

10 February 2011

Marine Notice No. 01/2011



ADPC NOTICES TO MARINERS

Standard Terms and Conditions for ADPC Ports

Notices to Marine Services Providers, Owners, Masters, Charterers and Agents

The **STANDARD TERMS AND CONDITIONS FOR ADPC PORTS** have been published with immediate effect. These Terms and Conditions form an agreement between ADPC and the Port User.

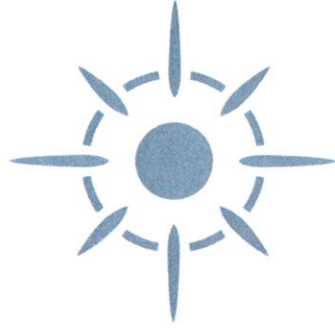
ADPC agrees to allow any Port User or Vessel access to and use of a Port, Port Channel and/or Terminal or to receive Marine Services Subject to these standard terms and conditions

No other terms and conditions or agreements will govern the relationship between ADPC and a Port User concerning the use of a Port or the provision of Marine Services unless expressly agreed to in writing by ADPC.

The attached Standard Terms and Conditions for ADPC ports are available on the ADPC Website.



Captain / Adil Ahmed Banihammad
Harbour Master



ADPC

شركة أبوظبي للموانئ

STANDARD TERMS AND CONDITIONS FOR ADPC PORTS

1. INTRODUCTION

ADPC agrees to allow any Port User or Vessel access to and use of a Port, Port Channel and/or Terminal or to receive Marine Services subject to the terms and conditions set out herein.

2. DEFINITIONS

In these Standard Terms and Conditions for ADPC Ports the following terms shall be defined as follows:

ADPC: means Abu Dhabi Port Company PJSC.

Marine Services: means any services provided to a Vessel by ADPC or ADPC's appointed agent, employee or contractor.

Marine Services Provider: means any natural person or legal entity that is licensed by ADPC to provide and provides Marine Services to a Port Users in a Port.

Port: means any Port in the Emirate of Abu Dhabi which is owned, operated, managed by or under the control of ADPC and shall include the Port Channels and Terminals within that port.

Port Channels:	means the waterways leading to a Port or Terminal within a Port.
Port Charges:	means the wharfage fees, channel fees, service fees and other published charges or tariffs determined or levied by ADPC for the use of a Port or for the provision of Marine Services.
Port User:	means any natural person or legal entity who uses a Port or who receives Marine Services from ADPC and shall include the vessel owner, vessel master, vessel agent or representative, charterer, shipping company, ship chandler, crew, mortgagors, mortgagees, cargo agents, stevedores, cargo owners, forwarders, shippers, consignees or any other person who is liable to pay Port Charges to ADPC pursuant to these Terms and Conditions or separate agreement with ADPC..
Terminal:	means the facilities and berths within a Port.
Terminal Operator:	means any entity that has been appointed or licensed by ADPC as the Operator of any Terminal or other property within a Port.
Terms and Conditions:	means these Standard Terms and Conditions.
Vessel:	means any vessel, which uses a Port or receives Marine Services and includes every kind of water and aircraft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

3. JURISDICTION

ADPC is established by Emiri Decree 6 of 2006 and pursuant to that decree is granted jurisdiction to own, operate, maintain and manage all commercial ports and related facilities in the Emirate of Abu Dhabi

(excluding oil and gas and military ports) and is appointed as port authority for those ports.

4. APPLICATION AND FORMATION OF AGREEMENT

- 4.1 These Terms and Conditions form an agreement between ADPC and the Port User.
- 4.2 The use of a Port or the receipt of Marine Services by a Vessel shall be governed by these Terms and Conditions.
- 4.3 The use of a Port or receipt of Marine Services by a Vessel for or on behalf of a Port User shall constitute consent by the Port User to these Terms and Conditions.
- 4.4 No amendment to or waiver of these Terms and Conditions will be binding on ADPC unless expressly agreed to in writing by ADPC.
- 4.5 No other terms and conditions or agreements will govern the relationship between ADPC and a Port User concerning the use of a Port or the provision of Marine Services unless expressly agreed to in writing by ADPC.

5. JOINT AND SEVERAL LIABILITY

Any obligation imposed on a Port User in these Terms and Conditions shall be construed as imposing joint and several liability upon such the Port User and any other Port User they represent.

6. AGENT/EMPLOYEES/ REPRESENTATIVES

Where the Port User is an agent, employee or representative of another Port User, then the Port User who is the agent, employee or representative irrevocably warrants and represents that it is duly authorised by and has the authority to accept and bind the Port User which is its principal or employer or which it represents to the Terms and Conditions jointly and severally and has provided a copy of the Terms and Conditions to such Port User.

7 PORT CHARGES

- 7.1 The Port User agrees that it is liable to pay and will pay any Port Charges payable for the use of a Port or receipt of Marine Services. The applicable Port Charges shall be in accordance with the ADPC tariff of schedules and charges, which shall be published and notified by ADPC from time to time.

- 7.2 All Port Charges will be payable immediately on demand by ADPC unless alternative payment arrangements are made and agreed in writing with ADPC.
- 7.3 ADPC reserves the right to require a deposit from any Port User prior to the use of a Port or receipt of Marine Services by such Port User. If a deposit has been requested by ADPC of a Port User but such Port User has not paid such deposit ADPC may prevent access to a Port or refuse to provide or facilitate Marine Services or provide a port clearance for any Vessel which such Port User represents, owns, operates or is otherwise associated with.
- 7.4 ADPC shall have a general as well as a particular lien on a Vessel, containers, equipment or cargo in its possession custody or control to secure payment of any Port Charges whatsoever due to ADPC from the Port User. Upon exercising a lien additional charges may apply to a Vessel, containers, equipment or cargo held subject to the lien. ADPC shall be entitled to sell or dispose of a Vessel, containers, equipment or cargo at the Port User's expense and apply the proceeds towards payment of any Port Charges and other charges due upon 28 days written notice to the Port User. In the event that any cargo detained in perishable and may deteriorate during the 28 day notice period, ADPC may sell such cargo without giving the said notice. Upon accounting to the Port User for any balance remaining after payment of any sums due and costs, ADPC shall be discharged from all and any liability whatsoever in respect of such Vessel, containers, equipment or cargo.

8. ACCESS TO AND USE OF THE PORT

- 8.1 In consideration for a Port User agreeing to the Terms and Conditions ADPC agrees and undertakes:
- (a) to allow a Vessel which such Port User represents, owns, operates or is otherwise associated with access to, and use of a Port;
 - (b) to facilitate or provide Marine Services to a Vessel calling at a Port.
- 8.2 ADPC reserves the right to:
- (a) appoint sub-contractors without the consent of the Port User to perform all or any part of the Marine Services; or

- (b) suspend access to a Port or not provide or prevent the provision of Marine Services in the event of any breach of these Terms and Conditions by the Port User; or
 - (c) refuse a Vessel entry to a Port or not provide or prevent the provision of Marine Services for reasons of safety, security or non compliance by the Port User or any of the Port User's Vessels with any local, national or international law, regulation, direction, rule or requirement of any competent authority having jurisdiction.
- 8.3 If ADPC suspends access to a Port or does not provide or prevents the provision of Marine Services in accordance with Clause 8.2, ADPC shall have no liability whatsoever to any Port User affected thereby.
- 8.4 The Port User acknowledges that ADPC and/or a Terminal Operator has absolute discretion in the allocation of berths, quay plant, machinery, labour and storage space within a Terminal and/or a Port.

9. TERMS OF MARINE SERVICES

- 9.1 Where ADPC, provides Marine Services in a Port, those Marine Services will be provided to a Port User's Vessels in such Port on the strict understanding (which the Port User acknowledges and agrees for itself and on behalf of any other Port User it represents either as an agent, employee or representative) that ADPC shall have no responsibility or liability whatsoever to the Port User (or any third party) in respect of such Marine Services.
- 9.2 Without prejudice to the provisions of Clause 9.1, ADPC shall not be responsible or liable for:
- (a) any damage of any description done by or to a Vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board a Vessel or to or by any other object or property; or
 - (b) any loss of a Vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board a Vessel or any other object or property; or
 - (c) any claim by a person not a party to these Terms and Conditions for loss or damage of any description whatsoever arising from any cause whatsoever, including (without prejudice to the generality of the foregoing) negligence at any time of a person providing Marine Services, his servants or agents,

unseaworthiness, unfitness or breakdown of a vessel providing Marine Services, its machinery, boilers, towing equipment, lines, ropes or wires, lack of fuel, stores, speed or otherwise.

- 9.3 Where Marine Services are not provided by ADPC but by a Marine Services Provider, the Port User and the Marine Services Provider shall be responsible for agreeing directly between themselves the terms and conditions upon, which Marine Services will be provided. At all times the Marine Services Provider will act on its own accord and will have no power to represent or bind ADPC.
- 9.4 Where ADPC provides Marine Services to a Port User, ADPC and the Port User may agree additional terms or a separate agreement to govern the provision of those Marine Services.
- 9.5 Marine Services that are tug and towage services provided by ADPC shall be governed by the United Kingdom Standard Conditions for Towing and Other Service (revised 1986 and as amended by ADPC) and for the purposes of which the Port User will be the "Hirer". A copy of these terms can be obtained from the ADPC website www.adpc.ae.

10 UNDERTAKINGS

11.1 The Port User shall:

- (a) ensure that any of its Vessels entering Port, is seaworthy and holds valid ship certificates and crew certificates certifying the Vessel's condition and competency of the crew, in accordance with international standards;
- (b) ensure that all of its Vessels are adequately covered by insurance policies for Hull & Machinery and Protection & Indemnity, covering oil pollution and third party insurance in accordance with international standards, and that all such insurance is valid throughout the period that such Vessels use a Port or are provided with Marine Services;
- (c) comply with and perform its obligations contained in these Terms and Conditions;
- (d) obtain and maintain at its own expense, all necessary licences and authorisations and comply with all applicable laws, acts, conventions, regulations, regulatory requirements and codes of practice issued by any competent authority;

- (e) comply with all reasonable directions imposed by ADPC and/or any Terminal Operator for the safe and/or efficient operation of a Port or a Terminal or pursuant to the laws of the jurisdiction where such Port or Terminal is situated, or as otherwise agreed with ADPC and/or any Terminal Operator for the use of a port or Terminal;
- (f) immediately inform ADPC and any Terminal Operator of any occurrence or incident which might affect the safe and efficient operation of a Terminal and/or a Port or endanger the health and safety of persons at a Terminal and/or a Port or which may cause pollution or damage to the environment and shall take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience caused by such occurrence or incident as may be directed by ADPC;
- (g) complete and provide to ADPC or any Terminal Operator any documents required pursuant to any applicable laws, regulations, byelaws, standards or directions prior to the use of a Port or receipt of Marine Services; and
- (h) accept that these Terms and Conditions constitute valid and legally binding rights and obligations of the Port User enforceable against the Port User in accordance with its terms.

11 LIABILITIES, INDEMNITIES AND LIMITATIONS OF LIABILITY

- 11.1 ADPC shall notify a Port User without undue delay upon becoming aware of any matter which gives rise to or may give rise to a claim for loss or damage(s) against such Port User in respect of Marine Services stating in reasonable detail or with such information as is available, the nature of the matter and claim, and so far as practicable, the amount claimed.
- 11.2 The Port User shall be responsible for any physical damage arising out of or resulting from the use of a Port. ADPC reserves the right to replace or repair any such damage caused by a Port User as it deems fit and correct, at the expense of such Port User.
- 11.3 The Port User shall be liable for, and shall indemnify, defend and hold harmless ADPC against any liability for claims or legal actions of any kind brought against ADPC by a third party, including reasonable costs and expenses incidental thereto, in respect of:

- (a) loss, damages, pollution damages, delay, deficiency, costs (including legal costs), expenses of whatsoever nature, however arising or caused, whether directly or indirectly incurred by ADPC, whether actual or consequential occasioned to and sustained by:
- i. a Vessel and/or its cargo ;
 - ii. the Port Users' premises or property, whether owned, hired, leased or otherwise provided;
 - iii. the property of any third party;
- (b) loss of life and/or personal injury, including fatal injury and disease, to any person or persons or any legal liability of whatsoever nature, however arising or caused, notwithstanding any defect of any premises, property, machinery, gear or appliance (none of which is in any way warranted by ADPC as to fitness for use) and notwithstanding any omission, negligence, default or error by ADPC, its directors, employees, representatives, agents, contractors or any person authorised by ADPC or any other person, body or authority in connection with ADPC's pilots, marine crafts, equipment or employees, representatives, agents and contractors, arising from or during the period of a Vessels' use of a Port or for receipt of Marine Services which ADPC may provide to the Port User or Vessel; and
- (c) pollutants or waste matter emanating from a Vessel or the Port Users' property (other than a Vessel) of whatsoever nature causing pollution and contamination arising out of or in connection with these Terms and Conditions,

in each event, whether caused by tort (including negligence), breach of statutory duty, contract or otherwise.

- 11.4 All indemnities at Clause 11.2 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of ADPC or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- 11.5 The Port User agrees that its liability under these Terms and Conditions shall be joint and several with any other Port User it represents (either as an agent, employee or representative) and shall not be conditional upon ADPC proceeding first against any other

person, whether or not such person is party or liable under this Agreement.

- 11.6 The Port User agrees to exclude all implied warranties and conditions related to ADPC allowing its Vessel to use a Port and agrees that ADPC will not be liable for any damages, however arising, incurred or suffered by the Port User.
- 11.7 In no circumstances will ADPC be liable for any consequential or indirect loss of whatever nature and howsoever arising including (but not limited to) any loss of profit (whether direct or indirect), loss of market share, loss of goodwill, loss of future or anticipated sales, loss of production or factory down time, damages, costs or expenses incurred or payable by the Port User to any third party or any other indirect or consequential losses.
- 11.8 Without prejudice to clauses 9 and 11 (sub-clauses 1-7), if ADPC is found liable to the Port User, this liability shall not exceed the limit published by the Abu Dhabi Department of Transport pursuant to the Abu Dhabi Transport Regulations (General and Port Operations) Second Edition 2010.

12. INSURANCE

The Port User is responsible for obtaining and providing insurance cover of any of its Vessels, cargo, equipment and any liability arising out of the ownership or use of a Vessel in accordance with industry best practice and any local, national or international law, regulation, direction, rule or requirement of any competent authority having jurisdiction.

13. WAIVER

The failure of ADPC to enforce or to exercise at any time or for any period of time any term of or any right pursuant to these Terms and Conditions does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect ADPC's right later to enforce or exercise it.

14 TIME LIMITS AND NOTICES

Any claim made against ADPC shall be made in writing to ADPC within 30 calendar days from the event giving rise to such claim. Failure to make a claim within this period shall cause the claim to be barred

unless the Port User can demonstrate that it was not possible to make a claim within this period and that the claim was made in writing to ADPC as soon as reasonably practical. In any event ADPC shall be discharged from all liability whatsoever, howsoever arising unless a suit or legal proceedings is brought and written details served on ADPC within 12 months of the date when the event giving rise to the cause of action occurred.

15 SEVERABILITY

Should any term of these Terms and Conditions be held invalid, illegal or unenforceable, the remainder of these Terms and Conditions, and the application of such term to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each term of these Terms and Conditions shall be valid and enforceable to the extent permitted by law.

16 GOVERNING LAW

These Terms and Conditions shall be governed and construed in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the UAE applicable therein and each and every person liable under these Terms and Conditions shall submit to the jurisdiction of the Courts of the Emirate of Abu Dhabi.

17 ADDITIONAL TERMS

These terms and Conditions are in addition to and do not substitute any rights, powers, contractual or other terms and duties granted to or imposed on ADPC or the Port User by the Abu Dhabi Transport Regulations (General and Port Operations) Second Edition 2010 issued by the Abu Dhabi Department of Transport ("Regulations"). In the event of any conflict between these Terms and Conditions and the Regulations the latter shall prevail to the extent of such conflict.