

BENICIA PORT TERMINAL COMPANY

Marine Terminal Schedule NO. 1

NAMING
RATES, CHARGES, RULES AND REGULATIONS

- Applicable At -

THE MARINE TERMINAL

- At -

ANTIOCH, CALIFORNIA

ALL INFORMATION CONTAINED WITHIN THIS TARIFF IS TRUE AND ACCURATE
AND NO UNLAWFUL ALTERATIONS WILL BE PERMITTED

TABLE OF CONTENTS

1. TERMINAL SCHEDULE.....4
2. ACCESS AND USE... 4
3. DEFINITIONS..... 6
4. NON-EXCULPATORY STATEMENT 11
5. APPLICATION OF RATES, RULES & REGULATION..... 11
6. ACCIDENT REPORTS..... 13
7. SERVICES & FACILITIES CHARGE APPLICATION..... 13
8. DOCKAGE, DAMAGE TO DOCK/FENDER SYSTEM-PRE-REPORTING..... 13
9. BERTHING ARRANGEMENTS 13
10. DAMAGE LIABILITY-FACILITIES..... 16
11. COLLISION LIABILITY INSURANCE..... 16
12. CHARGES WHEN SPECIFIC RATES NOT PROVIDED..... 17
13. DELIIVERY CHARGES-PRIVATELY OWNED VEHICLES..... 18
14. DELAYS..... 18
15. FURNISHING OF HEAVY LIFT EQUIPMENT..... 18
16. HAZARDOUS OR CONTAMINATION COMMODITIES 18
17. HAZARDOUS SUBSTANCES19
18. POLLUTION FINANCIAL RESPONSIBILTY 20
19. NO INSURANCE PROVIDED..... 20
20. NO PUNITIVE PROVIDED 20
21. LIMITATION OF LIABILITY-DAMAGE TO CARGO..... 21
22. LIMITATION OF LIABILITY-PERSONS, VESSELS OR OTHER PROPERTY 22
23. CLAIMS 22
24. NON-LIABILITY FOR LOSS OR DAMAGES..... 22
25. NON-LIABILITY FOR SHIPPER/CARRIER FAILURES 23
26. OPERATIONS, WHO MAY PERFORM..... 23
27. INSPECTION OF CARGO..... 23
28. MANIFEST OF CARGO 23
29. PAYMENT OF CHARGES 23
30. RESPONSIBILITY FOR PAYMENT 24
31. CHARGES ON DELINQUENT ACCOUNTS..... 25
32. SECURITY AND LIEN 25
33. REMOVAL OIF RUBBISH/GARBAGE..... 26
34. ACCESS TO SHIPPING DOCUMENTS 27
35. RIGHT TO REFUSE FREIGHT 27
36. REMOVAL OF ABANDONED CARGO 27
37. FURNISHING OF GENERATOR AND LIGHTING 27
38. SMOKING RESTRICTIONS..... 28
39. VEHICLE SPEED LIMITS..... 28
40. REMOVAL OF VESSEL'S OILY WASTE..... 28
41. TERMINAL NOT PUBLIC THOROUGHFARE..... 29
42. BASIS FOR COMPUTING DOCKAGE CHARGES 29
43. DOCKAGE PERIOD 29

44.	BARGES AND LIGHTERS.....	30
45.	APPLICATION OF DOCKAGE RATES AND CHARGES.....	30
46.	DOCKAGE RATES	30
47.	WHARFAGE-ASSESSMENT AND COLLECTION	30
48.	APPLICATION OF WHARFAGE RATES.....	30
49.	WHARFAGE RATES	32
50.	WHARFAGE DEMURRAGE-APPLICATION OF RATES.....	33
51.	NO FREE TIME	34
52.	TERMINAL'S LIABILITY-WHARF DENYRRAGE AND STORAGES	34
53.	SIDE WHARFAGE RATE.....	35
54.	CARGO DISPOSITION WHEN FREE TIME EXPIRES	35
55.	TRANSFER OF OWNERSHIP OF CARGO	35
56.	ACCEPTANCE OF FREIGHT FOR STORAGE	35
57.	WHARF DEMURRAGE RATES	35
58.	STORAGE RATES	36
59.	SECURITY FEES.....	36
60.	TAKING, RELEASING AND SHIFTING LINES.....	36
61.	SHIFTING OF VESSELS	37
62.	SUPPLYING OF FRESH WATER.....	37
63.	REMOVAL OF ABANDON CARGO	37
64.	LOADING, UNLOADING AND HANDLING RATES.....	37
65.	LOADING, UNLOADING AND HANDLING REGULATIONS.....	38
66.	TERMINAL SECURITY CHARGE.....	38
67.	MISCELLANEOUS CUSTOMER OBLIGATIONS.....	39
68.	CHOICE OF LAW/DISPUTE RESOLUTION.....	39
69.	INTERPRETATION OF THIS SCHEDULE.....	40

1. TERMINAL SCHEDULE

This Schedule sets forth the rates, rules, regulations, practices, and contractual terms and conditions applicable whenever a Customer requests or receives access to facilities or service from Benicia Port Terminal Company. ("BPTC," "Terminal," or "Terminal Operator") at its Terminal in Antioch, CA. It shall apply except to the extent that it is superseded, in whole or in part, by an executed written agreement between Customer and BPTC addressing the specific rate, rule, regulation, practice, term, or condition that is intended to deviate from this Schedule. All references to a Schedule, tariff, schedule, service, facilities, etc. of BPTC shall be deemed to refer to this Schedule and the rates, regulations and practices, and terms and conditions, set forth herein.

This Schedule is published and made available to the public pursuant to the United States Shipping Act, 46 U.S.C. 40101, et. seq., and shall at all times be enforceable as an implied contract between Customer and BPTC. Its provisions may be changed by BPTC from time to time without notice other than publication of the revised provisions. The current version of the Schedule is available at each terminal facility covered by this Schedule and on the internet at the following address: <https://websimon.descartes.com>

Use of the Terminal, wharves, other facilities, or property or the receipt of services under the jurisdiction of or provided by BPTC shall constitute a consent to and acceptance of the terms and conditions of this Schedule and evidences an agreement on the part of all vessels, their owners, charterers and agents, or other users or recipients of Services (including owners of or others with interests in cargo or equipment or both) to pay all specified charges and abide by all rules and regulations of BPTC and abide by the rules and regulations of this Schedule.

This Schedule does not include an expiration date.

2. ACCESS AND USE

Any access to and/or use of the Terminal and/or the Services of Terminal Operator whatsoever by or on behalf of Customer shall be deemed Customer's express agreement with the provisions set forth in this Schedule, including without limitation the security provisions contained herein, and the access and use provisions of this Section. Terminal Operator may request that Customer sign a separate, written Access Agreement, prior to such access/use or otherwise, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

This Item provides general rules and requirements for access to and use of the Terminal. More specific and/or detailed requirements may be specified elsewhere in this Schedule. Compliance with this Item does not excuse failure to comply with such specific requirements, and in the event of any conflict between this Item and those provisions, those provisions shall prevail.

(a)(1) Except as stated in (a)(2) below, all access to and/or use of the Terminal and/or the services of Terminal Operator by or on behalf of Customer is agreed to be non-exclusive and for the limited purpose requested by Customer and agreed by Terminal Operator. Customer

understands and acknowledges that activities by Terminal Operator and others will be on-going at the Terminal, and that such activities may be dangerous to those participating and others. Customer, including its employees, subcontractors, agents and invitees, agrees to not interfere with any operations being conducted at the Terminal and to not create any danger or safety hazard whatsoever at the Terminal. Unless otherwise specifically agreed by Terminal Operator in advance, all access and use of the Terminal shall be restricted to normal working hours.

(a)(2) Exclusive License for Ro/ro Unloading Services.

(i) Terminal reserves the right to enter into exclusive arrangements for the provision of handling services at the Terminal (“Exclusive License”).

(b) No Warranty: Terminal Operator makes no warranties whatsoever with respect to the Terminal or Customer’s access or use thereof. It is Customer’s obligation to inspect the Terminal and the areas which it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for Customer’s intended access and use. If Customer believes there is any problem as to safety or suitability, and/or if any such problem develops during Customer’s access or use, Customer shall immediately cease all of its operations and notify Terminal Operator. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to Customer’s satisfaction, Customer shall promptly withdraw its materials, supplies, tools, equipment, personal property, employees and subcontractors and its requested access/use shall be deemed voluntarily terminated. Once Customer begins any access or use of the Terminal whatsoever, or continues to conduct operations at the Terminal, it shall be irrevocably presumed that the Terminal was inspected and accepted by Customer as both safe and suitable for its operations.

(a) Compliance: Customer, including its employees, subcontractors and invitees, shall conform with all local, MPA, municipal, county, state and federal laws and regulations applicable to Customer’s operations at or concerning the Terminal, including without limitation those promulgated by the EPA, OSHA, WISHA, DOT, FMCSA, DHS and/or USCG, and shall be responsible for any violation of the same.

(b) Safety and Other Rules: Customer shall be responsible for assuring that all of its employees, subcontractors and invitees learn and obey Terminal Operator’s safety and other rules, whether posted, given in writing, set forth herein and/or advised verbally, and that all such persons otherwise wear hard hats, safety vests and other personal protective equipment as required by Terminal Operator.

(c) Clean-up: Customer shall remove all of its materials, supplies, tools, equipment, personal property, employees and subcontractors from the Terminal daily, and shall otherwise keep all areas used by Customer clean and free of debris. Deck cleaning or deck washing that has the potential to discharge any material into the Carquinez Straight is barred. Blowing, washing or sweeping of Petroleum Coke or any other substance into the surrounding water is strictly prohibited.

(d) No Security Provided: Terminal Operator does not provide any security for the materials, supplies, tools, equipment or personal property of Customer or any others at the Terminal. Customer shall be solely responsible for the security of all such items, including those of its employees, subcontractors, agents and invitees, and is cautioned to watch the same carefully and remove all such items on at least a daily basis and store them safely elsewhere.

(e) Damage to Property (Other than Cargo): Customer shall be responsible for, and shall indemnify and hold Terminal Operator harmless (including legal fees and costs) from and against, all loss/damage to Customer's owned/leased equipment and personal property, including all of its owned/leased materials, supplies, tools, equipment, tractors, trucks, motor vehicles, trailers, containers, chassis, flatbeds and other equipment and/or personal property (but not Cargo, the loss/damage of which Cargo is addressed elsewhere herein), howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other fault of Terminal Operator. In addition, Customer shall be responsible for, and shall indemnify and hold Terminal Operator harmless (including legal fees and costs) from and against, any loss/damage to the personal property of others at the Terminal, including the personal property of Terminal Operator, which in any way arises out of and/or relates to Customer's access and/or use of the Terminal or terminal Services.

(f) Personal Injury: Customer assumes responsibility for any bodily/personal injury, illness and/or death of its employees (including those of its subcontractors) and agrees to indemnify and hold Terminal Operator harmless (including legal fees and costs) of and from the same. In addition, Customer assumes responsibility for, and agrees to indemnify and hold Terminal Operator harmless (including legal fees and costs) of and from, any bodily/personal injury, illness and/or death of any other person at the facility which arises out of or is in any way connected with Customer's access and/or use of the Terminal or the Services. The foregoing indemnification shall be deemed to include any claim or suit by any employee (present or former) of Customer, and in furtherance thereof Customer waives any immunity from suit, exclusivity of remedy and limitation of liability under any worker's compensation act or similar law.

(g) Assumption of Risk: Customer specifically understands, acknowledges and agrees that any and all providing of, access to and/or use of the Terminal and/or the Services of Terminal Operator by or on behalf of Customer shall be at Customer's sole risk and expense. In addition to any other types of loss addressed herein, Customer assumes sole responsibility for, and agrees to defend, indemnify and hold Terminal Operator harmless from and against (including legal fees and costs), all other loss, damage, expense, claim, liability, suit, fine and/or penalty of any type or nature

whatsoever which in any way arises out of and/or relates to any providing of, access to and/or use of the Terminal and/or the Services of Terminal Operator by or on behalf of

Customer, including, without limitation, those respecting any loss/damage to the property of Terminal Operator, Customer or any other as well as those respecting the personal injury, illness and/or death claims of any person, including without limitation of any agent, employee, representative, guest, invitee, vendor and/or subcontractor of Terminal Operator, Customer or any other, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other legal fault of Terminal Operator. In furtherance of the foregoing, Customer shall waive any immunity from suit, exclusivity of remedy and limitation upon liability that would have otherwise been afforded pursuant to any worker's compensation act or similar law.

3. DEFINITIONS

The following terms when used herein shall have the meanings designated below:

CARGO shall mean merchandise, goods, freight, material, vehicles, mail, live animals, fuel, vessel's stores and supplies and any and all property not specifically described, including any equipment associated or utilized by the foregoing, and with respect to containerized cargo shall mean the contents of the container and the container itself. Bulk cargo means cargo that is loaded or carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics.

CHECKING shall mean the service of counting and checking cargo against appropriate documents for the account of cargo or the vessel, or other person obligated to pay as said herein.

CONTAINER shall mean a single, rigid, non-disposable container without wheels or bogies attached having not less than 135 cu. ft. capacity, having a door or closure that allows ready access to the cargo and having construction, fittings and fastenings able to withstand, without permanent distortion, all stresses that may be applied in normal service use of continuous transportation.

CUSTOMER shall mean any vessel, vessel owner, carrier, stevedore, agent, vessel operator, vehicle, conveyance, consignor, consignee, beneficial Cargo owner, person, Cargo, equipment, chassis, or any other person or entity, including but not limited to the agents, other providers, and other subcontractors (at any level) of any of the foregoing, that uses the Terminal facilities or is provided with, benefits from, or receives any services whatsoever from the Terminal Operator, or any person or business entity who owns or claims an interest in, right to, attachment, or lien regarding any vessel, vessel equipment, equipment, or Cargo.

DIRECT shall mean a continuous operation between barge, car or truck and vessel when performed by vessel's stevedores.

DOCKAGE shall mean the charge assessed against a vessel for berthing at a wharf, pier, or bulkhead structure, or bank, or for mooring to a vessel so berthed. The charge for Dockage shall be assessed, at the Terminal Operator's sole discretion, against the vessel, its owners, or operators, in accordance with the rates and charges specified herein.

FREE TIME shall mean the specified period, if any, during which cargo may occupy space assigned to it on Terminal property free of wharf demurrage or Terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

HANDLING shall mean the service of moving an article or package from or to ship's tackle or from one location to another on the dock or wharf.

HEAVY LIFT shall mean the service of providing heavy lift cranes and equipment for lifting cargo.

HOLIDAYS shall be the following (See Note), viz.:

New Year's Day	Martin Luther King Jr's Birthday
Lincoln's Birthday	Washington's Birthday
Memorial Day	Independence Day
Harry Bridges' Birthday	Labor Day
Admission Day	Columbus Day
Veterans Day	Thanksgiving Day
Christmas Eve Day	Christmas Day
New Year's Eve Day	

Presidential and Congressional Elections and any other National or State Holidays created by Executive Authority and any other legal holiday proclaimed by State or Federal Authority.

NOTE: When any holiday falls on Sunday, the Monday following will be observed as the holiday.

INBOUND CARGO shall mean cargo that has been discharged from a vessel and is to be delivered to the consignee or owner thereof.

IN BULK or BULK shall mean commodities which by nature of their unsegregated mass are usually handled by shovels, scoops, buckets, forks, magnets or mechanical conveyors, and which are loaded or unloaded and carried without wrapper or container and received and delivered by carriers without transportation mark or count. (Will not apply when subject to piece count.)

MOTOR VEHICLES (also referred to as “vehicles, motorized” or “vehicles”) shall mean self-propelling (whether in running or not running order), automobiles, pleasure, passenger, commercial or freight, including chassis, freight-trailers or freight semi-trailers, not boxed or crated, set up (“SU”) on own wheels (when boxed or crated, Cargo, NOS rate will apply.) (Does not include agricultural, earth moving or road making equipment.)

OUTBOUND CARGO shall mean cargo that is being or has been assembled and is awaiting loading to a vessel.

O.C.P. TERRITORY is defined as origins or destinations in the United States located in North Dakota, South Dakota, Nebraska, Colorado, New Mexico and states east thereof and points in Canada east of the Saskatchewan/Manitoba boundary line.

POINTS OF REST as used herein means:

- (1) an area on the Terminal premises where cargo ordinarily would be deposited when received, subject to non-interference with Terminal operations,
- (2) the actual point at which the cargo is placed. All cargo must be placed at the designated point of rest. The Terminal Operator reserves the right, upon failure of the proper party to move freight to the designated point of rest, after notice, to move the freight to another location, at the risk and expense of the owner of the freight or the carrier or person who has custody.

RECEIVING and DELIVERY CHARGES shall mean the charges assessed to cover the ordinary duties incidental to receiving goods for monthly storage, stowing and delivering ex-storage, but do not include unloading of motor vehicles or handling to or from ship's tackle or to or from vehicle's tail-gate.

SCRIBNER SCALE shall mean the gross contents in board feet according to the Scribner Decimal C Log Rule as set forth in Appendix E of Log Scaling and Timber Cruising, J.R. Dilworth, Oregon State University Book Stores, Inc., Corvallis, Oregon, 1966 Edition.

SERVICE and FACILITIES CHARGE shall mean the charge assessed against vessels, their owners, agents or operators (See Note 2) the use of Terminal working areas in the receipt and delivery of cargo to and from vessel and for services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo. (See Note 1.)

- (1) From vessels to consignees, their agents or connecting carrier, or
- (2) From shippers, their agents or connecting carrier, to vessels.

The Service and Facilities Charge does not include any services or facilities the charge for which is included in the separate charges for wharfage, dockage, wharf demurrage, wharf storage or other individual charges.

No person other than the Terminal operator shall be permitted to perform the services covered by this definition.

NOTE 1: The Service and Facilities Charge does not include any amount for the separately charged services of cargo handling, loading or unloading operations, or any charge for labor other than that which is essential to performing the service.

NOTE 2: The full amount of the Services and Facilities Charge shall be billed to, and paid to the Terminal by, the vessel, its owners, agents or operators, any contract of affreightment notwithstanding. To the extent that any contract of affreightment or other agreement establishes the responsibility as between the parties thereto for the payment of the Service and Facilities

charge, such agreement shall not affect the responsibility to pay the Terminal, but shall apply only between the parties thereto to allocate or adjust amongst themselves the cost of the charge paid to the Terminal. The term "Contract of Affreightment" as used herein shall mean tariff, ocean rate, charter, or any other arrangements under which the vessel transports cargo.

STRAIGHT TIME, OVERTIME and PENALTY TIME shall mean:

- (1) Straight Time: Between the hours of 8:00 A.M. and 5:00 P.M., Mondays through Fridays, except Holidays and except for ILWU Longshoremen and Walking Bosses between the hours of 3:00 P.M. and 5:00 P.M. (see Paragraph 2 herein and Item 5).
- (2) Overtime: All work performed on Mondays through Friday not included in Paragraph (1) hereof and all work performed on Saturdays, Sundays or Holidays, except such work as is covered by penalty overtime. Overtime also includes work performed during noon meal hour, except on Saturdays, Sundays or Holidays, and work performed in excess of five consecutive straight time hours, without an opportunity to eat.
- (3) Straight Time Penalty: Rate for working explosives and other penalty cargoes.
- (4) Penalty Overtime shall mean:
 - a. Time worked through a meal hour, other than the noon meal hour.
 - b. Time worked through noon meal hour on Saturdays, Sundays or Holidays.
 - c. Time worked in excess of five consecutive hours without an opportunity to eat when the rate then prevailing is the overtime rate.
 - d. Time worked in excess of five hours when also a meal hour.

TERMINAL or TERMINAL OPERATOR shall mean the Benicia Port Terminal Company ("BPTC") and the facilities under its control.

TERMINAL STORAGE shall mean the service of providing warehouse or other Terminal facilities for the storing of inbound or outbound cargo after the expiration of free time, if any, including wharf storage (defined below), shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made.

TON shall mean:

- (1) The term "ton" means 1000 Kilograms gross weight unless otherwise provided.
- (2) The term "measurement ton" means one cubic meter. Measurement tons may be based on ship's manifest or computed by using the full outside dimensions on all sides of the package.

UNITIZED CARGO shall mean cargo in individual shipping packages secured to pallets, platforms or skids capable of being handled with mechanical equipment not to exceed a four-ton forklift. Rates shall apply only when the cargo is unitized throughout the movement for which rates are applicable. Any charges for services necessary to bring cargo into conformance with this definition will be in addition to other applicable charges. The weight of the pallets, platforms or skids will be excluded when computing the weight on which charges are assessed. (This definition not applicable to cargo unitized on vessel while berthed at Terminal facilities.)

USAGE shall mean the use of the Terminal facility by any carrier engaged in water transportation, viz.: vessels, barges, and lighters, their owners, agents, or operators, to discharge or load cargoes from or to vessels, from or to place of rest on the Terminal facility, with the care, custody, control, handling, checking, delivery or assembly to be assumed and performed by the carrier at its risk and expense.

VESSEL as used herein shall mean floating craft of every kind.

WHARFAGE is the charge assessed against cargo or merchandise, vessel's stores, fuel and supplies for passage on, over, under or through any wharf, pier, or bank controlled by the Benicia Port Terminal Co., or between vessels or overside vessels (to or from barge, lighter or water) when berthed at a wharf, pier or bank controlled by the Benicia Port Terminal Co.

WHARF DEMURRAGE shall mean the charge assessed against merchandise which remains on the wharf premises after the expiration of any free time allowed.

WHARF STORAGE shall mean the storage of freight on the wharf premises. Allowance of wharf storage, if at all, is subject to the absolute discretion of the Terminal. If wharf storage is allowed, the duration of such storage is subject to the absolute discretion of Terminal, and free time as specified herein, if any, will be allowed, and upon expiration of free time, demurrage as specified herein will be charged. Storage of freight anywhere off the wharf premises is subject to separate agreement between cargo and the owner of the property. Declaration and acceptance for wharf storage may be upon either a daily or monthly basis at the discretion of the Terminal.

4. **NON-EXCULPATORY STATEMENT**

No provision contained in this Schedule shall exculpate or relieve the Terminal from liability for its own negligence nor require any person or user to indemnify or hold harmless the Terminal from liability for its own negligence.

5. **APPLICATION OF RATES, RULES & REGULATIONS**

- (a) Except as otherwise provided herein, the applicable rates, charges, rules and regulations under this Schedule shall be those in effect at the time the charge accrues.
- (b) The applicable rates, charges, rules and regulations for wharfage and service charges shall be as follows:

- (1) On Inbound Cargo: The rates, charges, rules and regulations in effect on the date that vessel commences discharging cargo.
 - (2) On Outbound Cargo: The rates, charges, rules and regulations in effect on the date that vessel commences loading cargo.
- (c) The rates, rules and regulations contained in this Schedule apply to (1) all vessels docking at the wharves of the Benicia Port Terminal Co., and (2) all cargo handled over all marine terminals of the Benicia Port Terminal Co.
- (d) Use of the wharves or marine Terminals of the Benicia Port Terminal Co. shall constitute acceptance of this Schedule and the terms and conditions named herein.
- (e) In the absence of a specific commodity rate herein, a commodity shall be rated as "Cargo, NOS" and not by analogy.
- (f) OVERTIME AND PENALTY RATES:
- (1) Rates named in this Schedule for services involving labor are based on current rates of pay during straight time hours. Copies of the current labor rates are available from the Terminal and shall be deemed part of the Contract between Customer and the Terminal. When services are performed during Overtime or Penalty Time hours for the account of shippers, carriers or other parties, the charge for such Overtime or Penalty Time shall be as set forth herein, unless subject to a negotiated agreement specifically superseding such charge. For definition of Straight Time, Overtime and Penalty Time see Item 3.
 - (2) The charge for clerical labor to check cargo to or from trucks, and labor to perform truck loading and unloading during overtime and penalty time periods, shall be as specified in Appendix A.
- (g) STAND-BY TIME AND MINIMUM HOURS:

In the following situations, vessels, their owners, agents or operators will be assessed at an added hourly rate, as specified in Appendix A:

- (1) When clerks are ordered for vessels, their owners, agents or operators and required to stand-by; (ii) for unused hours when clerks are ordered and vessel completes loading or discharging prior to completion of eight-hour minimum shift; and (iii) when clerks are ordered, but not used, vessels, their owners, agents or operators will be assessed for eight hours' at the rate specified in Appendix A.
- (2) If labor, other than clerks, is ordered for a specific service and for a stated time and is required to stand-by, labor charges will be assessed for the extent of time lost, at the rate specified in Appendix A. A complete schedule of rates of pay in effect may be obtained at the Terminal and is available upon request from the Terminal Operator. Such schedule, as it may be amended from time to time, is hereby incorporated by reference.

(h) ANNUAL INCREASE IN RATES AND CHARGES:

(1) Except as otherwise stated herein, the rates and charges provided in this Schedule are subject to increase, from year to year in January, to reflect any percent increase in the Consumer Price Index (CPI-U Index) during the twelve-month period ending in December of the immediately preceding year or 3%, whichever is greater. Such increases in the rates and charges provided by this Rule take effect automatically and without further notice from the Terminal Operator.

(2) Nothing in this paragraph shall prohibit or limit the Terminal Operator from changing rates and charges apart from the annual increase.

6. ACCIDENT REPORTS

Any and all Customers and any other users shall report in writing to the Terminal within fifteen (15) days after: it, its officers or managing agents, have knowledge of any accident or occurrence involving death or of injury to any person or persons, or damage to property in excess of \$500.00, occurring upon the premises, or elsewhere within the Terminal if user's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain the following information, to the extent available, with any missing information reported as soon as known:

- (a) the name and address of the person(s) involved;
- (b) a general statement as to the nature and extent of injury or damage;
- (c) the date and hour of occurrence;
- (d) the name and addresses of known witnesses; and
- (e) such other information as may be known to user, its officers or managing agents.

7. SERVICE & FACILITIES CHARGE APPLICATION

In connection with the initial approval of a berthing application, Terminal Operator will quote a specific Service and Facilities charge to the applicant. Subsequent use of the Terminal shall be deemed acceptance of the amount of the Service and Facilities charge, as quoted or as modified pursuant to discussions between Terminal Operator and applicant.

8. **DOCKAGE, DAMAGE TO DOCK/FENDER SYSTEM – PRE-REPORTING**

Vessels are responsible and will be invoiced for damages to the dock/fender system, as well as any other Terminal facilities or structures used during their occupancy of a Terminal berth. Such damages shall include any loss of business resulting from the incident. Damages identified during or after a vessel's departure will be deemed to have occurred during the vessel's berthage, unless the Terminal Operator is notified in writing by the vessel's agent of any pre-existing damage, prior to or at tie-up.

9. **BERTHING ARRANGEMENTS**

- (a) No vessel will be permitted to berth at a wharf or other marine Terminal facility at the Port of Benicia without having first made application in writing for a berth and without a berthing arrangement having been granted. Reservations will only be accepted within a 60-day period prior to the intended discharge date to ensure efficient scheduling and resource allocation. Any unauthorized berthing of vessels, lighters, barges, and tugs will be assessed and invoiced in accordance with the rates provided in Appendix A. The Terminal reserves the right to remove such vessels, lighters, barges, and tugs from the facility at owner's expense. The party making application for a berth must also acknowledge responsibility for payment of charges. Application must be made as far in advance as possible and in no event less than 72 hours prior to arrival. If the vessel making late application can be accommodated, the Terminal may, based on reasons it deems sufficient, in its sole discretion, reasons waive this minimum requirement of 72 hours.
- (b) Vessels will typically be scheduled for berthing in the order that written applications are received, subject to berth availability and operational/administrative considerations, and may be rescheduled as the Terminal may decide in its sole and reasonable judgment in accordance with the provisions of this Schedule.
- (c) **CANCELLATION OF BERTHING RESERVATION:** When it is desired to cancel or postpone docking, thirty (30) days' notice shall be given to the Terminal. In the event thirty (30) days' advance notice is not given to the Terminal, the vessel will be responsible for paying the Dockage Rates, specified in Appendix A, as if the vessel berthed according to its reservation. Following a cancellation, the Terminal may use the pier for other purposes, and the vessel will be required to make written application for a new berthing arrangement.
- (d) No person shall make any vessel fast, or cause or permit any vessel to be made fast to the wharf, or cause or permit any vessel to remain fastened to the wharf or to be or remain moored immediately in front thereof without the consent of the Terminal Operator. Any vessel made fast to or moored in front of the wharf or remaining fastened to or moored in front of the wharf, in violation of this Rule shall be subject to removal by or at the order of the Terminal Operator at the expense of such vessel, and its owner or operator, to such other place as the Terminal Operator may elect.
- (e) No person shall make fast any line or moor to any wharf or dock or to any shed

or tender piles supporting same, except to the mooring bollards, posts, or bits provided for that purpose.

(f) Vessels shall be moved or leave berths controlled by the Terminal Operator at the direction of the Terminal Operator. Any vessel which is not moved promptly upon notice to so move, may be shifted and any expenses involved, damage to vessels or to the wharf during such move shall be charged to the vessel or vessel operator at the Terminal's sole discretion.

(g) The Terminal reserves the right to order a vessel, which may be alongside the dock but not engaged in normal cargo operations, to shift her position or vacate a berth with all expenses incurred and all risk of damage for the account of the vessel for any reason including, but not limited to:

- (1) Labor shortages
- (2) Labor disputes
- (3) Engine trouble
- (4) Lack of fuel or stores
- (5) Lack of cargo
- (6) Cargo operations completed and vessel lying idle
- (7) Bunker operations not completed

(h) If a vessel fails to shift or vacate a berth as ordered by the Terminal, the vessel shall be subject to an additional dockage charge of per hour or portion thereof, in the amount specified in Appendix A. Such dockage charge shall commence 2 hours after written orders, issued under this Schedule, are handed to the master or other officer of the vessel and shall continue thereafter until said orders have been obeyed. Such dockage charge shall be in addition to regular dockage charges named in this Schedule.

- (i) The Terminal reserves the right to require a vessel occupying a berth to work at her own expense a minimum of two (2) shifts per calendar day with the maximum gangs practical, feasible and available. Should a vessel refuse or be unable to work as indicated above she shall forfeit her turn on berth and be ordered off berth in favor of the next vessel scheduled to work. A vessel losing her turn on berth under these conditions must re-apply for a new berthing arrangement.
- (j) The Terminal may change the berthing order of vessels or order a vessel off berth at the expense of the vessel when confronted by an urgent need to receive or load any cargo, import or export, or when conditions at the dock or in the Terminal will be facilitated thereby as determined in the sole and reasonable discretion of the Terminal.
- (k) Vessels for which the overall length exceeds 700 feet (213.36 meters), applying for a berth to perform Bulk or Ro/Ro loading or discharge operations, must supply the Terminal with a berth application (in writing) as far in advance as possible and in no event less than 2 weeks prior to the scheduled arrival date. If the vessel can be accommodated, the Terminal may for good and sufficient reasons and at its sole discretion, grant the application notwithstanding failure to meet this minimum requirement of 2 weeks. The berthing application should include, whenever possible, a complete loading or discharge notation plan. If not possible, such plan should be provided to the Terminal as soon thereafter as practical. Any vessel exceeding 700 feet remains subject to the 100% advance deposit of dockage rates, as outlined in Item 9(b) and is similarly subject to the cancellation policy stated in Item 9(d).
- (l) All vessels berthed at the Terminal shall at all times have sufficient crew to comply with all rules and regulations of the Terminal Operator and applicable authorities.

10. **DAMAGE LIABILITY-FACILITIES**

- (a) Every user of the Terminal, including without limitation every vessel and its agent, owner and operator, shall be jointly and severally responsible to compensate the Terminal in full, without depreciation, for all damage to the Terminal resulting from its use of, including berthing at, the Terminal. Time is of the essence. The user expressly agrees that the Terminal has the right, at the user's expense, to promptly repair or replace, contract for repair or replacement, or otherwise cause to be repaired or replaced any such damage or destruction, and further expressly agrees to be responsible to pay the Terminal, upon demand, the full cost, without depreciation, to repair such damage or destruction, including without limitation, engineering, damage survey, project oversight, administrative and other costs. At its sole discretion, the Terminal may provide the engineering and other services itself, in which case the cost shall be determined by the Terminal and shall be a minimum of 20 percent of the cost of using outside services. User shall be responsible to pay the invoiced amount, without regard for any right of the user to seek apportionment, contribution or indemnity from a third party.
- (b) All invoices for damage or destruction shall, without exception, be paid within 30 days of the invoice date. If an invoice is not paid in full within such 30 days, interest

shall accrue on the unpaid amount, at a rate of 1.5% per month, without prejudice to

other rights and remedies available to the Terminal. The Terminal may detain any vessel that causes or contributes to damage or destruction to the Terminal until sufficient security and/or assurances acceptable to the Terminal are provided to pay the full cost of repair or replacement of such damages or destruction, and may deny subsequent entry to the vessel or Vessel Line until Terminal is paid in full.

(c) Any dispute arising out of this Item not resolved by the Parties shall be resolved pursuant to the dispute resolution provisions of Item 68 herein, and the prevailing party shall be awarded its attorney's fees and costs. The commencement or pendency of a dispute resolution mechanism shall not suspend or affect application of this Item.

11. COLLISION LIABILITY INSURANCE

(a) All vessels berthing at the Terminal shall maintain Marine Collision Liability Insurance with limits of at least \$3 million for each accident and \$5 million policy limits for aggregate operations on an occurrence basis with umbrella liability coverage with a limit of at least \$10 million with underwriters, deductibles and other terms satisfactory to the Terminal, and shall provide proof of such insurance acceptable to the Terminal.

(b) The vessel, her owners and operators shall indemnify, defend and hold Terminal harmless (including legal fees and costs) from and against any loss, damage, expense, claim, liability and/or suit resulting from failure of vessel to provide insurance as required and/or resulting from the failure of vessel's such insurance, including without limitation exposure to loss, damage, expense, claim, liability and/or suit which would have been covered had insurances been procured and maintained as required.

12. CHARGES WHEN SPECIFIC RATES NOT PROVIDED

(a) GENERAL. Where services are performed or provided by the Terminal for which no specific rates are shown in this Schedule, the man-hour rates appearing in Paragraph (c) hereof shall be charged for the labor employed, plus the cost of any material used, together with the applicable charge for the use of Terminal equipment as provided in Paragraph (b).

(b) USE OF TERMINAL EQUIPMENT (See Note 1)

Use of equipment not otherwise specified shall be assessed charges in accordance with Appendix A.

NOTE 1: Rates for equipment do not include service of operators. The charge for operator's service shall be assessed on a man-hour basis at the rates referenced herein.

(c) Labor Rates, including Minimum time per man: As specified in the current ILWU/PMA Agreement, available from the Terminal upon request and incorporated by reference herein.

(d) Computation of charges per man:

- (1) Multiply the number of paid hours by, as applicable, the straight time rate: 1st Shift, 2nd Shift, or the overtime rate, at applicable rates per the ILWU/PMA Contract.
- (2) Travel Time at straight time hour rate, per man, per round trip, at applicable rates per the ILWU/PMA Contract.
- (3) To the total of sub-paragraphs (1) and (2) above add Insurance and Taxes at 50%.
- (4) Add the total number of hours in sub-paragraphs (1) and (2) above for PMA Assessments at applicable rate per ILWU/PMA Contract.
- (5) Add mileage of 82 miles per round trip at applicable rates per the ILWU/PMA Contract.
- (6) Add bridge tolls per round trip at applicable rates per the ILWU/PMA Contract.

NOTE 2: When the Terminal is required to pay travel time, bridge tolls, meals, and mileage to longshoremen, clerks, and other labor employed to perform the service, the amounts so expended will be billed at cost to the party ordering the operation, in addition to the man-hour rate.

13. DELIVERY CHARGES-PRIVATELY OWNED VEHICLES

Owners of imported automobiles (privately owned vehicles), will be notified by the vessel agent of the specific date or dates that the units will be available for pick-up. Failure by such owners to take possession on said date or dates will result in supplemental charges to be billed to the owner by BPTC on the basis of the actual cost (applicable hourly rate times number of hours) of a clerk-supervisor employed to effect delivery.

14. DELAYS

The Benicia Port Terminal Co., unless directly responsible for delays in loading or unloading rail cars or other transportation equipment, will not assume any responsibility or liability for demurrage charges which may accrue against such equipment.

15. FURNISHING OF HEAVY LIFT EQUIPMENT

- (a) When the Terminal is requested by a vessel or by a person(s) to obtain and/or use equipment in the course of performing services for the vessel or person(s) making such request, and when such equipment is rented, or leased, by the Terminal from an outside source, the person or persons for whose account the equipment is obtained and/or used shall be billed in accordance with Appendix A. The charge for the labor employed in connection with the use of such equipment will be calculated in accordance with the provisions of Item 5.

(b) The minimum amount to be charged under the provisions of Paragraph (a) hereof shall in no case be less than the amount of the charge computed at the applicable rates for the equipment or services when it is specifically provided for in any other individual item of this Schedule.

16. HAZARDOUS OR CONTAMINATING COMMODITIES

(a) The Terminal does not offer to accept or to hold on its premises any article or commodity that may affect the rate of insurance paid by the Terminal, or that may contaminate other goods or otherwise endanger property.

(b) EXPLOSIVES, viz.: Gun Powder, Blasting Powder and High Explosives, may only be handled over, or be received on, a wharf by special advance arrangement with, and at the option of the Terminal subject to Federal, State and City rules and regulations. If and when handled or received, the applicable rates and charges on such explosives for Service and Facilities Charges, or Wharfage shall be determined by the Terminal and communicated to the applicant, which shall be deemed accepted either by written agreement or by subsequent delivery of such explosives to the Terminal.

17. HAZARDOUS SUBSTANCES

(a) Hazardous substances, as used herein, shall mean any hazardous, toxic, polluting, dangerous, or extremely dangerous substance, material or waste, whether solid, liquid or gas, which is or becomes regulated under any environmental laws or by any applicable governmental authority, including the United States, state, or any local governmental authority, or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, lithium and lithium ion batteries, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, mold, mycotoxins, microbial matter and air borne pathogens (naturally occurring or otherwise), pollutants, contaminants, dangerous substances or goods, explosives, radioactive materials, or any other hazardous, corrosive, flammable, irritant, strong sensitizer, or toxic material, substance or waste, which is defined by those or similar terms, or is otherwise regulated. The term includes, without limitation, any substances containing constituents of hazardous substances.

(b) Customer shall notify Terminal Operator in writing of any Cargo containing or reasonably expected to contain any hazardous substance seven (7) days prior to such Cargo entering the Terminal, or if not earlier known, within twenty-four (24) hours of discovery.

(c) Customer shall have the full and sole responsibility, at its expense, to manage and prepare all arrangements for the immediate mitigation, remediation, removal and disposal of all hazardous substances and all leaking, released, damaged or exposed hazardous or non-hazardous Cargo from the Terminal. Such arrangements shall include but not be limited to: discussions with shippers, consignees or other responsible parties; contracting with appropriately licensed, trained and insured vendors to complete the

process described above; providing frequent status updates to Terminal Operator; providing all applicable and/or required documentation to Terminal Operator for all labor, equipment rental and materials provided during Terminal Operator's assistance with mitigation and remediation efforts as may be agreed by and at the sole discretion of Terminal Operator; providing all applicable and/or required notifications regarding any release to any applicable regulatory authority, as well as providing all follow-up reporting; and indemnifying Terminal Operator for any and all costs, penalties, fines, or other enforcement action (including without limitation attorneys' fees and expert costs) resulting from hazardous or non-hazardous Cargo, or constituents thereof, on, below, within and from the Terminal.

(d) Although sole responsibility always remains with Customer, if and when Terminal Operator detects and/or determines that: (1) there is an actual or imminent leak or spill of a hazardous or non-hazardous substance; (2) Cargo is emitting an odor; or (3) Cargo has significant damage or has been involved in an incident that poses a potential significant risk or threat to the Terminal, environment, or employees, Terminal Operator shall notify Customer and has the option to, but not the obligation to, promptly take such action as is necessary and possible by Terminal Operator to mitigate and correct the violation. These actions will be at Customer's sole risk and expense, reimbursable within five (5) days of a demand.

(e) Customer shall be fully responsible for the treatment, handling and disposal of all hazardous and non-hazardous substances, including all Cargo, and shall indemnify and hold Terminal Operator harmless from and against all liabilities, expenses, governmental agency fines, citations and/or violations, losses or claims resulting from the release and/or disposal of hazardous and non-hazardous substances, except in any case where Terminal Operator, or its employees, agents or sub-contractors, is deemed negligent by competent independent authority and only to the extent such losses are directly related to such negligence.

(f) Quality / Hazardous Materials Procedures / Requirements

1. Upon request from Terminal Operator, Customer (including its subcontractors and agents) shall confirm and describe in writing how they will comply with this section and Customer's compliance with all environmental laws, applicable permits, and government safety-related codes and standards as they specifically apply to Customer.

2. Customer shall, with respect to all shipments of hazardous substances, review booking information, bills of lading, manifests, and Cargo packaging supplied by Customer's individual customers for compliance with current applicable IMDG Code / 49 CFR parts 100 to 199 provisions, as well as all other applicable laws.

18. POLLUTION FINANCIAL RESPONSIBILITY

Vessels delivering Cargo to the Terminal shall fully comply (or hold necessary waivers) with all United States Coast Guard Regulations, and to the extent necessary, meet the requirements of

IMCO and the United States Clean Water Act and carry a current United States Coast Guard Certificate of Financial Responsibility (Oil Pollution).

19. NO INSURANCE PROVIDED

(a) Terminal Operator does not provide any insurance whatsoever for the benefit of Customer, nor any insurance whatsoever covering Customer's cargo, property or personnel.

(b) Rates named herein do not include any form of insurance and are computed at correspondingly reduced levels on the basis of the applicability of Items 21 - 26, and all other provisions herein limiting the liability of the Terminal.

20. NO PUNITIVE DAMAGES

Terminal Operator shall not under any circumstances be liable to Customer or any other user for any punitive or exemplary damages

21. LIMITATION OF LIABILITY – DAMAGE TO CARGO

(a) COGSA (46 U.S.C. §1300 et seq.) is fully incorporated into this Schedule and shall be applicable at all times the Goods are, or are deemed, in the care, custody and/or control of Terminal Operator. Terminal shall not be liable for damage or loss to Cargo unless resulting from Terminal's failure to exercise due and proper care in performing the services provided for herein. In no case shall Terminal be liable for a sum in excess of \$500.00 per package or per customary freight unit (or pro rata part thereof in case of partial loss or damage) unless the value of such goods has been declared in writing to the Terminal, specifically directed to the limitation of liability contained herein, before receipt by the Terminal, and Customer has paid the increased Rates/charges resulting from such declaration of higher value. The words "package" and "unit" include any piece, shipping unit or article of any description whether or not enclosed or boxed in whole or in part and shall include containers, vans, pallet loads, loaded platforms or skids without regard to the contents of vans or containers and the number of pieces enclosed therein and without regard to the number of boxes, cartons, pieces, or Rules on pallets, platforms or skids. In the event the value of the merchandise is declared to be in excess of \$500.00 in the manner provided for in this Rule, the merchandise so declared will be subject to an additional charge equal to 1/4 of one percent of the excess value so declared, and the liability of the Terminal shall upon payment thereof be limited to such increased declared value (or pro rata part thereof in the case of partial loss or damage).

Terminal Operator shall not be responsible in any event for any loss/damage to or in connection with the Goods if the nature or value thereof has been misstated. Terminal Operator shall not be liable to Customer or any other respecting the Goods except as set

forth in this Section, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, and/or in tort, contract or any other theory.

In the event any damage or loss could have occurred during some other mode of transportation or while in the care, custody, or control of any other provider, including the Customer, such loss or damage shall be deemed to have occurred while in the care, custody, or control of the other provider or Customer.

(b) Customer shall incorporate in any bills of lading, way bill or other document evidencing transportation agreements entered into for the transportation of cargo for which Terminal's facilities and/or services under this Schedule are employed, a provision extending to independent servants, agents and subcontractors of Customer (including Terminal, each of its subcontractors, and all of their respective agents, employees or other personnel), the benefits and limitations upon liability of Customer thereunder, which shall include, but not be limited to, the provisions of the U. S. Carriage of Goods by Sea Act ("COGSA"), incorporated and extended to apply throughout the time during which Terminal provides facilities and/or performs services under this Schedule. Any waiver by Customer of such limitation of liability provisions shall not be effective against Terminal. It is expressly agreed by the Customer that should such bill of lading, way bill or other document provisions not extend the application of the COGSA defenses to the Terminal, the Customer will indemnify Terminal for those sums that it is liable for over and above the COGSA limitation of liability defenses. When Customer accepts Cargo on an ad valorem basis, the Terminal shall not be responsible for increased liability unless Customer and Terminal agree in writing, including the extra charges to be assessed by Terminal against Customer.

22. LIMITATION OF LIABILITY – PERSONS, VESSELS OR OTHER PROPERTY

Terminal shall not be liable for damage or loss to persons, vessels or property (other than Cargo), unless resulting from Terminal's negligence. Liability, if any, of the Terminal shall be in any event limited to the sum of \$1,000.00 with respect to any occurrence or series of occurrences.

23. CLAIMS

Every claim for loss or damage of any type must be submitted to the Terminal Operator in writing immediately upon discovery, and in no event later than twenty (20) calendar days immediately following the event allegedly giving rise to such loss or damage. Any failure to comply with this notice requirement shall be deemed to be and is accepted and acknowledged by the claimant to constitute, laches and to be materially prejudicial to Terminal Operator, and for that reason to bar such claim for loss or damage in its entirety.

24. NON-LIABILITY FOR LOSS OR DAMAGE

(a) The Terminal will not be responsible or accept any liability for concealed damage or loss or for the condition of the contents of containers received in damaged condition from vessel or inland carrier.

(b) The Terminal will not be responsible or accept any liability for loss or damage, the result of or caused by fire or extinguishment thereof; explosion; frost; heating; leakage; evaporation; natural shrinkage; seepage, wastage or decay; pilferage; animals, including rats, mice or other rodents; insects, including moths and weevils; leakage or discharge from fire protection systems; collapse of wharves, piers or other structures; breakdown of plant, machinery or equipment; floats, logs, or piling required in breasting vessels away from wharves or piers; dampness; floods; combinations, riots or sabotage; labor disturbances, including lockouts, picketing and strikes of any persons in its employ or in the service of others or for any consequences arising therefrom; labor shortage; insurrection or war; insufficient notification; the elements; and any causes unavoidable or beyond control and without the fault or negligence of the Terminal, its officers, agents or employees, and in particular (but without limitation) the Terminal will not be responsible for damage by elements to goods or property which are stored in open or uncovered areas.

25. NON-LIABILITY FOR SHIPPER/CARRIER FAILURES

In no event shall the Terminal be liable for loss, damage or delay arising from failure of the shipper to arrange for space on the transporting vessel, or from the failure of any carrier to load and transport goods on the particular date or vessel nominated by the shipper or owner of such goods. In the event of any such failure, such goods shall be held subject to all of the applicable charges and provisions of this Schedule.

26. OPERATIONS, WHO MAY PERFORM

Benicia Port Terminal Co. reserves the right in every instance to furnish all equipment, supplies and material and to perform all terminal services in connection with the operation of the Benicia Port Terminal Co.

27. INSPECTION OF CARGO

(a) The Terminal Operator may enter upon and inspect any vessel in berth at its Terminal to ascertain the kind and quantity of merchandise or cargo thereon and no person or persons shall hinder, molest or refuse entrance upon such vessel for the purpose specified.

(b) Customer shall be accountable for all expenses related to inspections conducted by the Terminal, Customs and Border Protection ("CBP"), other federal, state or local authorities, and any inspections that Customer requests. Customer guarantees to pay timely all such expenses, including inspection fees, and understands it will be invoiced directly by the Terminal for expenses and fees of the Terminal and any amounts invoiced to the Terminal by others.

- (c) The Terminal will make reasonable commercial efforts to notify the Customer of pre-notified CBP inspections, but whether notified or not, Customer is obligated to pay all related expenses including inspection fees.

28. MANIFESTS OF CARGO

The vessel, its owner, operator and/or its agent shall, upon demand by the Terminal Operator before departure of a vessel, exhibit the enrollment or license of the vessel showing tonnage and furnish a copy of the manifest of cargo loaded or discharged. If the Terminal Operator does not make such a demand before departure of the vessel, manifests or summaries of all cargo loaded or discharged at the Terminal shall be furnished to the Terminal Operator by the vessel's owners or agent within twenty-one calendar days of sailing. The right is reserved to audit all manifests and use such audits as a basis for charges.

29. PAYMENT OF CHARGES

- (a) Except as otherwise specified herein All charges pursuant to this Schedule, including charges for services rendered by the Terminal, or for the privilege of using any Terminal facility, are earned and an obligation to pay arises immediately upon commencement of the service or use of the facility
- (b) All charges are due and payable to the Terminal in cash immediately upon presentation of an invoice, or as they otherwise accrue hereunder, and in any event before the cargo leaves the custody of the Terminal. The Terminal reserves the right, at its sole and unfettered discretion, to require the payment of any and all charges in advance.
- (c) All minimum charges accrue to the account of the Terminal Operator.
- (d) Payment terms are cash unless the Terminal Customer, prior to the use of the Terminal facilities or services, has applied for credit, and such credit has been granted by the Terminal at its discretion and upon a showing of creditworthiness or the posting of security deemed adequate and acceptable by the Terminal. Any Terminal Customer doing business under this Schedule may apply for credit. If credit is extended by the Terminal, payment is required within fifteen (15) days of the date of the invoice.
- (e) Failure to pay credit accounts within fifteen (15) days may result in cancellation of credit privileges and the re-establishment of cash terms. Interest shall be due and payable on all amounts not paid within fifteen (15) days of the invoice, at the rate of one and one-half percent (1-1/2%) per month for every month or part of a month that such amount is unpaid.
- (f) In addition to any other rights recognized by law, the Terminal Operator reserves the right to withhold delivery of any goods on which Terminal charges are due and payable, until such time as those charges are paid in full.

- (g) The Terminal Operator reserves the right to deny to anyone the use of the Terminal until all past due accounts are paid.
- (h) If the Terminal Operator commences an action to collect any past due amount, the Terminal Operator shall be entitled to recover all costs including a reasonable attorney's fee incurred in connection with collection efforts.

30. RESPONSIBILITY FOR PAYMENT

Use of Terminal Facilities or service is conditioned upon satisfactory assurance of the Terminal that applicable charges will be paid when due (as defined in Item 30). The Terminal may, at its discretion, by notice to the affected party, require payment of charges in advance as follows:

1. By the vessel, its owners or agents before the vessel is assigned a berth and commences its loading or unloading operations.
2. By the cargo owner, shipper or consignee before cargo leaves the custody of the Terminal.
3. For all charges on perishable cargo or cargo of doubtful value and household goods.

The provisions of this rule shall govern the terms of payment by, and liability of an agent acting on behalf of a disclosed principal for charges owing from said principal as a user of Terminal facilities, notwithstanding any other provisions to the contrary in this Schedule or in any form issued pursuant to this Schedule.

The invoicing of a charge to a particular user or party does not release any other user or other party responsible for the charge hereunder, and Terminal reserves the right to invoice any such user if previously invoiced users have not paid.

31. CHARGES ON DELINQUENT ACCOUNTS

For purposes of the application of Item 30 and the commencement of interest payment obligations, any invoice covering charges in this Schedule issued by the Terminal for which full payment is not received by the Terminal within fifteen (15) calendar days from the date of the invoice is delinquent. Interest at the rate of one and one-half percent (1-1/2%) per month shall be due and payable on all delinquent accounts for every month or part of a month that such account is delinquent. If legal action (including arbitration) is commenced to collect any delinquent account, the debtor agrees to pay all arbitration/litigation costs including a reasonable attorney's fee incurred in connection with collection efforts.

32. SECURITY AND LIEN

- (a) Customer grants Terminal Operator a lien on the Cargo while in the possession of Terminal Operator and a lien against any vessel, container, chassis, Cargo, and any equipment (individually and collectively, "Available Security") to provide security for

the payment of amounts due Terminal Operator hereunder. As additional security for said amounts due Terminal Operator, Customer grants Terminal Operator a consensual lien on all Available Security of Customer concurrently or subsequently in Terminal Operator's possession. Terminal Operator may assert its lien rights at any time, and in furtherance thereof may hold and/or store such Available Security until payment is received and/or sell such Available Security publicly or privately; in the event of sale, proceeds shall first be applied to sale costs, then to amounts due Terminal Operator, with the balance, if any, to be remitted to Customer.

(b) Terminal Operator shall have a lien on all Available Security in its possession for any charges for services rendered, storage, demurrage and any other charges due, including all costs and legal fees associated with collection of amounts due and enforcing this lien, or any other sums whatsoever payable by or chargeable to or for the account of Available Security under any bailment, receipt or other document issued by Terminal Operator, and any contract preliminary hereto and any sums owed to Terminal Operator by the person responsible for the account of Available Security or any affiliates thereof on prior accounts or shipments, and the cost and expenses of recovering the same (for purposes of this Item 33, all such charges, fees and costs collectively the "Charges and Costs"), and may hold any or all of the Available Security until all such Charges and Costs are fully settled.

(c) If the Charges and Costs are not fully settled by the time of the Cargo release, or if the Available Security is otherwise unclaimed, after a reasonable time not to exceed thirty (30) days after arrival at the Terminal, or the time set forth in any Applicable Rate provision, Terminal Operator may sell the Available Security privately or by public auction, or otherwise dispose of such Available Security, ten (10) days after sending the owner of record notice, via letter (U.S. Mail, postage prepaid, return receipt requested) or by actual notice by any appropriate means, of the amount of Charges and Costs owed, the date of sale and a statement informing the registered owner that if the Charges and Costs are not fully settled by the date of sale any or all of the Available Security will be sold and the proceeds of such sale will be used to settle the Charges and Costs owed plus the costs of the sale. If the owner of record does not fully settle the outstanding Charges and Costs within ten (10) days of the mailing of the notice letter or giving actual notice, the sale will proceed as described in the notice. If the sale proceeds fail to cover the outstanding Charges and Costs, Terminal Operator may recover the deficit from the party responsible for such Charges and Costs, or its affiliates owing any unsatisfied portion thereof. Sale proceeds beyond the Charges and Costs owed will be returned to the registered owner if claimed within one (1) year of the mailed notice.

(d) SECURITY. In addition, Customer grants a security interest to Terminal Operator in the Available Security and all proceeds derived from the Available Security for all charges and expenses (including money advanced and interest), whether incurred before or after delivery, and Customer agrees to execute and deliver all such documents as may be required to perfect such security interest. If Available Security is transferred from one party to another, and should the charges relating to such Available Security not be paid in full on the date of such transfer, the lien for such charges shall attach to the Available Security retained by the transferor and to Available Security transferred to the

transferee. In the event a proceeding is brought by one party against the other to enforce any provisions herein, the prevailing party shall be entitled to legal fees and costs.

33. REMOVAL OF RUBBISH/GARBAGE

(a) Rubbish, refuse, debris or other similar materials or objects must be removed from the Terminal and other areas within the confines of the Terminal by the person placing it there ("responsible party") or by the owners thereof; otherwise it will be removed at the expense of the owner or responsible party and subject to a charge as specified in Appendix A. In compliance with MARPOL 73-78, Annex V, the Terminal will, upon twenty-four (24) hours' notice, make available garbage reception facilities for disposal of vessel's garbage as described in 33 Code of Federal Regulations, Part 151. Application shall be made to The Benicia Port Terminal Co. Charges for this service will be as specified in Appendix A.

(b) No rubbish, refuse, debris or any similar materials, objects or substances of any kind shall be dumped overboard from vessels or wharfs.

34. ACCESS TO SHIPPING DOCUMENTS

Vessel agents, owners and masters must permit the Terminal Operator access to shipping documents and data relevant to the correct assessment of charges.

35. RIGHT TO REFUSE FREIGHT

(a) BPTC reserves the right without responsibility for demurrage, loss or damage, to refuse, to accept, receive, unload or to permit vessel to discharge all freight for which prior arrangements for space, receiving, unloading or handling has not been made by shipper, consignee or carrier.

(b) Without prejudice to the above, and except as otherwise agreed by BPTC at its sole discretion, and subject to any conditions imposed by BPTC, the Terminal will not accept the following types of Cargo:

1. Overweight containers exceeding the max-gross weight of the container as marked on the container.
2. Hazardous containers with the presence or release (including a threatened release) of hazardous substances inside and/or outside of the container in violation of any laws, statutes, ordinances, regulations, rules or other governmental requirements.
3. Hazardous containers without accompanying proper documentation satisfactory to the Terminal.

4. Hazardous containers without proper placards, unless Terminal Operator is authorized, and agrees, to affix placards at Customer's expense.

36. REMOVAL OF ABANDONED CARGO

The Terminal Operator reserves the right to move abandoned cargo and dispose of or sell such cargo (including by public or private sale) 60 days after notice is given, as well as the right to remove freight or other material which in its sole and absolute judgment is likely to damage other property, to another location, at the risk and expense of the owner.

37. FURNISHING OF GENERATORS AND LIGHTING

(a) Vessels, their owners, agents, masters, and shippers or consignees of goods requesting discharge/loading operations to be performed during night shifts will be furnished additional lighting, if required, by the Terminal through the use of portable generators and light towers, at the charges specified in Appendix A.

(b) When vessels, their owners, agents, masters and shippers or consignees of goods are requested by the Terminal to perform discharge/loading operations during night shifts, the Terminal reserves the right to waive such charges applicable to the rental of portable generators and lighting towers and charges for installation and removal of portable lighting towers.

38. SMOKING RESTRICTIONS

The berth shall be, without exception, a no-smoking area. No smoking shall be allowed on other parts of the Terminal premises, with the exception of approved areas or locations specifically designated for that purpose. Any persons violating this regulation may be barred, at the discretion of the Terminal, from further use of the Terminal, and, in addition, may be subject to prosecution under applicable Federal, State and City laws.

39. VEHICLE SPEED LIMITS

Any person operating or driving a motor vehicle or other vehicle at the Terminal, or in any other area where merchandise is being handled, shall operate and drive at a careful and prudent speed not greater than 15 MPH, and slower if posted or if circumstances warrant, and in no case operate or drive a motor vehicle or other vehicle at the Terminal or merchandise handling areas at such a speed as to endanger any person.

40. REMOVAL OF VESSEL'S OILY WASTE

When the Terminal is requested by a vessel, its owners or agent to receive discharge of oily waste for the vessel or persons making such a request, such persons providing the request will be supplied the names of applicable haulaway carriers allowed by the Terminal to perform the service. When the Terminal allows a vessel and a haulaway carrier to directly arrange, store or transfer oily waste, any and all such arrangements by the haulaway carrier shall not in any way

whatsoever express or imply that the haulaway carrier is an agent of the Terminal. It shall be the responsibility of the vessel to contact and arrange for discharging and haulaway of such oily waste, with such arrangements thereafter establishing a direct agreement and transfer between the vessel and haulaway carrier as designated by the vessel. The Terminal, by means of allowing an oily waste haulaway carrier to service such an arrangement directly with the vessel, shall in no respect consider itself or claim to be deemed a facility that stores, handles, transports or makes arrangements for such discharges. Charges for services of oily waste haulaway shall be paid directly to the haulaway carrier and shall be the responsibility of the vessel ordering the services as a result of such direct arrangements. Vessels requesting to discharge oily waste shall and prior to authorization by the Terminal for a haulaway carrier to perform such a transfer, provide written confirmation to the Terminal of the vessel's responsibility in conforming with any and all applicable laws governing such a discharge. Identifying the names of the persons or parties performing the transfer, when such transfer will occur and what vehicles and other conspicuous devices will be employed, and indemnifying the Terminal, its subcontractors and the respective employees of both from any liability or damages arising out of the oily waste removal.

Any vessel that is docked at the Terminal for either the sole or partial purpose of discharging oily waste will be charged five (5) times the dockage charges that would otherwise apply under Appendix A, in addition to the applicable wharfage rate under Appendix A, as well as a Terminal Usage Charge which will be quoted by the Terminal to the requesting party at the time of such request for discharge of oily waste, and which must be accepted prior to any discharge. Payment of these charges must be made in advance by the vessel, following application for a berth and prior to berthing arrangements being granted or authorized by the Terminal.

41. TERMINAL NOT PUBLIC THOROUGHFARE

- (a) The Terminal property is not a public thoroughfare and all persons entering thereon do so at their own risk.
- (b) No person shall enter any secure or restricted areas of the Terminal without: (a) a Transportation Workers Identification Credential ("TWIC") card; (b) an escort authorized by the Terminal; or (c) written authorization from Terminal Security.

42. BASIS FOR COMPUTING DOCKAGE CHARGES

- (a) Dockage shall be based on overall length of the vessel as shown in Lloyd's Register. If length is not shown in Lloyd's Register the ship's Certificate of Registry showing length of vessel will be accepted.
- (b) Vessels for which the overall length is not available in either Lloyd's Register or the Certificate of Registry named in paragraph (a) of this item, shall be measured at the direction of the Terminal. When necessary to measure a vessel, the linear distance in meters shall be determined from the most forward point on the bow of the vessel to the aftermost part of the stern of the vessel, measured as parallel to the base line of the vessel.

(c) In computing dockage charges based on overall length of vessel, the following will govern in the disposition of fractions: Less than one-half (.5) meter: discard. One-half (.5) meter or more, increase to the next whole figure.

(d) Dockage rates are per twenty-four (24)-hour day or fraction thereof.

(e) When a vessel changes its status so that it would be liable to pay dockage at a different dockage rate, the dockage due under the changed status shall be assessed from the time such change takes effect; provided, however that where the change in status occurs within a 24-hour period based on the original dockage, the total charge for said 24-hour period shall be the higher of either status.

(f) Vessels on regular daily schedule leaving from and returning to the wharf shall not be assessed more than one full day's dockage in any 24-hour period.

43. DOCKAGE PERIOD

Dockage shall commence upon a vessel when made fast to a wharf, pier, bulkhead, structure or bank or upon mooring to a vessel so berthed and shall continue until such vessel is completely freed from and has vacated the berth.

44. BARGES AND LIGHTERS

Barges and Lighters shall be assessed on the basis of length and all rules set out in Items 39-43 will apply.

45. APPLICATION OF DOCKAGE RATES AND CHARGES

Except as otherwise provided herein, dockage charges shall be assessed against all vessels, barges, or lighters in all trades at the full dockage rates provided in Appendix A.

EXCEPTION: One half of the dockage rates provided in Appendix A shall be assessed against vessels, barges, or lighters when berthed offshore of a vessel that is paying full dockage.

46. DOCKAGE RATES

Dockage rates apply on all vessels, barges and lighters engaged in any trades, and shall be assessed at the rates specified in Appendix A.

47. WHARFAGE - ASSESSMENT AND COLLECTION

Wharfage is the responsibility of the owner(s) of the cargo, merchandise, or vessel's fuel and supplies on which wharfage is assessed. However, the collection of wharfage must be guaranteed by the vessel, her owners, operators, and/or agents, in a manner and amount acceptable to the Terminal, and the Terminal expressly reserves the right to collect wharfage directly from the vessel notwithstanding such guarantee. Wharfage shall be due and payable

upon presentation. Use of a wharf or wharves by a vessel, her owners, operators or agents shall be deemed acknowledgment and acceptance of this provision (See Exception.)

EXCEPTION: When it is requested that the wharfage charges be assessed and collected directly from the cargo owner or a federal agency, and where satisfactory guarantee or payment is given to the Terminal, the wharfage charges will be assessed and collected from the cargo owner or federal agency in lieu of collection from the vessel as provided above.

48. APPLICATION OF WHARFAGE RATES

Except as otherwise provided in individual Rules of this Schedule or in Paragraphs (a) to (i) below, wharfage shall be assessed in accordance with the Schedule of rates set forth in Appendix A subject to the provisions of this Item, and will be in addition to other applicable charges named in this Schedule.

(a) The wharfage rates provided in Appendix A are in cents per ton of 1000 Kilograms (2204.62 lbs.) or one cubic meter (35.314 cu. ft.), according to vessel's manifest, on whichever basis the water freight is assessed, or as otherwise provided. When cargo is manifested on a metric ton basis, the following conversion table will apply:

<u>TO FIND</u>	<u>GIVEN</u>	<u>MULTIPLY</u>
Metric Tons	Short Tons	Short Tons by 0.907
Short Tons	Metric Tons	Metric Tons by 1.102
Metric Tons	Long Tons	Long Tons by 1.016
Long Tons	Metric Tons	Metric Tons by 0.984
Kilos	Pounds	Pounds by 0.4536
Cubic Meters	Measurement Tons (40 cu. ft.)	Measurement Tons by 1.133
Meas. Tons	Cubic Meters (40 cu. ft.)	Cubic Meters by 0.883
Cubic Meters	MTBMs (ft.B.M. in thousands)	MFBMs by 2.36
MFBMs (ft.B.M. in thousands)	Cubic Meters	Cubic Meters by 0.424

METRIC EQUIVALENTS:

1 Kilo	= 2.2046 Pounds
1 Pound	= 0.4536 Kilos
1 CWT (US - 100 pounds)	= 45.359 Kilos or 0.04536 Metric Tons
1 CWT (British - 112 pounds)	= 50.802 Kilos or 0.0508 Metric Tons
1 Bushel Grain (US)	= 60 pounds = 27.216 Kilos
33.333 Bushels Grain	= 1 Short Ton
37.333 Bushels Grain	= 1 Long Ton
36.743 Bushels Grain	= 1 Metric Ton

1 Cubic Meter	= 35.315 Cubic Feet
1 Cubic Foot	= 0.0283 Cubic Meters
1,000 Ft. B.M.	= 83.33 Cubic Feet
1 Cubic Meter	= 423.792 Ft. B.M.
1 Barrel (US - 42 gallons)	= 158.987 Liters
1 Meter	= 3.2808 Feet

(b) The wharfage rates provided in Appendix A do not include, and separate charges will be assessed for, sorting, weighing, marking, sampling, inspecting, cooperating, recording marked weights or numbers, or loading or unloading to or from railroad cars or motor truck vehicles, stevedoring, demurraging, handling, customs charges, revenue stamps or fees of any nature imposed by the State or Federal Government against the shipment or vessels transporting the same.

(c) On merchandise which is moving on other than a weight or measure basis (e.g. per package, etc.) the wharfage charges shall be assessed per ton of 1,000 kilograms or one cubic meter, whichever yields the greater revenue, or as otherwise shown.

(d) When the ocean rate is based on a combination of weight and measurement, wharfage charges shall be computed on a measurement basis.

(e) Cargo on which wharfage charges have been assessed and which has not been removed from the Terminal, may be reshipped from the same Terminal without being assessed a further wharfage charge.

(f) Wharfage will not be charged on:

(1) Equipment taken on a wharf to handle cargo (but not intended for shipment).

(2) Baggage when accompanying travelers, not including automobiles.

(3) Cargo which a vessel discharges and reloads prior to departure for the purpose of loading or discharging other cargo (over-stowed cargo).

(g) Cargo which is moving to O.C.P. Territory, as defined in Item 3 will be assessed wharfage (refer to Appendix A) based on correct and complete documents as submitted to the Terminal. The owner, agent, master or other person in charge of the cargo shall furnish proof of such movement by the cargo to O.C.P. Territory no later than 60 days from the date of tender of such cargo to the inland carrier. Failure to make and deliver, to the Terminal, such documents of proof of movement to O.C.P. Territory within the aforementioned period, shall nullify the applicability of the O.C.P. wharfage rate for that commodity.

(h) Except as provided in Section (g) of this Item, wharfage will be charged against equipment placed on the pier, even if later reloaded.

49. WHARFAGE RATES

Wharfage will be assessed at the rates specified in Appendix A, in Cents per 1,000 Kilograms (2204.62 lbs.) or One Cubic Meter (35.314 cu. ft.) according to Vessel's Manifest, except as otherwise shown.

Vehicles, motor, self-propelling, viz.: (See Exception)

Automobiles, pleasure, passenger, commercial or freight including chassis, freight trailers, freight semi-trailers, not boxed or crated, SU on own wheels shall be assessed on the total number of units imported or exported per calendar year by account, in the amount specified in Appendix A. (See NOTE 1) When boxed or crated, Cargo N.O.S. rates will apply.

EXCEPTION: Does not include agricultural, earth moving or road-making equipment, or vehicles accommodating more than 6 passengers.

NOTE 1: Does not apply to vehicles originating from or destined to O.C.P. Territory as defined in Item 3 and covered by other specific articles in Item.

50. WHARF DEMURRAGE -- APPLICATION OF RATES

(Subject to Note 1)

WHARF DEMURRAGE (as defined in Item 3):

At the expiration of free time, if any, the wharf demurrage rates shown in individual items of this Schedule will apply on freight remaining on Terminal premises, unless and until arrangements for storage have been made with the Terminal.

WHARF STORAGE (as defined in Item3):

Upon prior application and acceptance of property for storage, rates applicable to such service shall be subject to the following provisions:

(a) Daily Storage:

(1) Daily storage applies for a 24-hour period, or fraction thereof, commencing with midnight of one day to midnight of the following day and includes Saturdays, Sundays and Holidays.

(2) Merchandise that has been accepted for daily storage can be later accepted for monthly storage effective with the date of acceptance for monthly storage. Merchandise accepted for monthly storage cannot be reverted to daily storage.

(b) Monthly Storage - Receiving and Delivery Charges:

(1) Except as otherwise provided in paragraph (2) hereof, monthly storage periods shall extend from a date in one calendar month to but not including the same date of the next and all succeeding calendar months, but if there be no corresponding date in the next succeeding calendar month it shall be extended to and include the last day of that month. When the last day of the final storage month falls on Sunday or a Legal Holiday the storage month shall be deemed to expire on the next succeeding business day.

(2) Upon written agreement between the Terminal and the owner of the merchandise or his agent, monthly storage charges will not be computed under the provisions of paragraph (1) hereof but will instead be computed on the first of the month balance system as follows:

(a) When the storage period commences on or before the fifteenth day of the month, a full month's storage shall be assessed for that month. A full month's storage shall be charged on the merchandise on hand on the first day of the following month and for each succeeding month thereafter.

(b) When the storage period commences after the fifteenth day of the month, storage charges for one-half month shall be assessed for that month. A full month's storage shall be charged on the merchandise on hand on the first day of the following month and for each succeeding month thereafter.

(3) Receiving and delivery charges, as defined in Item 3, will be billed with storage for the first month. Where monthly storage has been requested and granted and freight is thereafter removed from Terminal facilities before expiration of the free time period, receiving and delivery charges, as shown in individual Items, will be assessed.

NOTE 1: Rates provided in this section will not apply on bulk cargo (as defined in Item 3 handled mechanically through specialized facilities.

51. NO FREE TIME

Unless otherwise provided herein or by a signed agreement between the Terminal and the user, no free time shall be allowed on any cargo.

52. TERMINAL'S LIABILITY – WHARF DEMURRAGE AND STORAGE

(a) For the purpose of fixing the maximum limit of the Terminal's liability for loss of or damage to merchandise during storage at the Terminal, the value of the merchandise shall be conclusively presumed to be not in excess of 25 cents per pound (including all Government duties and excise taxes), unless a greater value has been declared as hereinafter provided. At the time the merchandise is placed in Wharf Demurrage or

Storage, the storer, subject to the provisions of Part (b) hereof, may declare in writing a value greater than 25 cents per pound, and in the event such declaration is made the value of the merchandise shall be conclusively presumed to be not in excess of the value so declared. In no case shall the Terminal's liability exceed the actual value of the merchandise.

(b) In the event that storer elects to declare the value of merchandise to be in excess of 25 cents per pound as provided in Part (a) hereof, the wharf demurrage or storage rate or minimum charge applicable thereto will be subject to an additional charge per day, period or month, as shown in connection with applicable rate, equal to 1/4 of one per cent of the excess value so declared.

(c) Where the value of merchandise changes after storer's original declaration, it will be incumbent upon storer to declare a new value in writing in order to obtain a revision of charges and of the Terminal's liability under this Item.

53. SIDE WHARFAGE RATE

All floating craft loaded or discharged offshore will be assessed side wharfage per ton or fraction thereof, in the amount (and subject to the minimum) specified in Appendix A. Side wharfage may be assessed, at the sole discretion of the Terminal, against the owner, agent, or operator of such floating craft.

54. CARGO DISPOSITION WHEN FREE TIME EXPIRES

Cargo remaining on Terminal premises after expiration of free time, if any, and freight shut out at clearance of vessel may, at the sole discretion of the Terminal, be allowed to remain where situated, be piled or re-piled to make space, be transferred to other locations on Terminal premises, or be removed to public or private warehouse, with all expense and risk of loss and damage for account of the owner, shipper, consignee or carrier as responsibility may appear. For cargo remaining 15 or more days after free time, if any, expires, the Terminal Operator may initiate steps to sell or auction the cargo and apply the proceeds to satisfy any accrued charges including storage, any handling charges, court costs and attorney fees.

55. TRANSFER OF OWNERSHIP OF CARGO

Wharf demurrage charges, storage charges and receiving and delivery charges, are for the account of the cargo and any transfer of ownership after the cargo is received on the Terminal will not entitle the cargo to any additional free time by reason of such transfer of ownership.

56. ACCEPTANCE OF FREIGHT FOR STORAGE

(a) Acceptance of freight for storage is at the option of the Terminal for its convenience.

(b) When Terminal space is available for monthly storage, freight may remain where already placed or may be moved and stored elsewhere on Terminal premises at the option of the Terminal. All freight accepted for monthly storage shall be assessed both the monthly storage rates and the receiving and delivery rates shown in the individual Items of this Schedule and shall be subject to the rules provided herein for monthly storage.

57. WHARF DEMURRAGE RATES

Demurrage charges, as specified in (and subject to the minimum charges of) Appendix A, will be charged for the first five calendar days or fraction thereof, and for each succeeding period of five calendar days or fraction thereof.

58. STORAGE RATES

Rates for daily and monthly storage shall be assessed as specified in Appendix A.

NOTE: When outside uncovered storage is requested by shipper or consignee of cargo: Rates will not apply where commodity rates are specifically named for either covered or uncovered storage.

59. SECURITY FEES

Maritime users of BPTC facilities will be charged a per visit Security Fee to defray security costs incurred in order to meet U.S. Port Security requirements. The fee shall apply to all vessels exceeding 45 meters in length and shall be in the amount of amount specified in Appendix A. These charges are in addition to all other applicable charges in this Schedule.

This charge does not cover any additional security personnel, mandated by government or law enforcement authority to be posted at the vessel while docked at Port facilities.

60. TAKING, RELEASING AND SHIFTING LINES

The Benicia Port Terminal Co. reserves to itself the right to perform the service of taking, releasing, or shifting of vessel's lines on its Terminal facilities. Charges for their performance shall be determined as follows:

- (a) Compute time from the time men report for duty, as called at the request of carrier, until the vessel is tied up, shifted, or let go.
- (b) Apply the rates applicable during or between the hours in which the men are required to report for duty to perform the service subject to the minimum charge per man shown in connection therewith. When the time extends over two or more periods, the charge shall be computed upon the basis of the highest minimum charge.
- (c) Minimum time per man:

As specified in the current Line Handling ILWU/PMA Agreement.

- (d) Computation of charges per man:
 - (1) Multiply the number of paid hours by the straight time rate: 1st Shift, 2nd Shift, or the overtime. rate, as applicable, at applicable rates per the ILWU/PMA Contract.
 - (2) Travel Time at straight time. hour rate, per man, per round trip, at applicable rates per the ILWU/PMA Contract.
 - (3) Add mileage of 82 miles per round trip at applicable rates per the ILWU/PMA Contract.
 - (4) To the sum total of Sub-paragraphs (1), (2) and (3) above add Insurance and Taxes at 50%.
 - (5) Add the total number of hours in Sub-paragraphs (1) and (2) above for PMA Assessments at applicable rate per ILWU/PMA Contract.
 - (6) Add bridge tolls per round trip at applicable rates per the ILWU/PMA Contract.

61. SHIFTING OF VESSELS

Vessels loading or discharging bulk cargoes may shift, or will be shifted, the number of times equaling the number of hatches to be loaded into. All costs for shifting, if ordered through the Terminal, will be charged against the vessel at the regular lines gang charges. See Appendix A.

62. SUPPLYING OF FRESH WATER

When Terminal supplies Fresh Water to carrier, a charge shall be assessed charge per ton of 2,000 pounds, subject to a minimum charge per vessel, and a separate hook up and hose usage fee in the amounts specified in Appendix A. Terminal reserves the right, at its sole discretion, to limit the amount of fresh water taken.

63. REMOVAL OF ABANDONED CARGO

The Terminal Operator reserves the right to move abandoned cargo and dispose of or sell such cargo (including by public or private sale) 60 days after notice is given, as well as the right to remove freight or other material which in its sole and absolute judgment is likely to damage other property, to another location, at the risk and expense of the owner.

64. LOADING, UNLOADING AND HANDLING RATES

- (a) General or Breakbulk Cargo: Charges for the loading and/or unloading of import, export, intercoastal or coastwise traffic will be as provided in the current Terminal tariffs

of the applicable railroad, Terminal operator or cargo handler responsible for the inbound or outbound movement.

(b) Automobiles, Import and Export: Import and export motor vehicles, received at the Terminal on their own wheels from ocean vessel, rail or motor carrier or under their own power will be accepted under the following conditions and assessed the following charges:

(1) Wharfage: Appendix A will apply.

(i) Responsibility: The owner of the vehicle or his agent will be responsible for the cargo during the time the vehicle is on Terminal property and will provide the necessary insurance.

(ii) Placement of Vehicle: The vehicle shall be placed at the point of rest designated by the Terminal Operator.

(iii) Consolidation of Vehicles: The owner of the vehicle or vehicles or his agent shall from time to time, upon reasonable request of, and at the direction of, the Terminal Operator, move vehicles for the purpose of consolidation in order to assure maximum utilization of the facility.

(c) Charges provided in this Item do not include handling, receiving, servicing or otherwise preparing the vehicle for transportation.

(d) Export/import vehicles as shown above include only those moving in commercial service and do not include privately owned vehicles (See paragraph (f) below for privately owned vehicles rates).

(e) Vehicles entering and/or leaving the Terminal via rail or motor carrier, or under their own power without a prior or subsequent movement by water at the Terminal, will be assessed a Terminal charge in the amount specified in Appendix A.

(f) POVs- Privately Owned Vehicles

1. POVs will be assessed charges for the services and in the amounts specified in Appendix A.

2. Additional charges, in the amounts specified in Appendix A, apply to those privately owned or high heavy units requiring additional services such as a lift charge or fuel added.

3. Any POV received without title and not shipped within 15 days will incur additional storage charges per day or portion thereof, as specified in Appendix A

(g) Movement of discharged vehicles to truck away point will be billed a per-vehicle charge, in addition to all other applicable fees, in the amount specified in Appendix A.

(h) Vehicles pre-staged for export using BPTC's Terminal be charged per vehicle for the first two days, and thereafter per day, or part of a day, per vehicle, at the rates specified in Appendix A

65. LOADING, UNLOADING AND HANDLING REGULATIONS

Orders to rail carriers for the placing, shifting and removal of empty and loaded rail equipment shall be issued by the party requiring the service, subject to the direction of the Terminal Operator and availability of space at the Terminal.

66. TERMINAL SECURITY CHARGE

The Terminal reserves the right at its sole discretion to assess a charge for security measures implemented in response to MARSEC security requirements and/or changing security levels.

Due to required MARSEC security measures implemented at the terminals, the following surcharges will be assessed on each vessel docking at an APS pier as specified in Appendix A.

67. MISCELLANEOUS CUSTOMER OBLIGATIONS

Customer warrants that it is authorized by its shipper(s) as shipper's agent to use and verify Terminal Operator scale weights as SOLAS compliant verified gross mass ("VGM") weights. Customer authorizes Terminal Operator to use these weights and Customer hereby verifies such weights in the absence of a separately provided VGM. For export containers arriving via rail, Customer must provide VGM weight in an electronic format acceptable to Terminal Operator.

Customer shall establish EDI access to Terminal Operator's computer system for transmitting Outbound booking information, releases of inbound containers, and IPI destinations as well as receiving gate activity data. The parties agree to transmit activity messages, principally terminal operations activity messages, within two (2) hours of the occurrence of the event. The requirement is to be met throughout the week including weekends and public holidays. Computer services beyond normal terminal operator's functions may be provided by Terminal Operator at Customer's expense.

Customer, in partial consideration for use of the facilities and/or the services being performed, agrees to waive any right to claim and/or defense of sovereign immunity with respect to any monetary amount, loss, damage, expense, claim, liability, suit, fine and/or penalty due from Customer to Terminal Operator hereunder.

68. CHOICE OF LAW/DISPUTE RESOLUTION

(a) This Schedule shall be governed by the general maritime law of the United States, or in the event no United States general maritime law applies to a particular issue, governed by the laws of the State of California, except its choice of law rules.

(b) Unless otherwise provided in a written agreement between the parties, (1) Customer shall bring any claim, dispute, or action, including requests for equitable or injunctive relief against the Terminal exclusively in a federal or state court in San Francisco, California, (2) for any claim, dispute or action, including requests for injunctive or equitable relief by the Terminal, Customer irrevocably consents to the personal jurisdiction of any federal or state court in San Francisco, California and every other federal or state court with personal jurisdiction over Customer, (3) Customer consents to any removal requested by Terminal from a state court to a federal court, and (4) in all of the foregoing, Customer waives any objection based on venue or forum non conveniens.

(c) Each party knowingly, voluntarily and intentionally waives any right it may have to a trial by jury.

(d) The prevailing party in any litigation shall be awarded its reasonable attorney's fees and costs, including expert witness costs.

69. INTERPRETATION OF THIS SCHEDULE

This Schedule shall be construed neutrally, and for the mutual benefit of the parties, rather than for or against a party. The titles in this Schedule are for convenience of reference only and have no bearing on the meaning of this Schedule. If any provision of this Schedule is found to be legally unenforceable, it is agreed that such provision shall be deemed deleted from this Schedule as if never made a part hereof, with the remaining provisions of this Schedule to not be effected thereby and to remain in full force and effect.

Any failure of Terminal Operator to enforce a provision of this Schedule shall not be deemed to waive such provision or any other provision in this Schedule.

Terminal Operator may request that Customer sign a separate, written agreement for any one or more services, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

This Schedule, together with Terminal Operator's written quotation and any separate, written agreements between Terminal Operator and Customer as identified directly above, represents the entire agreement between Terminal Operator and Customer and supersedes all prior and contemporaneous agreements, written or oral.

APPENDIX A: BPT SCHEDULE OF RATES**BERTHING RATES**

Unauthorized berthing of vessels, lighters, barges, and tugs, per day	Double dockage rate, minimum of \$763.57/day or fraction thereof
Additional charges for failure to shift or vacate a berth, when ordered within	\$3053.01 per hour or portion thereof

LABOR RATES PROVIDED BY TERMINAL

Straight Time	Per Current ILWU Contract Rates
Overtime and Saturdays	Per Current ILWU Contract Rates
Penalty Time, Sundays, and Holidays	Per Current ILWU Contract Rates
Clerical Labor to Check to/from trucks per hour	Negotiated Rate
Labor for truck loading/unloading during overtime/penalty periods, per hour	Negotiated Rate
Standby time for clerks	190% of applicable hourly rate
Unused time when vessel completes loading/discharging before end of shift	190% of applicable hourly rate
Clerks are ordered but not used	8 hours at 190% of applicable hourly rate
Non-clerk Standby Time	Time lost at 190% of applicable hourly rate

EQUIPMENT CHARGES WHEN SPECIFIC RATES NOT PROVIDED

Use of Terminal Equipment

Lift trucks, electric or gasoline:	
Fork, high-lift type:	
Up to 5,000-pound rated capacity	140% of Terminal's cost
Over 5,000 and up to 7,500 rated capacity	140% of Terminal's cost
Over 7,500 and up to 10,000 rated capacity	140% of Terminal's cost

Furnishing Heavy Lift Equipment

<u>Per Piece of Equipment</u>	140% of Terminal's cost
-------------------------------	-------------------------

Furnishing Generators/Lighting

Furnishing of lighting/generators- Per 8- hour shift	\$381.71
------------------------------------------------------	----------

DOCKAGE RATES

Per Day (or Fraction Thereof Based on Length of Vessel (Including Barge) in Meters:

Up to 30	\$ 128.00
31 to 45	195.00
46 to 60'	274.00
61 to 75	382.00
76 to 90	568.00
91 to 105	888.00
106 to 120	1272.00
121 to 135	1718.00
136 to 150	2227.00
151 to 165	2810.00
166 to 180	3444.00
181 to 195	4157.00
196 to 210	4921.00
211 to 225	5766.00
226 to 240	6664.00
241 to 255	7627.00
256 to 270	8655.00

271 to 285	9752.00
286 to 300	10,905.00
301 to 315	12,130.00
316 to 330	13,416.00
331 to 345	14,770.00
346 to 360	16,183.00
361 to 375	17,664.00
376 to 390	19,215.00*

*Dockage charges for vessels over 390 meters in overall length shall be \$19,215.00 per day plus \$47.00 per day for each meter of overall length or fraction thereof in excess of 390.

WHARFAGE RATES

ARTICLES	RATES
Cargo, N.O.S., including vessel's stores and supplies, per 1,000 Kilograms	9 . 69
Fuel, bunker, for use of vessel to which initially delivered: From barge to vessel, per Barrel	.25
From car or truck to vessel, per 1,000 Kilograms	3.08
Liquids, N.O.S. , in bulk, direct from vessel to barge or direct from barge to vessel, per 1,000 Kilograms	3.08
Liquids, N.O.S., in bulk, direct from car or truck to vessel, per 1,000 Kilograms	3.08
Livestock, or other animals, per head	8.89
Dunnage and ship lining, per 1,000 ft. B.M.	13.29
United States Mail, per ton of 1,000 Kilograms	14.24
Tractors, agricultural, earth moving or road-making equipment, or vehicles accommodating more than 6 passengers, per ton of 1,000 Kilograms	25.07
Automobiles, pleasure, passenger, commercial or freight including chassis, freight trailers, freight semi-trailers, not boxed or crated, SU on own wheels	35.30
Environmental Impact Recovery Fee - Per Unit	2.00

WHARF DEMURRAGE RATES

Merchandise, N.O.S. in cents per pound	2.91 for first 5 days or fraction thereof, and 2.91 for each additional 5 days or fraction thereof
----------------------------------------	-------------------------------------------------------------------------------------------------------

STORAGE RATES

Merchandise, N.O.S. per day or fraction thereof, including Saturdays, Sundays, and Holidays	\$ 48.00 (minimum of 5 days)
Merchandise, N.O.S. per month or fraction thereof	514.75
Merchandise, N.O.S., per day or fraction thereof, including Saturdays, Sundays, and Holidays, when held in uncovered areas	30.52 (minimum of 5 days)
Merchandise, N.O.S., per month or fraction thereof, when held in uncovered areas	396.97

SECURITY FEE

Per visit	\$2.37 per meter of overall length
-----------	------------------------------------------

LOADING, UNLOADING AND HANDLING RATES

Vehicles entering and/or leaving Terminal via rail, motor carrier or under own power	\$ 35.30
--------------------------------------------------------------------------------------	----------

POVs - Privately Owned Vehicles Rates:

Receiving cars	\$ 38.16
Storage of cars per day or portion thereof	\$ 3.07
Receiving High/Heavy	\$ 229.03
Storage of high/heavy per day or portion thereof	\$ 6.11
Battery Jump (per jump)	\$ 15.27
Customs/Admin/Key Ties per unit	\$ 6.11

Added storage charges per day or portion thereof for a POV without title and not shipped within 15 days	\$ 9.17
Additional charges per vehicle for movement of discharged vehicles to truck away	\$ 22.90
Added per-vehicle charge for vehicles pre-staged for export using BPTC's Terminal, for first two days	\$ 15.27
Added per-vehicle, per day (or part thereof) charge for vehicles pre-staged for export using BPTC's Terminal, after the first two days	\$ 2.30

TERMINAL SECURITY CHARGE

Container vessels and barges with containers, per container	\$ 4.96
-------------------------------------------------------------	---------

RUBBISH GARBAGE

Removal by Terminal, Per event	140% of actual expense
Provision of garbage reception facilities	125% Terminal's cost of equipment/supplies/services

FRESHWATER

Terminal supply of Fresh Water to carrier, per ton of 2,000 pounds	\$ 3.58
Minimum Fresh Water charge, per vessel	\$ 125.98
Hook up and hose usage fee	\$ 161.85