agreement by the Vessel Party to provide a stand-by harbor tug for the duration of the river barge's stay at the Terminal for the purpose of tending to the river barge, the cost of which harbor tug shall be at the sole expense of the Vessel Party. In the event that the Terminal assists any river barge that is sinking or damaged as a result of any leaks, cracks or other similar conditions, the charges for such assistance shall be borne solely by the Vessel Party and Terminal shall have no responsibility for loss or damage to a river barge or Cargo occurring as a result of Terminal providing such assistance. In no event shall Terminal have any responsibility for inspecting any river barge nor shall Terminal have any liability if loss or damage to a river barge or Cargo occurs as a result of Terminal's failure to reject a river barge that has leaks, cracks or similar conditions, whether or not such conditions are latent or patent.

Notwithstanding anything to the contrary herein, the Terminal is a private terminal facility and is not a "marine terminal operator" as defined by the Shipping Act of 1984, as amended. Common carriers by water (such as liners), as defined by the Shipping Act of 1984, as amended, will not be accepted for Loading or Unloading at the Terminal. 46 U.S.C. App. Section 1702 (6) defines a common carrier as "a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country... except that the term does not include... ocean transportation by...ocean tramp...." Only Vessels engaged in private or contract carriage pursuant to private commercial arrangements will be accepted by the Terminal.

The standard Ocean Vessel acceptable for Loading is a gearless, bulk carrier, 750' LOA, 105' beam which can ballast to achieve an air draft of 54' 8" at river stage of 0' at Davant, Louisiana for Loading under traveling ship loader and 46' at a river stage of 0' for Loading at Terminal's stationary loader at Davant, Louisiana. The standard Ocean Vessel for Unloading is a gearless, bulk carrier, 750' LOA, 105' beam which can ballast to achieve an air draft of 57' at a river

stage of 0'. Requests for exceptions to the foregoing shall be made at the time of Vessel filing and shall be subject to the sole discretion of the Terminal.

4 ADDITIONAL SERVICES, RATES AND CHARGES

4.1 CHARGES

United Bulk Terminals shall invoice all customers on inbound tons, whenever the initial handling of the Cargo occurs, e.g. (1) Cargo unloaded from a river barge direct to storage at the Terminal facilities or an Ocean Vessel shall be invoiced when cargo unloading occurs from the river barge, and (2) Cargo unloaded from an Ocean Vessel direct to storage at the Terminal facilities or another Vessel including a river barge shall be invoiced when cargo unloading occurs from the Ocean Vessel. United Bulk Terminals shall render invoices for services provided hereunder, including, but not limited to, those services as set forth in the [Appendix](#), upon completion of said services and the User agrees to pay said invoices within ten (10) days from date of invoice. The invoice shall also contain reconciliation for Dockage charges which are to be secured with a deposit pursuant to [Section 4.3](#) below. Any invoice that remains unpaid after ten (10) days from date of invoice shall earn interest, compounded at one and one-half (1-1/2%) percent per month or portion thereof or the maximum legal interest rate allowed under Louisiana law to the extent that a rate of one and one-half (1-1/2%) percent per month violates Louisiana laws. Any pending or alleged claims against United Bulk Terminal will not be allowed as an offset against outstanding or accrued charges until such claims have been agreed to by United Bulk Terminal in writing or legally established by court order.

The number of tons of Cargo to be invoiced by the Terminal shall be certified by a representative of the National Cargo Bureau or a mutually agreed surveyor who shall perform a displacement survey to determine the tonnage transferred either by barge or vessel. Such displacement survey shall be performed at the sole cost and expense of the User and it is agreed that copies of the certificate shall be concurrently submitted to the User and United Bulk Terminal.

Any charges for Liquidated Damages are due in full before the Vessel will be allowed to leave the Terminal. Moreover, Vessel Party agrees to waive any damages it may sustain resulting from any delay in Vessel leaving the Terminal because of Vessel Party's failure to pay or delay in paying Liquidated Damages.

Laycan Spread Cancellation Penalty and Window Cancellation Penalty charges assessed pursuant to [Section 4.15](#) below will be invoiced by the Terminal following the close of the load window Vessel missed and will be due by Shipper within thirty (30) days from date of invoice. Window Cancellation Penalty charges are subject to the same interest and setoff terms and conditions as set forth in the first paragraph of this Section.

4.2 GROUND STORAGE OF CARGO

Terminal agrees to provide outside ground storage at the rate provided for in the applicable Customer Contract. Terminal shall not be responsible for spontaneous combustion or other damage to any stored Cargo. Upon request by the User, tractor work to shape, compact or periodically rearrange any stockpile in which the User's Cargo is stored will be provided, subject to such terms and conditions as mutually agreed upon by the Terminal and User. User agrees that the Terminal may also periodically groom Cargo stored at the Terminal so as to prevent spontaneous combustion. Terminal's grooming, shaping, compacting or rearranging of Cargo will in no way create any liability for the Terminal. If a condition of spontaneous Combustion or a significant rise in temperature should occur, User assumes full responsibility for all costs and damages thereby resulting; the responsibility of the Terminal being to promptly notify User of any such condition observed by Terminal and User being responsible to promptly advise and direct Terminal regarding the appropriate action necessary to extinguish any fires. If User fails to respond to such notice by Terminal or fails to promptly advise and direct

Terminal, then Terminal, at the sole cost and expense of User, may, but is not obligated, to take appropriate action to extinguish any fires caused thereby. All such actions undertaken by Terminal, whether under the direction of User or otherwise, shall be for User's account and will in no way create any liability for the Terminal.

Terminal shall not be responsible for loss or contamination or damage or destruction of any Cargo in its care, custody or control, whether in Storage or elsewhere. Furthermore, Terminal shall not be responsible for loss of calorific content or loss of weight of any Cargo transferred or stored at the Terminal. User specifically acknowledges that normal variances in the measurement of quantity and weight of cargo shipped in bulk exists and that the weights of Cargo determined by the National Cargo Bureau or a mutually agreed surveyor on behalf of User shall be used only for invoice purposes by the Terminal.

In no event shall the use of the Terminal Storage facilities be construed as a lease or sublease agreement between the Terminal and User.

4.3 DOCKAGE

Dockage fees calculated on the basis stated in [Appendix A](#) shall be assessed to any Vessel berthed at the Terminal or at any Terminal buoy system.

Prior to berthing, the Vessel Party will be required to deposit with United Bulk Terminals an amount sufficient to cover all estimated charges due, including dockage, tug assistance, line handling, crew boat services, facility security fee, facility user fees and any other supplemental fees levied by governmental agencies. United Bulk Terminals reserves the right to postpone Cargo operations until the full requested deposit has been received. Additional deposits may be required during the loading in the event actual charges incurred exceed any deposit(s) received. Cessation of operations will occur if actual charges incurred exceed total deposit(s) received, and any delays and costs and penalties associated created thereby shall be for Vessel Party's account.

4.4 RIVER BARGE FLEETING AND SHIFTING CHARGES

River barges fleeted and/or shifted at the Terminal shall be charged for the service by United Bulk Terminals at the rate provided in [Appendix B](#).

4.5 RIVER BARGE COVER HANDLING

Any river barges requiring Terminal assistance in handling river barge covers shall be charged for the service at the rate provided in [Appendix B](#).

4.6 DISCHARGING STACKED COVER RIVER BARGES

Any stacked cover river barges shall be discharged at the rate provided in [Appendix B](#).

4.7 WATER

Water flow and access to water mains is limited. Arrangements for water shall be made with Terminal in advance of berthing the Vessel. Water, when available, will be furnished at the charge provided in [Appendix A](#). Prior approval and coordination by Terminal management shall be required for water delivered by river barge.

4.8 BUNKERS

Absent the prior approval of the Terminal, no bunkers, diesel fuel or oils may be received by Ocean Vessels in Berth. To the extent the taking of bunkers hinders Terminal operations, the actual cost associated with any delay will be billed to the Vessel Party. Terminal reserves the right to assess a bunker fee if Vessel is allowed to accept a bunker barge while at berth.

4.9 REPAIRS

Once the Notice of Readiness has been tendered, no repairs that would impede the movement of the Vessel or that would interfere with Cargo transfer operations or affect safety shall be undertaken.

4.10 SAMPLING

Automatic mechanical sampling services are provided by an independent third party contractor and are available to the User at the Terminal at the sole cost and expense of the User. It is understood and agreed that Terminal shall not, under any circumstances, be responsible or liable for the sampling services or any lack thereof.

4.11 VISITORS AND DELIVERY OF VESSEL PROVISIONS

Absent the prior written consent of United Bulk Terminals, no Visitor or Visitors, including, but not limited to, any User, crew members, Shipper, river transportation operator, launch service operator, master, owner, charterer, operator or agent, shall be allowed access to any of the Terminal facilities, docks or buoys while any Vessel is moored or berthed at any such United Bulk Terminal facility, dock or buoy. The Terminal reserves the right to deny access to any Visitor or Visitors whom the Terminal, in its sole discretion, deems may result in injury, damage or loss to persons or property at the Terminal. Every person entering the Terminal facilities must sign in with the Terminal office before proceeding to any Vessel or Terminal building and shall furnish Terminal with identification acceptable to Terminal. Any person or vehicle that enters the Terminal facilities shall be subject to a search. Such Visitors, subject to the prior approval of the Terminal, may arrange for outside transportation for pickup and delivery at the Terminal. Approved Visitors may gain access to Vessels berthed at Berth No. 1 via United Bulk Terminal's crew boat service. Such access, however, shall require that the Visitor furnish twenty-four (24) hours prior written notification to the Terminal office of same. All Visitors must wear protective equipment, hard hats, safety glasses and life jackets. Delivery of provisions or stores to any Vessels berthed at the Terminal shall require the prior approval of the Terminal subject to a determination by the Terminal whether such activities will interfere with Cargo operations or Vessel arrivals, departures or shifting. The Vessel agent must be present when provisions are to be brought on to a Vessel. Any Visitor shall execute such releases and indemnity agreements as required by Terminal as a condition to being allowed access to the Terminal facilities.

4.12 SPECIAL CONTRACTS

Charges for services or items not specifically provided for in these Terminal Rules and Regulations shall be assessed pursuant to a separate contract with Terminal.

4.13 LIENS

All lawful charges made by or due to the Terminal shall constitute a lien in favor of the Terminal upon the Cargo and against any Vessel for such charges. It is understood and agreed that the Terminal shall have the right to retain possession of and/or relocate any Cargo within Terminal property if necessary to preserve and maintain its lien rights. Terminal shall have no liability to Vessel Party by retaining and/or relocating Cargo at the Terminal.

4.14 DEMURRAGE

United Bulk Terminals shall not be responsible for any demurrage or other damages for delay or loss of despatch time or any other damages incurred by any Vessel or Vessel Party or their Cargo for any cause, unless specifically agreed to in a separate written contract entered into between Vessel Party and United Bulk Terminal.

Moreover, United Bulk Terminals acknowledges the vessel chartering concept "once on demurrage, always on demurrage." However, United Bulk Terminal does not recognize this

chartering provision as applying to any demurrage responsibility or liability on the part of United Bulk Terminals for a force majeure event or any other cause. Such language is a contractual issue between the vessel owner and charterer/customer. All layday deductions for United Bulk Terminal, including force majeure events, will apply regardless of whether the Vessel is already on demurrage and United Bulk Terminal will not be liable for reimbursement of such demurrage or cost of delays, including consequential damages.

All Vessel demurrage claims must be presented within three (3) months of the service provided by United Bulk Terminals and be accompanied by a supporting invoice and proof of payment of said demurrage. United Bulk Terminals shall have the right to conduct an independent audit of User's demurrage terms and original invoices. User shall pay to United Bulk Terminals despatch earned on services provided. Any demurrage claim presented after three (3) months of the performed service will be denied

4.15 LAYCAN SPREAD AND WINDOW CANCELLATION PENALTY

Shipper may cancel a scheduled laycan spread without penalty by providing written notice of such cancellation to Terminal at least twenty-one (21) days prior to the first day of the scheduled laycan spread. If Shipper cancels a laycan spread less than twenty-one days prior to the first day of such laycan spread, Terminal shall be entitled to a "Laycan Spread Cancellation Penalty" for Shipper's account. The Laycan Spread Cancellation Penalty is assessed per Vessel and is: (1) \$17,500 for Vessels capable of Loading and/or Unloading only 50,000 metric tons or less of Cargo, or (2) \$25,000 for Vessels capable of Loading and/or Unloading more than 50,000 metric tons of Cargo. If Shipper schedules a four (4) day loading window, it may cancel such scheduled loading window seven (7) days or more prior to the first day of the scheduled loading window and incur only the Laycan Spread Cancellation Penalty. If Shipper fails to cancel a scheduled loading window at least seven (7) days prior to the first day of the scheduled loading window, and Shipper does not execute load out to Vessel during that loading window, Terminal shall be entitled to a "Window Cancellation Penalty" for Shipper's account in place of the Laycan Spread Cancellation Penalty. The Window Cancellation Penalty is assessed per Vessel and is: (1) \$35,000 for Vessels capable of Loading and/or Unloading only 50,000 metric tons or less of Cargo, or (2) \$50,000 for Vessels capable of Loading and/or Unloading more than 50,000 metric tons of Cargo.

4.16 FORCE MAJEURE

Neither party shall be under any liability of any kind or nature whatsoever (other than obligations of such party to pay or expend money for services actually provided during a *Force Majeure* event) for any loss, damage, delay or failure in performance, including, but not limited to, demurrage, delay, damages, deterioration of quality, shrinkage in quantity and/or loss of cargo, in the event that it should fail or delay to perform its obligations hereunder where such failure is directly or indirectly, wholly or partly, caused by *Force Majeure* event.

The term *Force Majeure* includes the following regardless of whether foreseeable or not: war; civil commotion; government order; labor disputes; labor shortage; unforeseen mechanical and electrical breakdowns; strike or lockout; flood; river freeze up; inability to obtain fuel or power; fire; act of God; and/or resolution or order of government authority.

A *Force Majeure* event shall not excuse a party from performing unless such party shall give written notice to the other party promptly upon learning of such *Force Majeure*, but in no event later than thirty (30) days subsequent to such event. Information as to the cause of inability to perform, and probable extent thereof, shall be included in such notice and shall be updated periodically during the continuance of the *Force Majeure* event. Failure to give such notice and furnish such information promptly shall be deemed a waiver of all rights for such period of time during which notice was not given. Upon removal of the cause, shipment shall resume at the specified rate.

5 DEFINITIONS AND NOTES

VESSEL. The term "Vessel" or "Vessels" shall include any river barge, ocean-going barge, or Ocean Vessel.

OCEAN VESSEL. The term "Ocean Vessel" shall mean any Vessel, other than a river barge, that utilizes the services and facilities of the Terminal for the Loading, Unloading, Storage, handling or transfer of Cargo.

CARGO. The term "Cargo" shall include, but not be limited to, coal, petroleum coke, furnace coke, fertilizer, grain, steel related scrap products and other dry cargo.

TERMINAL. The term "Terminal" means the United Bulk Terminals' Terminal at Mile 55, AHP left descending bank, Lower Mississippi River, near Davant, Louisiana.

HOLIDAYS. The term "Holidays" includes Mardi Gras, Independence Day, Thanksgiving Day and Christmas Day. All guarantees are exclusive of Holidays.

BERTH. The term "Berth" or "Berths" means Terminal's docks and mid-stream transfer facilities including the Terminal's mooring buoys.

USER OR USERS. The terms "User" or "Users" shall include Vessel Party and all individuals or business entities, including all Ocean Vessels, river barges, trucks, railroad cars or other means of conveyance and/or equipment used by said individuals or business entities, which utilize the services and/or facilities of the Terminal.

VESSEL PARTY. The term "Vessel Party" or "Vessel Parties" means any party or parties owning, nominating or contracting with the Vessel, including, but not limited to, its agent(s), owner(s), operator(s) and/or charterer(s).

SHIPPER. The term "Shipper" shall include Vessel Party and all individuals and business entities which contract in writing directly with Terminal to utilize or intending to utilize the services and/or facilities of the Terminal (this definition in no way modifies the contractual relationship or duties created by the Agreement to be Bound ([Section 2.3](#))).

STORAGE. The term "Storage" shall mean the service of providing facilities for the outside storing of inbound or outbound Cargo.

TERMINAL FLEET. The term "Terminal Fleet" shall mean the United Bulk Terminals river barge upper and lower fleets at the Terminal.

LOADING AND UNLOADING. The terms "Loading" and "Unloading" shall mean the service of Loading or Unloading Cargo, as the case may be, between any place at the Terminal and railroad cars, trucks, Vessels, river barges or any other means of conveyance to or from the Terminal.

VISITORS. The terms "Visitors" or "Visitor" mean any individual or entity listed in the Visitor List and any other individual or entity that seeks access to the Terminal facilities or any Vessel berthed there, including, but not limited to, any surveyor.

APPENDIX

APPENDIX A - VESSEL FEE SCHEDULE

(*All rates contained herein are in U.S. Dollars)

A.1 DOCKAGE

Rates as per the schedule below per gross registered ton shall be assessed for each full twenty-four (24) hour period (Not prorated). Time shall commence upon berthing and shall end at the Vessel's departure from the berth. The minimum dockage to be paid shall be \$7,500.00. Vessel Party shall indicate the gross registered tonnage (Lloyd's) of the Vessel in the Berth Application. The daily dockage fee shall be calculated based on the dockage rate/GRT equivalent to the daily demurrage rate shown in the chart below.

Proportional Vessel Dockage

<u>Demurrage Rate/Day</u>	<u>Dockage Rate/GRT/Day</u>
\$0-\$14,999	0.55
\$15,000-\$24,999	0.60
\$25,000-\$34,999	0.65
\$35,000-\$44,999	0.70
\$45,000-\$54,999	0.75
\$55,000-\$64,999	0.80
\$65,000-\$74,999	0.85
\$75,000-\$84,999	0.90
\$85,000-\$94,999	0.95
\$95,000-\$104,999	1.00
\$105,000-\$114,999	1.05
\$115,000-\$124,999	1.10
Every \$10,000 Additional	0.05 Additional

A.2 SECURITY FEE

\$1,250.00 per Vessel per day

A.3 CREW BOAT SERVICE

\$1,500.00 per Vessel per day

A.4 LINE HANDLING

Main Docks or Buoys: \$3,500.00

A.5 WATER

\$500.00 per barge

A.6 BUNKERING FEE

\$2,000.00 per barge

A.7 ENVIRONMENTAL FEE

\$200.00 per day

A.8 ASSIST TUGS

United Bulk Terminals will provide all assist tugs for docking/undocking, shifting and holding operations. The cost of these services will be as follows:

- 1) Docking/Undocking

Tug Charge	\$3,212.00 per tug plus
Tonnage Charge	\$31.00 per 1,000 GRT plus
Fuel Surcharge *	1% for every \$0.05 over \$3.00/gal

- 2) Shifting \$748.00 per hour per tug
- 3) Holding \$748.00 per hour per tug
- 4) Delays (Tug Stand-by) \$660.00 per hour per tug
- 5) Reporting of tugs \$1,460.00 per tug
- 6) Buoy Charge \$456.00 per tug

**The fuel surcharge will be based on the lowest quoted fuel price on the 1st and 15th of each month from the greater New Orleans area and will be adjusted on those dates.*

APPENDIX B - FLEET SERVICE RATES

B.1 FLEETING

Dry Cargo, Open Hopper and Deck	Up to 200' x 35'	\$55/day
Dry Cargo, Open Hopper and Deck	Over 200' x 35'	\$85/day
Special Cargo – Equipment Barges – Towboats*		\$100/day

**A watchman is required with all towboats*

B.2 TUG SERVICE

Tug Service (hourly rate with a one hour minimum)	\$300 per hour
Tow Building	\$300 per barge
Tow Building Assist (30 minute max per barge)	\$150 per barge
Rigging Removal* – double-ups and additional rigging	\$100 per barge

**Picking up of loose rigging at the hourly tug rate*

B.3 BARGE HANDLING

Includes “in” charge, shift to dock, shift from dock and “out” charge	\$850 per barge
Commercial barge handling – “in” charge and “out” charge	\$425 per barge
Reload barge handling – shift to dock and shift from dock	\$425 per barge

B.4 BARGE COVER FEES

Stack or spread lift tops (steel or fiberglass) per operation	\$2,000 per barge
Stack or spread roll tops per operation	\$2,400 per barge
Roll barges with roll top covers per operation	\$1,600 per barge
Cover productivity loss – barges unloading with stacked covers	\$2,000 per barge

B.5 SHIFTING (all rates quoted each way)

Shifting rates to/from IMT	\$300 per barge
Shifting rates to/from Turn Service Myrtle Grove	\$300 per barge
Shifting rates to Cenex Harvest States	\$500 per barge
Shifting rates to ConocoPhillips Alliance Refinery	\$500 per barge

(Other shifting rates quoted upon request)

B.6 BARGE PUMPING SERVICES

Barge Pumping \$150 (setup fee) plus 3 hr. minimum @ \$80/hr. and \$80/hr. each additional hour thereafter

B.7 Additional Fleeting Charges

FAILURE TO REMOVE BARGES. For failure to timely remove river barges from terminal fleet, in accordance with [Section 3.10](#), a charge of \$150.00 per barge will be incurred.

HIGH WATER PREMIUM. When the Carrollton Gauge (New Orleans) reaches 12' or higher, a 25% high water premium will be added to all services.

B.8 United Bulk Terminals Fuel Surcharge Policy

All barge shifting and hourly tug services are subject to the following fuel surcharge policy:

<u>Price</u>	<u>%</u>	<u>Price</u>	<u>%</u>	<u>Price</u>	<u>%</u>	<u>Price</u>	<u>%</u>
\$ 1.75	0.0	\$ 2.37	24.8	\$ 2.99	49.6	\$ 3.61	74.4
\$ 1.76	0.4	\$ 2.38	25.2	\$ 3.00	50.0	\$ 3.62	74.8
\$ 1.77	0.8	\$ 2.39	25.6	\$ 3.01	50.4	\$ 3.63	75.2
\$ 1.78	1.2	\$ 2.40	26.0	\$ 3.02	50.8	\$ 3.64	75.6
\$ 1.79	1.6	\$ 2.41	26.4	\$ 3.03	51.2	\$ 3.65	76.0
\$ 1.80	2.0	\$ 2.42	26.8	\$ 3.04	51.6	\$ 3.66	76.4
\$ 1.81	2.4	\$ 2.43	27.2	\$ 3.05	52.0	\$ 3.67	76.8
\$ 1.82	2.8	\$ 2.44	27.6	\$ 3.06	52.4	\$ 3.68	77.2
\$ 1.83	3.2	\$ 2.45	28.0	\$ 3.07	52.8	\$ 3.69	77.6
\$ 1.84	3.6	\$ 2.46	28.4	\$ 3.08	53.2	\$ 3.70	78.0
\$ 1.85	4.0	\$ 2.47	28.8	\$ 3.09	53.6	\$ 3.71	78.4
\$ 1.86	4.4	\$ 2.48	29.2	\$ 3.10	54.0	\$ 3.72	78.8
\$ 1.87	4.8	\$ 2.49	29.6	\$ 3.11	54.4	\$ 3.73	79.2
\$ 1.88	5.2	\$ 2.50	30.0	\$ 3.12	54.8	\$ 3.74	79.6
\$ 1.89	5.6	\$ 2.51	30.4	\$ 3.13	55.2	\$ 3.75	80.0
\$ 1.90	6.0	\$ 2.52	30.8	\$ 3.14	55.6	\$ 3.76	80.4
\$ 1.91	6.4	\$ 2.53	31.2	\$ 3.15	56.0	\$ 3.77	80.8
\$ 1.92	6.8	\$ 2.54	31.6	\$ 3.16	56.4	\$ 3.78	81.2
\$ 1.93	7.2	\$ 2.55	32.0	\$ 3.17	56.8	\$ 3.79	81.6
\$ 1.94	7.6	\$ 2.56	32.4	\$ 3.18	57.2	\$ 3.80	82.0
\$ 1.95	8.0	\$ 2.57	32.8	\$ 3.19	57.6	\$ 3.81	82.4
\$ 1.96	8.4	\$ 2.58	33.2	\$ 3.20	58.0	\$ 3.82	82.8
\$ 1.97	8.8	\$ 2.59	33.6	\$ 3.21	58.4	\$ 3.83	83.2
\$ 1.98	9.2	\$ 2.60	34.0	\$ 3.22	58.8	\$ 3.84	83.6
\$ 1.99	9.6	\$ 2.61	34.4	\$ 3.23	59.2	\$ 3.85	84.0
\$ 2.00	10.0	\$ 2.62	34.8	\$ 3.24	59.6	\$ 3.86	84.4
\$ 2.01	10.4	\$ 2.63	35.2	\$ 3.25	60.0	\$ 3.87	84.8
\$ 2.02	10.8	\$ 2.64	35.6	\$ 3.26	60.4	\$ 3.88	85.2
\$ 2.03	11.2	\$ 2.65	36.0	\$ 3.27	60.8	\$ 3.89	85.6
\$ 2.04	11.6	\$ 2.66	36.4	\$ 3.28	61.2	\$ 3.90	86.0
\$ 2.05	12.0	\$ 2.67	36.8	\$ 3.29	61.6	\$ 3.91	86.4
\$ 2.06	12.4	\$ 2.68	37.2	\$ 3.30	62.0	\$ 3.92	86.8
\$ 2.07	12.8	\$ 2.69	37.6	\$ 3.31	62.4	\$ 3.93	87.2
\$ 2.08	13.2	\$ 2.70	38.0	\$ 3.32	62.8	\$ 3.94	87.6
\$ 2.09	13.6	\$ 2.71	38.4	\$ 3.33	63.2	\$ 3.95	88.0
\$ 2.10	14.0	\$ 2.72	38.8	\$ 3.34	63.6	\$ 3.96	88.4
\$ 2.11	14.4	\$ 2.73	39.2	\$ 3.35	64.0	\$ 3.97	88.8
\$ 2.12	14.8	\$ 2.74	39.6	\$ 3.36	64.4	\$ 3.98	89.2
\$ 2.13	15.2	\$ 2.75	40.0	\$ 3.37	64.8	\$ 3.99	89.6
\$ 2.14	15.6	\$ 2.76	40.4	\$ 3.38	65.2	\$ 4.00	90.0
\$ 2.15	16.0	\$ 2.77	40.8	\$ 3.39	65.6	\$ 4.01	90.4
\$ 2.16	16.4	\$ 2.78	41.2	\$ 3.40	66.0	\$ 4.02	90.8
\$ 2.17	16.8	\$ 2.79	41.6	\$ 3.41	66.4	\$ 4.03	91.2
\$ 2.18	17.2	\$ 2.80	42.0	\$ 3.42	66.8	\$ 4.04	91.6
\$ 2.19	17.6	\$ 2.81	42.4	\$ 3.43	67.2	\$ 4.05	92.0
\$ 2.20	18.0	\$ 2.82	42.8	\$ 3.44	67.6	\$ 4.06	92.4
\$ 2.21	18.4	\$ 2.83	43.2	\$ 3.45	68.0	\$ 4.07	92.8

United Bulk Terminals Davant LLC
14537 Highway 15
Davant, Louisiana 70040
Facsimile: (504) 682-5678
E-mail:
ubt.traffic@unitedbulkterminals.com

United Bulk Terminals

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\$ 2.22	18.8	\$ 2.84	43.6	\$ 3.46	68.4	\$ 4.08	93.2
\$ 2.23	19.2	\$ 2.85	44.0	\$ 3.47	68.8	\$ 4.09	93.6
\$ 2.24	19.6	\$ 2.86	44.4	\$ 3.48	69.2	\$ 4.10	94.0
\$ 2.25	20.0	\$ 2.87	44.8	\$ 3.49	69.6	\$ 4.11	94.4
\$ 2.26	20.4	\$ 2.88	45.2	\$ 3.50	70.0	\$ 4.12	94.8
\$ 2.27	20.8	\$ 2.89	45.6	\$ 3.51	70.4	\$ 4.13	95.2
\$ 2.28	21.2	\$ 2.90	46.0	\$ 3.52	70.8	\$ 4.14	95.6
\$ 2.29	21.6	\$ 2.91	46.4	\$ 3.53	71.2	\$ 4.15	96.0
\$ 2.30	22.0	\$ 2.92	46.8	\$ 3.54	71.6	\$ 4.16	96.4
\$ 2.31	22.4	\$ 2.93	47.2	\$ 3.55	72.0	\$ 4.17	96.8
\$ 2.32	22.8	\$ 2.94	47.6	\$ 3.56	72.4	\$ 4.18	97.2
\$ 2.33	23.2	\$ 2.95	48.0	\$ 3.57	72.8	\$ 4.19	97.6
\$ 2.34	23.6	\$ 2.96	48.4	\$ 3.58	73.2	\$ 4.20	98.0
\$ 2.35	24.0	\$ 2.97	48.8	\$ 3.59	73.6	\$ 4.21	98.4
\$ 2.36	24.4	\$ 2.98	49.2	\$ 3.60	74.0	\$ 4.22	98.8

APPENDIX C - CONTACTS

United Bulk Terminals Davant LLC

14537 HWY 15

Davant, Louisiana, 70040

Dispatchers (24 hrs.)

504-333-7400 – Main line

504-682-5678 - Fax

504-784-1263 - Cell

ubt.traffic@unitedbulkterminals.com

Allen Newman

Logistics Superintendent (7am to 4pm, Monday - Friday)

504-333-7360 – Office

504-682-5678 – Fax

504-416-9279 – Cell

Allen.Newman@unitedbulkterminals.com

Tyrone Williams

Operations Manager (7am to 4pm, Monday - Friday)

504-333-7318 - Office

504-319-4362 - Cell

Tyrone.Williams@unitedbulkterminals.com

Rickey Rosser

Operations Superintendent (7am to 4pm, Monday - Friday)

504-333-7338 - Office

504-202-8566 - Cell

Rickey.Rosser@unitedbulkterminals.com

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United Bulk Terminals

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APPENDIX D - BERTH APPLICATION

BERTH APPLICATION

Application is hereby made by facsimile or e-mail, with an executed original to follow by U.S. Mail at the addresses below, this _____ day of _____, _____ for assignment and use of the terminal facilities at United Bulk Terminals for the M/V _____ on or about _____, _____ for loading/discharge in accordance with the United Bulk Terminals Rules and Regulations made a part hereof and attached hereto as Exhibit "A".

PARTICULARS OF VESSEL (if known, otherwise to be provided not less than 72 hours prior to Vessel coming to the Berth):

Vessel: M/V _____

Gross Registered Tons: _____ Dead Weight: _____

Length: _____ Breadth: _____

Maximum Depth Loaded: _____ Air Draft: _____

Previous Port: _____ Previous Cargo: _____

Cargo Destination _____

Max air draft: Traveling loader – 54' 8" at zero river stage / Stationary loader – 46' at zero river stage.

Will vessel bunker: YES / NO If so, how many barges: _____ (must get terminal approval)

Total M/T's to load or unload: _____

Hold Stowage:

Hold #1 _____ Hold #2 _____ Hold #3 _____

Hold #4 _____ Hold #5 _____ Hold #6 _____

Hold #7 _____ Hold #8 _____ Hold #9 _____

Hold Load Rotation (max 2 load passes, 2 holds to trim):

1) _____ 2) _____ 3) _____ 4) _____

5) _____ 6) _____ 7) _____ 8) _____

9) _____ 10) _____ 11) _____ 12) _____

13) _____ 14) _____ 15) _____ 16) _____

17) _____ 18) _____ Trim 1) _____ Trim 2) _____

APPLICANT AGREES:

1. Application for berth is hereby made on behalf of Vessel, its agent(s), owner(s) and/or operator(s) and/or charterer(s) and that payment of applicable charges for said Vessel will be made to United Bulk Terminals as required in the United Bulk Terminals Rules and Regulations.

United Bulk Terminals Davant LLC
14537 Highway 15
Davant, Louisiana 70040
Facsimile: (504) 682-5678
E-mail:
ubt.traffic@unitedbulkterminals.com

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2. Has in its possession a current copy of the United Bulk Terminals Rules and Regulations and stipulates that the Vessel, its agent(s), owner(s) and/or operator(s) and/or charterer(s) are bound by and agree to abide by all provisions of the United Bulk Terminals Rules and Regulations.
3. Berthing tug(s), shifting tug(s) and disembarking tug(s), will be arranged prior to the Vessel coming to the Berth and, to the extent required beyond those normally furnished by United Bulk Terminals, shifting tug(s) also will be arranged prior to the Vessel coming to the Berth.
4. Warrants that the Vessel shall fully comply with all applicable U.S. Coast Guard regulations and local, state and federal environmental laws and regulations in effect as of the date Vessel gives the Notice of Readiness.
5. Will furnish United Bulk Terminals with the International Tonnage Certificate and the proposed stowage plan, including cargo capacity, for Cargo to be loaded or actual stowage plan for Cargo to be unloaded, prior to the Vessel coming to the Berth.
6. Will furnish United Bulk Terminals with Notice of Readiness signed by the charterer or his agent, prior to commencement of Loading or Unloading.
7. Warrants that the Vessel does not constitute a "common carrier" within the meaning of 46 U.S.C. App. 1702(6) and 46 U.S.C. 801 and is a private or contract carrier.
8. WARRANTS THAT HE/SHE HAS AUTHORITY TO EXECUTE THIS BERTH APPLICATION ON BEHALF OF THE VESSEL, ITS AGENT(S), OWNER(S) AND/OR OPERATOR(S) AND/OR CHARTERER(S); THAT APPLICANT HAS RECEIVED, READ AND UNDERSTANDS THE PROVISIONS OF THE UNITED BULK TERMINAL, L.L.C. RULES AND REGULATIONS AND IS EMPOWERED TO BIND THE VESSEL, ITS AGENT(S), OWNER(S) AND/OR OPERATOR(S) AND/OR CHARTERER(S) TO THE TERMS OF THE UNITED BULK TERMINAL, L.L.C. RULES AND REGULATIONS AND THE BERTH APPLICATION.

REQUESTED BY

AUTHORIZED SIGNATURE

TITLE

DATE