



Terminal Rules & Regulations

United Bulk Terminals Davant, LLC 14537 Highway 15
Davant, Louisiana 70040

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1. GENERAL RULES AND REGULATIONS

1.1 INTRODUCTION

These Terminal Rules and Regulations (the “**Rules**”) are published by United Bulk Terminals Davant, LLC (“**UBT**”) and contain rules, regulations, rates, and other charges applicable to the use of UBT’s dry-bulk cargo terminal located at LMR Mile 55 as well as the terminal’s fleets, anchorages and all other associated appurtenances and facilities (collectively, the “**Terminal**”).

UBT is a privately owned company and is not affiliated or associated with any city, state or federal agency. Therefore, the use of the Terminal is by private contract by and between UBT and User. “User,” for purposes of these Rules, shall include any Vessel (as defined below), cargo owner, shipper, receiver, consignee, motor-carrier, rail-carrier, barge owner, barge operator, barge carrier, any other third party that is engaged in or doing business with UBT, any third party that is brought to or instructed to appear at the Terminal by any Vessel, cargo owner, shipper, receiver, consignee, motor-carrier, rail-carrier, barge owner, barge operator, or barge carrier, or any third party that is otherwise present at or using the Terminal in any form whatsoever, including, without limitation, any associated or affiliated companies and subcontractors thereof. UBT, for purposes of these Rules, shall be interpreted to include UBT’s owners and all directors, officers, employees, agents, representatives, any third parties acting on UBT’s behalf, all contractors and subcontractors of UBT, and, without limitation, UBT’s associated or affiliated companies and any subcontractors thereof.

1.2 APPLICATION OF THE RULES; AMENDMENTS TO THE RULES

The rates, rules, and regulations contained in these Rules shall apply equally to all users of the Terminal and shall apply to all services provided on or after the effective date shown on these Rules or any amendments thereto.

Amendments to these Rules may be issued from time to time, and these Rules are subject to change without prior notice. All such amendments or changes will be published in the same manner as these Rules.

1.3 CONSENT TO TERMS OF THE RULES

The use of any portion of the Terminal shall constitute a consent to these Rules, and such use shall evidence an agreement on the part of any User to pay all charges specified in these Rules and be governed by all terms and conditions contained herein. Notwithstanding anything to the contrary herein, the rights of any User to utilize the Terminal shall be subject to the prior approval of UBT.

1.4 INTERPRETATION

UBT shall be the sole judge as to the interpretation of these Rules.

1.5 COMPLIANCE AND LOCAL AUTHORITY

User agrees to comply with all federal, state, and local laws, statutes, ordinances, rules, permit conditions and regulations applicable to the Terminal, as well as all other federal and state laws concerning the waterways adjacent to the Terminal.

The Terminal is within the jurisdiction of the Plaquemines Port, Harbor & Terminal District, Plaquemines Parish, and all rules, regulations, and requirements of the Plaquemines Port, Harbor & Terminal District. For the avoidance of doubt, rates and charges set forth in these Rules are net and are in addition to all other rates, charges and impositions that may be imposed by the Plaquemines Port, Harbor & Terminal District or other governmental and non-governmental agencies. Rates, rules and regulations of the Plaquemines Port, Harbor & Terminal District, Plaquemines Parish, and all rules, regulations, and requirements of the Plaquemines Port, Harbor & Terminal District can be found here: <http://www.portofplaquemines.com/tariff>.

If any User fails to comply with all such laws and regulations, the Terminal may order any User or Vessel to vacate the Terminal or Berth. If the User and/or Vessel does not vacate the Berth when so ordered, the User and/or Vessel will be subject to 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 User and/or Vessel and any party or parties either owning, nominating or contracting with the Vessel including, but not limited to, its agent(s), owner(s), operator(s) and/or charterer(s).

1.6 HOURS OF OPERATION

The Terminal operates twenty-four (24) hours a day, every day throughout the year except for Holidays. For purposes of these Rules, "**Holidays**" shall be defined as:

- New Year's Day
- Mardi Gras Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

When any of the above Holidays fall on Sunday, the following Monday shall be observed as the Holiday. When one of the above Holidays falls on Saturday, the preceding Friday will be observed as the Holiday. Holidays will be considered from 18:00 the day prior to the observed Holiday and extend through 06:00 the day following.

1.7 PAYMENT TERMS

For any User whose credit has been pre-approved by UBT in writing, Payment is due in full within fifteen (15) days of the date of any invoice issued by UBT pursuant to these

Rules. All late payments shall bear interest at the lesser of the rate of ten percent (10%) per month or the highest annual rate permissible under applicable law. User shall not withhold amounts due to UBT on account of a dispute or claim.

Questions regarding the validity of any invoice from UBT must be submitted to UBT in writing within ten (10) days of presentation of the invoice to User, after which such time period the invoice shall be deemed accurate and valid. User shall be liable for all reasonable costs and expenses, including, but not limited to, attorneys' fees, costs and expenses, incurred by UBT in connection with any efforts to collect unpaid invoices.

For any User whose credit has not been pre-approved by UBT in writing, UBT may require pre-payment of all expected fees and charges. It shall be within UBT's sole discretion to require such pre-payment. The liability and responsibility for payment of charges extend to any agent, on behalf of their owners and/or charters, using the Terminal's mooring buoy systems for berthing and securing their vessel for loading/unloading operations.

User shall have no right of set-off or withholding, and no deduction of any amounts due from User to UBT shall be made without UBT's prior written approval.

1.8 HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

All Users of the Terminal, specifically and without limitation, agree to hold harmless, defend and indemnify UBT, its parents, subsidiaries, divisions, affiliates and joint ventures, and its/their respective officers, directors, agents, employees and insurance underwriters, as well as other entities which may manage, own, control or operate the Terminal (the **"UBT Indemnitees"**), from and against any and all disputes, claims, liability (including, but not limited to, absolute or strict liability), causes of action, damages (including, but not limited to, punitive damages) and expenses (including, but not limited to, the payment of reasonable attorney fees, expert witness fees and litigation expenses regardless of type), in connection with any loss of life, bodily injury, impairment of health, pollution and/or damage to or loss of property, directly or indirectly arising out of, related to, and/or resulting from the User's (i) activities or operations at any part of the Terminal; (ii) use of any part of the Terminal; (iii) storage of any cargo at the Terminal; or (iv) the breach of any federal, state, and local laws, statutes, ordinances, rules, permit conditions and regulations applicable to the Terminal or these Rules. Users agreement to hold harmless, defend and indemnify the UBT Indemnitees shall apply **even if the event or loss in question is caused by the sole or concurrent negligence of any UBT Indemnitee, the unseaworthiness of any vessel, and/or because of any pre-existing deficiency or defect, hidden or otherwise, of any portion of the Terminal**, unless such loss of life, bodily injury, impairment of health and/or damage to or loss of property is caused by the gross negligence of willful or wanton misconduct of a UBT Indemnitee.

1.9 NON-LIABILITY OF UBT INDEMNITEES

The UBT Indemnitees shall not be liable for any loss of or damage to cargo, whether caused by frost, heat, flood, rain, the elements and/or any other weather-related

conditions (including, but not limited to, tropical storms and hurricanes), evaporation, natural shrinkage, wastage or decay, insects, birds, rodents, and/or other animals, logs and/or other river debris, acts of God, strikes, shortage of labor, work stoppages, riots, civil commotion, insurrection, war, acts or failures to act of any governmental entity, acts of terrorism, any consequence arising therefrom, concealed damage, leakage, variation in weights or losses in weight whether occurring while cargo is in storage or is being handled, or for failure to detect or remedy same, and/or any causes beyond the control of UBT.

1.10 DELAY DAMAGES

UBT will use its best efforts to receive, load, unload, handle or deliver cargo, but does not undertake to do so within any particular time period except to the extent expressly guaranteed in a written agreement to which UBT and the shipper are direct counter-parties. In furnishing any services or performing any acts hereunder, UBT shall not be liable for any freight, despatch, demurrage, or other damages for delays to any River Barge, Vessel or other watercraft, including, but not limited to, standby time, loss of despatch time, demurrage or for any other delay damages incurred by any User, for any cause whatsoever, even if such delay is the fault of a UBT Indemnatee.

1.11 INSURANCE

Unless granted an exception by UBT, all Users shall be required to procure and maintain during the duration of its work or presence at the Terminal, minimum insurance as set forth below:

1. Worker's Compensation (including or in the alternative, Longshore and Harbor Workers Compensation Act coverage) as required by state and federal laws, such policy to include voluntary compensation endorsement, Amended to Coverage B-Maritime and Employer's Liability Coverage (including crew coverage) with \$1,000,000.00 limits;
2. Comprehensive general liability (CGL) insurance, or its marine equivalent, with the watercraft exclusion deleted, including automobile liability coverage and completed operations coverage with primary limits of \$1,000,000.00 per occurrence single limit;
3. Excess following form CGL insurance, or its marine equivalent, to the insurances required above, with limits not less than \$5,000,000.00 per occurrence in excess of the limits set forth above;
4. As applicable, pollution legal liability insurance, which coverage designates UBT as an "additional named insured" and dedicates limits for the sole benefit of the Terminal, in an amount not less than \$5,000,000.00 per occurrence and \$10,000,000.00 in the aggregate.

With the exception of workers' compensation insurance, UBT shall be named as an additional assured with a waiver of subrogation in each of the foregoing policies. Each of the foregoing policies shall contain a provision that UBT will receive thirty (30) days' written notice of material changes or cancellation. A current Certificate of Insurance evidencing the above coverages shall be furnished to UBT prior to the commencement of work or berth at the Terminal, and will be maintained on file at the Terminal office.

1.12 LAW AND JURISDICTION

Any and all disputes, claims, liability (including, but not limited to, absolute and strict liability), causes of action, damages (including, but not limited to, punitive damages), or expenses (including, but not limited to, the payment of reasonable attorney fees, expert witness fees, and litigation expenses regardless of type), directly or indirectly arising out of, related to, and/or resulting from the User's operation at or use of any part of the Terminal, storage of cargo at the Terminal or breach of these Rules, which cannot be resolved amicably, shall be governed by the general maritime law of the United States. All such claims and disputes shall be subject to the exclusive jurisdiction of the United States District Court for the Eastern District of Louisiana, New Orleans, Louisiana Division, and all Users submit themselves to the personal jurisdiction of said court. If that court lacks subject matter jurisdiction, then exclusive jurisdiction shall rest in the Louisiana Twenty-Fifth Judicial District Court in Plaquemines Parish, Louisiana, and all Users submit themselves to the personal jurisdiction of said court. All such disputes and/or causes of action shall be resolved pursuant to the general maritime law of the United States, and, to the extent not inconsistent or where otherwise not covered, the laws of the State of Louisiana, excluding its conflicts of law provisions. In the event, UBT must move to dismiss a lawsuit filed in violation of this provision, the reasonable attorneys' fees and costs incurred by UBT in so moving shall be paid by the plaintiff(s) to said lawsuit.

1.13 REMEDIES FOR ENFORCEMENT

UBT shall have all remedies available to it at law to enforce these Rules. In the event of any legal proceedings to enforce any provision of these Rules, UBT shall be entitled to recover its expenses incurred in such proceedings, including, but not limited to, payment of reasonable attorney fees, costs, expert witness fees, and litigation expenses regardless of type.

1.14 ENTIRETY OF AGREEMENT

UBT reserves the right, but is not required, to enter into confidential agreements with Users of the Terminal which may alter, amend or otherwise supplement the terms and conditions as found in these Rules. In case any portion of any provision or any one or more of the provisions contained in these Rules should be held or determined invalid or illegal, 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.

1.15 ASSIGNMENT

User shall not assign or transfer their obligations under these Rules, or any of its rights or obligations hereunder, without the prior written consent of UBT. Such consent may be subject to such additional terms as UBT may deem, in its sole discretion, necessary or appropriate.

2. VESSEL REQUIREMENTS ASSOCIATED WITH CARGO HANDLING OPERATIONS

2.1 NOMINATION; ARRIVED VESSELS

(a) Vessel Nomination

The nomination of a “**Vessel**” shall be furnished by the “**Shipper**” to the Terminal between 7:30 a.m. and 4:00 p.m. Mondays thru Fridays, excluding Holidays.

“**Shipper**” shall be defined as the owner or consignor of any cargo to be handled at the Terminal, including any agent, representative or other party authorized to and acting on behalf of any cargo interest, in connection with the transfer, storage and handling of cargo at the Terminal.

Acceptance of a nominated Vessel shall be provided in writing to Shipper within one business day of nomination. Acceptance by Terminal of a nomination of a Vessel shall be evidenced by a confirming e-mail from the Terminal to Shipper.

(b) Arrived Vessels

All Vessels (either directly or through their agent) which intend to utilize the facilities and services of the Terminal shall file a Berth Application, executed by an authorized representative of Shipper. A copy of the form Berth Application to be utilized is found at **Exhibit A** to these Rules (the “**Berth Application**”), and can be accessed online at [\[hyperlink\]](#). The Berth Application sent must be received by the Terminal between 7:30 a.m. and 4:00 p.m. Mondays through Fridays, excluding Holidays, as soon as practicable prior to the arrival of the Vessel.

Acceptance by Terminal of a Berth Application shall be evidenced by Terminal's issuance of a written acceptance of the Berth Application to the Vessel (either directly or through the Vessel's agent).

Any Vessel arriving and submitting a Notice of Readiness, as defined below, shall have all accompanying documentation and submitted payment for all pre-paid items before berthing. In addition, all cargo must have arrived at the Terminal and be either stored on Terminal ground storage or in River Barges (for direct-transfer operations) before a Vessel will be permitted to berth at the Terminal.

With respect to any Vessel expected to arrive at the Terminal for the loading of export cargo, such Vessel shall, no later than three (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 notifying party. Any bill(s) of lading, mate's receipt or other shipping documents issued in connection with the transportation of the cargo shall have no effect or control over the services to be provided by the Terminal.

2.2 NOTICE OF READINESS

In order for a Vessel to submit the Vessel's Notice of Readiness, the Vessel must (collectively, the "**Notice of Readiness**"):

- (1) submit the Berth Application to UBT;
- (2) pay all Vessel fees as required by UBT's pro forma invoice;
- (3) be cleared by U.S. Customs and Border Protection;
- (4) ensure that all holds on the subject Vessel have been inspected and found suitable by a marine surveyor;
- (5) provide UBT with a copy of its International tonnage certificate and the subject stowage plan;
- (6) arrive at the closest available position in this order:
 - a. UBT designated loading berth
 - b. UBT designated lay berth
 - c. Davant Anchorage
 - d. Alternate nearest available anchorage, within the limits of the Plaquemines Parish Port Harbor and Terminal District
 - e. Under no circumstances will UBT acknowledge a Notice of Readiness for any Vessel outside of the Plaquemines Parish Port Harbor and Terminal District, whether located in U.S. territorial waters, off the coast in the Gulf of Mexico or on the high seas, and including, but not limited to, awaiting pilot at Southwest Pass.

Unless waived by UBT, a Vessel will not be called to Berth until and unless (i) all Cargo to be loaded for Shipper is ready and available for loading; (ii) the Notice of Readiness is

complete and tendered to Terminal; and (iii) the Vessel provides the Terminal with notice of the Vessel's readiness to commence cargo operations.

2.3 VESSEL ACCESS

All Vessels are to furnish at all times while in Berth, safe access onboard. To the extent the Vessel's personnel or other visitors, including the Vessel's agent, need to leave or board the Vessel, twenty-four (24) hours prior written notification to UBT must be provided and include a list of the: (a) name, (b) telephone number and (c) reason for visit of each visitor to the Vessel and Vessel personnel leaving the Vessel provided along with a crew list. Each visitor must have a form of identification acceptable to UBT and consistent with applicable federal law. 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**").

2.4 SHIFTING AND READINESS

Assignment of Berth under these Rules is predicated upon 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. Vessels 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 Vessel shall remain prepared and be properly crewed to promptly carry out Cargo transfer operations within or between Terminal Berths and undock and vacate the Berth on order of the Terminal twenty-four (24) hours a day, seven (7) days a week. For purposes of these Rules, "promptly" shall mean within thirty (30) minutes of a notice being tendered by the Terminal.

In the event that the Vessel fails to comply with these requirements, Terminal management may, in its sole discretion, and without liability, reject the subject Vessel or order the subject Vessel to vacate the berth. If the Vessel is ordered to Berth and a delay in delivery of the Vessel to Berth occurs in excess of three (3) hours from the time that the Vessel was ordered to Berth, then the 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 Vessel is moored in or vacates the Berth, as the case may be, regardless of intervening circumstances of any nature, which charge shall be assessed as liquidated damages.

2.5 BERTH ASSIGNMENT; DOCKAGE; TOWAGE AND ANCILLARY FEES

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 (either directly or through its agent) must advance pay UBT for the Dockage fees as provided in Section 1.7 and as outlined in **Exhibit B**.

2.6 REFILING

If any Vessel that has filed a Berth Application at the Terminal is ordered to Berth by UBT and is unable or refuses to accept a Berth, due to any reason whatsoever, or otherwise fails to comply with these Rules, UBT may, at its sole discretion, cancel the Vessel's original filing. If filing is canceled, the Vessel must refile and will be assigned a rotation in the Terminal lineup based on the new filing time. The Vessel, its owner(s), operator(s), charterer(s), agent(s) and other interests shall be responsible, jointly and severally, for a dead Berth charge of \$5,000 for each hour or fraction thereof until the Vessel is moored in Berth, regardless of intervening circumstances of any nature, which charge shall be assessed as liquidated damages.

2.7 VESSEL ROTATION

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

2.8 VESSEL SAFETY AND SECURITY

All Vessels are to furnish at all times while in Berth, safe ingress and egress, lighting and equipment to permit loading and unloading. When a Vessel is berthing at any of the Terminal facilities, the Vessel's 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 these Rules, shall be obtained before any crew or any other individual will be allowed on any Terminal facilities, docks and/or buoys. The Vessel shall comply with the following:

- 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 (less than 20 minutes).
- 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 the Vessel'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.
- d. In compliance with United States Coast Guard, Department of Homeland Security directives, 33 CFR 105, UBT has developed a Facility Security Plan ("FSP"). According to UBT's FSP, certain areas of the Terminal's landside facilities and all of UBT's berths and fleets are considered restricted areas. Anyone or anything entering into the Terminal is subject to screening, inspection and/or search, and must

possess a form of identification acceptable to Terminal.

2.9 SAFE BERTH

The Master of the 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 Terminal's berths, docks, anchorages, facilities or approaches thereto.

2.10 WEATHER CONDITIONS

When, in the Terminal's opinion, weather conditions threaten the safety of any moored or fleeted Vessel and/or the structural integrity of any part of the Terminal, transfer operations will be suspended and any Vessel 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. Normal and seasonal high-water and increased currents are probable along the Lower Mississippi River. Some vessels have determined in the past that they required additional tug support during certain conditions. By berthing in any of the Terminal's mooring locations, the Vessel, its owners, charterers, operators, agents and other affiliated groups, acknowledge that they are aware of the open and obvious condition of high water.

2.11 CARGO OR DEBRIS ON DECK OF VESSEL

Vessels shall not arrive at the Terminal with cargo or any other obstruction on its deck. The Vessel agrees that if notified of such condition, it shall be the sole responsibility of the Vessel to clean and remove any such product which renders the deck of any such Vessel hazardous to the safety of any person. Should the corresponding Vessel fail to promptly clean and remove any product from the deck of any such Vessel, UBT 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. Alternatively, UBT may reject the Vessel and refuse to accept the Vessel. Any time used to clean and remove such product rendering the deck hazardous to the safety of any person shall not count against laytime.

2.12 LINE HANDLING

The master and crew of every Vessel shall provide assistance in handling lines and operating deck machinery. An English-speaking deck officer must be available to ensure timely response to directors of any representatives of the Terminal relative to the handling of lines. Terminal representatives will position lines on the shoreside. Line handling for docking and undocking of Vessels shall be assessed at the rate provided in **Exhibit B.**

2.13 USE OF TUGS

When a Vessel is entering or leaving the Berth, UBT shall provide a tug, the standard cost of which as set forth in **Exhibit B** shall be at the sole expense of and for the account of the Vessel, without refund or credit against any charges due and owing to the Terminal. If in the opinion of the Terminal management, the weather or other conditions so warrant, each 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 Vessel, which additional tugs shall be at the sole risk and expense of the Vessel per the charges contained in **Exhibit C**. 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. Additional charges for towage services may be assessed to the Vessel by UBT. The Vessel may elect to hire tugs as required herein; however, any such provided must be approved by UBT and is at the sole risk and expense of the Vessel.

2.14 STOWAGE

The Vessel shall be solely responsible for the stowage of the cargo and must be self-trimming bulk carriers. Should additional trimming be requested or required all additional fees shall be for Vessel's account.

In any event, the loading sequence plan shall not exceed two (2) pass loadings and two (2) hold trims. UBT 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 jointly and severally subject the Vessel and Shipper to a detention fee of \$5,000 per hour (with partial hours prorated).

2.15 BUNKERS

Absent the prior approval of the Terminal, no bunkers, diesel fuel or oils may be received by Vessels in Berth.

2.16 VACATING BERTH UPON COMPLETION OF LOADING OR UNLOADING

The vessel shall vacate the Berth within one (1) hour of completion of loading or unloading. If a Vessel refuses or fails to vacate the Berth when ordered, UBT shall be entitled to charge and recover as liquidated damages jointly and severally from the Vessel and Shipper, 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 Vessel does not vacate the Berth in a timely manner, as defined by Terminal, the 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 Vessel, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Vessel.

3. RIVER BARGE REQUIREMENTS AND ASSOCIATED CARGO HANDLING OPERATIONS

3.1 MOORING OF BARGES

UBT operates a closed fleet. Any owner, operator, charterer or agent of a river barge calling at the Terminal (“Barge Carriers”) shall obtain the prior approval of UBT before their line-haul towing vessels and River Barges enter the Terminal’s fleet/berth/docks/buoys. No less than twenty-four (24) hours advance notice of the foregoing shall be provided by Shipper or Shipper’s Barge Carrier to UBT’s Logistics Manager or UBT assigned party. Any Barge Carrier delivering River Barges to the Terminal shall be responsible for mooring the River Barges in accordance with these Rules and any other regulations promulgated by the Plaquemines Parish Port, Harbor and Terminal District, and United States Coast Guard. If such approval by UBT is granted, Shipper’s Barge Carrier is required to comply with UBT’s prescribed safety rules and personal protective equipment requirements and follow UBT’s Facility Security Plan. UBT reserves the right to restrict access to its barge fleet due to the existence of high water or other weather conditions, including, but not limited to, ordering fleeted barges to vacate the fleet due to presence or threat of high water or other weather conditions.

All River Barges Shipper’s Barge Carrier brings into the Terminal Fleet must be jointly inspected by Shipper’s Barge Carrier and UBT prior to being placed in the Terminal Fleet (such joint inspection may sometimes be hereinafter referred to as the “**Joint Inspection**”). The Joint Inspection shall 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 fleeting; 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 line-haul towing 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 Towing Vessel.

3.2 CONDITIONAL ACCEPTANCE OF RIVER BARGE

In the event a Barge Carrier tenders a River Barge for placement into the Terminal Fleet which, based on the Terminal's sole discretion, is: (1) found to be in a leaking or otherwise damaged condition during the Joint Inspection whereby UBT believes such River Barge 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 UBT may refuse to accept such River Barge at the Terminal and in the fleet, or, alternatively, UBT may elect to "**Conditionally Accept**" such River Barge. In the event, UBT agrees to "Conditionally Accept" a River Barge, UBT will provide notification to the Barge Carrier by e-mail confirming that UBT will accept the subject River Barge, but the acceptance of the River Barge shall be a "Conditional Acceptance." In the event UBT Conditionally Accepts a River Barge, the following allocation of risk, indemnity agreement and waiver of rights shall be in effect between the parties:

- a. The Shipper and the Barge Carrier shall be jointly and severally responsible for the leaking, damaged, lack of freeboard and/or improperly loaded condition of the River Barge resulting in the Conditional Acceptance of the River Barge by the Terminal, and Shipper and the Barge Carrier shall be responsible for any sinking, loss of and damage to the River Barge and the cargo contained therein, regardless of fault, and even when the River Barge is in the care, custody and/or control of UBT;
- b. The Shipper and the Barge Carrier shall be jointly and severally 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 River Barge's leaking, damaged, lack of freeboard and/or improperly loaded condition;
- c. The Shipper and the Barge Carrier shall jointly and severally defend (including the payment of reasonable attorneys' fees, court costs, expert witness fees, 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 River Barge 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 River Barge's leaking, damaged, lack of freeboard and/or improperly loaded condition; and

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

3.3 CARGO ON DECK OF RIVER BARGE

Barge Carriers acknowledge that any River Barge arriving at the Terminal with cargo on its deck may constitute a hazardous and unsafe condition. Barge Carriers agree that if notified of such condition, the Barge Carrier shall be responsible to clean and remove any such product which renders the deck of any such River Barge hazardous to the safety of any person. Should the Barge Carrier fail to promptly clean and remove the 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 Shipper. Alternatively, the Terminal may reject the River Barge and refuse to accept it at the Terminal or into the Terminal's Fleet.

The Barge Carrier and Shipper 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 the Barge Carrier's and Shipper's sole responsibility. Any EPA, regulatory or court-imposed fines levied against Terminal as a result of the Barge Carrier's and Shipper's non-compliance and/or failure to report shall be for Shipper's account.

3.4 RIVER BARGE FLEETING AND SHIFTING CHARGES

River Barges fleeted and/or shifted at the Terminal shall be charged for the service by UBT at the rate provided for in UBT's Fleet Service Rate Schedule, included as **Exhibit C**.

3.5 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 UBT'S Fleet Service Rate Schedule.

3.6 DISCHARGING STACKED COVER RIVER BARGES

Any stacked cover River Barges shall be discharged at the rate provided in UBT's Fleet Service Rate Schedule.

3.7 RIVER BARGE RELEASE

Once loading or unloading of a River Barge has been completed, as determined by UBT personnel, the River Barge must be picked up within seventy-two (72) hours of Terminal's transmittal of notice to the Barge Carrier 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 Barge Carrier. If the Barge Carrier 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 UBT's Fleet Service Rate Schedule. UBT will not be responsible for any additional cleaning charge (hoppers or decks) post barge release unless notified by barge carrier prior to the barge's departure from UBT's fleet.

3.8 STORAGE/TRANSFER OF CARGO

UBT reserves the right to discharge cargo from a River Barge directly to a Vessel or to discharge cargo from a River Barge to be stored at the Terminal prior to it being transferred to a Vessel. It shall be within UBT's sole discretion to determine whether cargo will be stored at the Terminal or transferred directly from a River Barge to a Vessel.

3.9 ADDITIONAL CHARGES

UBT may assess such other charges to Barge Carrier's as detailed in UBT's Fleet Service Rates Schedule. Such services shall be assessed based upon UBT's discretion, and include, if required, the pumping of barges with standing water down to two (2) inches of water. Barge Carrier shall remit payment for all services UBT provides as set forth in UBT's Fleet Service Rates Schedule and Section 1.7.

4. AGENCY

4.0 APPOINTMENT

Host Agency, LLC shall act as the vessel agent for all Vessels calling at the Terminal. Fees for agency shall be paid by UBT direct to Host Agency. Host Agency can be contacted at the below:

Host Agency

365 Canal St.
Suite 2500
New Orleans, LA 70130
NewOrleans@hostagency.com
504-469-0731

EXHIBIT A

United Bulk Terminals

— DAVANT —

BERTH APPLICATION

Vessel Name:

IMO #:

Estimated time of arrival at Southwest Pass:

Agent:

Name of Vessel Operator (Responsible for Dockage):

Vessel LOA/Beam/GRT:

_____ / _____ / _____

Vessel Gear Outreach/Capacity:

_____ / _____

Estimated Arrival & Departure Aft Draft:

Arrival: _____ Departure: _____

Est Arrival Max Waterline to the top of hatchcombing:

Services Required:

Required for Berthing

A. Stowage Plan:

B. Load Sequence:

C. Signed Terminals Rules and Regulations:

D. Payment of Dockage/Fees:

Additional copies of this document may be accessed online at [[URL link](#)]

EXHIBIT B
VESSEL FEE SCHEDULE

1. USER FEE

UBT charges one lump sum fee, “**User Fee**,” to all Vessels based on gross registered tonnage (GRT) as reflected on International Tonnage Certificate or if certificate is not provided as listed in RightShip.

Each Vessel shall be assessed the User Fee based on the Vessel GRT. In any event, for the purpose of calculating the User Fee, the minimum Vessel GRT shall not be less than 30,000 nor exceed 70,000 GRT.

The User Fee shall be \$3.52 per GRT for the duration of the loading or discharging.

A High River surcharge of 15% when the Carrollton Gauge (New Orleans) reaches 12’ or higher will be assessed against the Vessel, based on the User Fee.

The User Fee is inclusive of the below listed services:

- Security Fee
- Environmental Fee
- Crew Boat Service
- Dockage Fee
- Attendance Fee
- Towage (excluding additional services)
- Layberth Fee
- Line handling
- Stores Delivery
- Crew Shore Leave
- Documentation Fees
- Freight Forwarding
- Facility Overtime
- Clean up fees
- Trimming

Services not expressly covered in the above shall be assessed on an as incurred basis, with UBT to provide notification of the rates applicable thereto. User’s continued use of the Terminal upon such notice shall constitute acceptance of such rates and charges.

EXHIBIT C
FLEET SERVICE RATES

C.1 FLEETING

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

**A watchman is required with all towboats*

C.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*

C.3 BARGE HANDLING

Includes “in” charge, shift to dock, shift from dock and “out” charge	\$1,000 per barge
Commercial barge handling – “in” charge (not unloading at UBT)	\$425 per barge
Commercial barge handling – “out” charge (not unloading at UBT)	\$425 per barge

C.4 BARGE COVER FEES

Cover productivity loss – barges unloading with stacked covers	\$2,000 per barge
Handling Barge Hatch Covers (steel or fiberglass)	n/a*

**UBT holds as policy not to handle barge covers*

C.5 BARGE PUMPING SERVICES

Barge Pumping \$500 for the first 3 hours. Thereafter, each hour will be charged at \$100 per hour, or portion thereof based on 15 minute increments.

C.6 ADDITIONAL FLEETING CHARGES

FAILURE TO REMOVE BARGES. For failure to timely remove river barges from terminal fleet, in accordance with the Terminal Rules & Regulations, a charge of \$150.00 per barge will be incurred per day after the first three (3) days, or any portion thereof. It will increase by \$150.00 per barge per day thereafter. After seven days, additional liquidated damages may be assessed.

Fees assessed after barge is released:

Day 1-3	\$55/day
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Day 4-6	\$150/day
Day 7	\$300 + Liquidated Damages
Day 8	\$450 + Liquidated Damages
Day 9	\$600 + Liquidated Damages

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