

## STEVEDORING AND WAREHOUSING SERVICES TERMS

These Stevedoring and Warehousing Services Terms (“SWST”) apply to and govern any services procured by Ingram (as defined below) from Provider (as defined below). Ingram wants to retain Provider to provide stevedoring, warehousing, or other related services in connection with Ingram’s transportation of its customers’ cargo.

### 1. **Definitions.**

- a. “Cargo” means the cargo, goods, containers, or other items tendered to Provider for loading or unloading or other Services (as defined below) by Provider.
- b. “Facility” means any port, marine terminal, dock, container yard, warehouse, or other facility at which Cargo is loaded, unloaded, transshipped, consolidated, deconsolidated, handled or stored, as well as any fleeting facility, dock or other facility at which barges or other vessels are secured. When more than one Facility is referenced in an Agreement, they will be referred to in the aggregate as “Facilities.”
- c. “Ingram” means Ingram Logistics Services LLC (“ILS”) or its affiliate Ingram Barge Company LLC (“IBCO”) (IBCO and ILS are individually and collectively “Ingram”).
- d. “Provider” means the person or entity from which Ingram is procuring Services (defined below), including the person or entity’s employees, principals, agents and/or representatives, as well as its subcontracted warehousemen or stevedores. It is the responsibility of the Provider to provide notice and copy(s) of these SWST to all relevant parties included in the preceding definition.
- e. “Services” means any stevedoring, terminal operations, storage, warehousing, or any related services provided by Provider to Ingram or on behalf of Ingram’s customers.

2. **General Applicability.** These SWST apply to and supplement any verbal agreement, e-mail, facsimile confirmation, service booking note, detailed order, a document specifically styled as a “Services Order,” or other agreement (any of the foregoing are the “Agreement”) between Ingram and Provider calling for provision of Services to Ingram or on behalf of its customers. To the extent there is any conflict between the Services Order and these SWST these SWST will supersede and govern unless each conflicting provision in the Services Order includes the exact following phrase: “The parties specifically intend for the following term to supersede any conflicting term(s) in the SWST.”
3. **Term.** These SWST and any revisions to the same become effective when posted on Ingram’s website at: [www.ingramlogistics.com/resources/](http://www.ingramlogistics.com/resources/) or when incorporated by reference into an Agreement, and remain in effect until supplemented or replaced by a future revision issued by Ingram.
4. **Services Standards.** Provider shall use its trained personnel, equipment and operational experience to provide the Services to Ingram. Provider shall cause the Services to be performed safely, in a timely, workmanlike manner, and in accordance with all applicable laws and regulations.

5. **Facility Locations; Operational Hours.** Providers shall cause the Services to be available at the Facility (or Facilities) and on the dates and times as agreed in an Agreement.
6. **Rates.** The rates to be paid by ILS to Provider for the Services are as set forth in the Agreement.
7. **Cargo Weights.** Unless otherwise stated in the Agreement, Provider shall upon request weigh Cargo it handles for (or on behalf of Ingram).
8. **Invoicing.** Provider shall invoice Ingram monthly for Services rendered. Payment of the uncontested portion of any Provider invoice is due within 30 days of Ingram's receipt of the invoice.
9. **Delay; Demurrage; Freetime.**
  - a. Where Provider operates as a stevedore, it agrees to perform the Services at the loading or discharging rates set forth in the Agreement, and, if such Services are not performed within the allowed time, to pay demurrage at the rates set forth in the Agreement; or, in the absence of such rates, at the demurrage rate paid by Ingram.
  - b. When Provider operates as a terminal, or as otherwise applicable, Provider shall provide Ingram with the number of days of freetime set forth in the Agreement for Cargo delivered to Provider, and Ingram shall pay storage for such Cargo on Provider's premises in excess of such agreed-upon freetime at the rate stated in the Agreement.
10. **Maximum Load Weight; Other Instructions.** When applicable, and upon timely request by Provider, Ingram shall advise Provider on the maximum load weight for each conveyance that Cargo is to be loaded onto/into as part of the Services performed by Provider.
11. **Compliance with Law.** Each of the parties shall comply with all applicable laws, ordinances, and regulations during the performance of the Services, including with respect to the equipment, Cargo and/or other materials provided by such party that will be (i) used during the performance of, or (ii) subject to these SWST.
12. **Barge Responsibility.** When barges are tendered by Ingram or others to Provider for Provider's use in performing the Services, Provider shall be responsible for any loss of or damage to such barges that occurs following their delivery to, and prior to their pickup from, any Facility, but only to the extent that such loss or damage does not directly arise from the unseaworthiness of such barges when delivered to Provider, or the negligence or intentional acts or omissions of Ingram or its other contractors, subcontractors, agents or vendors (e.g. other than Provider or Provider's contractors, subcontractors, agents or vendors). A barge that Ingram directs to a Facility will be deemed to be delivered to the Facility when it has been secured on behalf of Ingram at the Facility, and it will be deemed to be picked up when it has been untied on behalf of ILS from the Facility. Provider shall cause the barges in its care and custody to have a safe berth of not less than nine (9) feet of draft, with adequate moorings, and shall not permit any barge to touch bottom while in its control. While barges are in the care and custody of Provider, or its agents, all applicable U.S. Coast Guard and U.S. Army Corps of Engineers regulations will be complied with. Provider shall reject any barges that it reasonably determines to be unseaworthy or unfit for the provision of the Services at any Facility; if Provider accepts a barge for loading or unloading at any Facility, such barge will for all purposes be deemed to be seaworthy and in suitable condition for the Services. Provider states that it has the experience and equipment necessary to, when applicable, remove and reinstall the fiberglass lift-top covers on any barges

provided for the Services, and shall provide such cover-removal and re-installation services pursuant to the Agreement

13. **Termination.** Ingram may terminate an Agreement in its sole discretion for any reason and without penalty upon 30 days' written notice to Provider; at the time of such termination, Ingram shall pay Provider for any Services actually performed through the date of termination. Additionally, either party (as used in this section "Non-Breaching Party") may terminate an Agreement immediately upon providing written notice to the other upon the occurrence of any of the following:

- a. the other party's breach of these SWST and subsequent failure to cure such breach within 30 days of its receipt of written notice of the breach from the Non-Breaching Party,
- b. the other party becoming the subject of any bankruptcy proceeding or action, or,
- c. the other party's material violation of a law, ordinance, regulation, or other legal requirement applicable to performance obligations of the Agreement or these SWST.

14. **Force Majeure.** Each party shall be excused from performance to the extent such performance is prevented by Force Majeure, provided that the party affected shall have given the other party prompt notice of such condition. "Force Majeure" shall include, but not be limited to, acts of God, acts of public enemy, acts of terrorism, insurrections, riots, strikes, lockouts, labor disputes, fires, explosions, pandemic, floods, breakdowns of or damage to plants, mines, equipment, or facilities, disease, accidents of navigation, river freezes, high or low water, embargoes, acts or orders of civil or military authorities, inability to transport, lock delays or closings, fuel shortages, or other causes howsoever occurring beyond the reasonable control of the party affected. The party affected by a Force Majeure condition shall make reasonable efforts to eliminate it as promptly as possible recognizing, however, the settlement of any strike or other labor dispute shall be solely within the discretion of that party involved therein. The declaration of Force Majeure by Provider shall not relieve Provider from legal responsibility for any cargo or barges directed to any Terminal by Ingram that are in Provider's care, custody, or control at the time of the events giving rise to the Force Majeure declaration.

15. **Indemnification:**

- a. **Provider's Indemnity Obligations.** Provider shall protect, defend, indemnify and hold Ingram and its affiliates and its and their employees, vendors, vessels, contractors (excluding the Provider Parties), subcontractors at any tier or agents ("Ingram Parties") harmless from and against any all losses, damages, injuries, liabilities, judgments, claims and expenses, including without limitation penalties for violation of laws and pollution cleanup costs and reasonable attorney's fees (collectively "Losses") arising from or related to (i) Provider's breach of the Agreement (ii) the negligence, gross negligence, recklessness or intentional misconduct of Provider Parties (defined below), except to the extent of the negligence, gross negligence, recklessness or intentional misconduct of Ingram Parties; and except for any Losses covered by the last sentence of Section 15(b); or, (iii) any combination of (i) and (ii). ***In addition, Provider shall protect, defend, indemnify and hold the Ingram Parties harmless from and against any and all Losses arising from or related to any injury, illness, death, or any combination thereof, of any employees of any Provider Party, regardless of cause, including the sole, joint, or concurrent negligence or fault (whether active, passive, and/or gross), any tort, any***

***strict liability or any other theory of liability which may be available against any Ingram Party, either at law or in equity.***

- b. Ingram's Indemnity Obligations. Ingram shall protect, defend, indemnify and hold Provider and its affiliates and its and their employees, vendors, contractors (excluding the Ingram Parties), subcontractors at any tier, or agents ("Provider Parties") harmless from and against Losses arising from or related to (i) Ingram's breach of the Agreement; (ii) the negligence, gross negligence, recklessness or intentional misconduct of the Ingram Parties, except to the extent of the negligence, gross negligence, recklessness or intentional misconduct of Provider Parties; and except for Losses covered by the last sentence of Section 15(a); or, (iii) any combination of (i) and (ii). ***In addition, Ingram shall protect, defend, indemnify and hold the Provider Parties harmless from and against any and all Losses arising from or related to any injury, illness and/or death of the employees of any Ingram Party regardless of cause, including the sole, joint, or concurrent negligence or fault (whether active, passive, and/or gross), any tort, any strict liability or any other theory of liability which may be available against any Provider Party, either at law or in equity.***

16. **Insurance.** Without limiting in any way Provider's indemnity obligations herein, Provider shall procure and maintain, at its expense, throughout the term of this Agreement, insurance policies with insurers satisfactory to Ingram and complying with the following minimum limits and requirements:

- a. Workers' Compensation Insurance (including U.S. Longshore and Harbor Workers' Compensation Act coverage) to statutory requirements, and Employer's Liability in an amount not less than \$10,000,000 per occurrence;
- b. Commercial General Liability Insurance, including Pollution Liability and Contractual Liability, in an amount not less than \$10,000,000 per occurrence;
- c. If the Services include warehouse operations, warehouseman's legal liability coverage or its equivalent in an amount not less than \$10,000,000 per occurrence;
- d. Stevedore's Liability insurance and Wharfinger's Liability insurance, including Sudden & Accidental Pollution Liability coverage, in an amount not less than \$10,000,000 per occurrence;
- e. Hull and Machinery insurance in an amount not less than the fair market value of any watercraft operated by Provider or its subcontractors in performing services under this Agreement;
- f. If Provider operates any watercraft in performing the Services, Protection and Indemnity Insurance, including Collision and Contractual Liability, in an amount not less than \$10,000,000 per occurrence;
- g. Pollution Liability Insurance in an amount not less than \$10,000,000 per occurrence, as provided by WQIS;
- h. Providers Legal Liability Insurance, including Sudden & Accidental Pollution Liability coverage, in an amount not less than \$10,000,000 per occurrence; and,

- i. All-Risk Property Insurance to the fair market value of any equipment operated by Provider or its subcontractors in performing services under this Agreement which is not covered under marine policies.

The above liability coverages may be provided in any combination of primary and excess coverage. Provider will upon request, cause to be furnished to Ingram a certificate of the required insurance, on a form acceptable to Ingram. All policies will provide that Provider's insurer will notify Ingram at least 30 days prior to termination of any policy or prior to any changes being made which restrict or reduce the coverage provided or effect any other material change; and all policies will, as respects liabilities and risks assumed by Provider, waive subrogation against Ingram and its affiliated companies, name Ingram and its affiliated companies as additional assureds (except for Workers' Compensation coverage), and be primary as respects any other coverage in favor of Ingram and its affiliated companies. All policies will also provide that there will be no recourse against Ingram or its affiliates for premiums or calls, that the interests of Ingram and its affiliates will be insured regardless of any breach by Provider of the warranties, declarations, or conditions contained in such policies, and that (i) naming Ingram and its affiliates as additional assureds, (ii) granting them a waiver of subrogation, or (iii) both (i) and (ii) will in no way impair the rights otherwise inuring to them. Any deductibles will be borne solely by Provider but will not exceed a combined total of \$50,000 per occurrence.

17. **Weather.** Provider shall monitor local weather conditions at any Facility in real time and shall take appropriate action to avoid atmospheric moisture damage to the Cargo during the provision of the Services.
18. **Conflict.** If any of Provider's own correspondence, invoicing, or any other documentation it issues or incorporates in connection with the Services includes: (i) additional proposed terms, (ii) language stating that Provider's terms supersede and govern for any reason, or (iii) any combination of (i) and (ii), any such additional terms described in (i) – (iii) will be deemed material alterations of these SWST. Ingram does not assent to any such alterations to these SWST absent an express statement to that effect in writing sent to Provider, and this "Conflict" Section will be deemed sufficient notice of Ingram's objection to such additional terms under applicable law. These SWST (and, when applicable, the applicable terms of any Service Order or Agreement document issued by Ingram to Provider) are the entirety of the terms offered by Ingram to Provider; Provider's acceptance of Ingram's terms is not (and will not be deemed) conditioned on Ingram's acceptance of any material alterations to these SWST proposed by Provider—any such alterations will be deemed errant, void, and unenforceable against Ingram without further notice. Without limitation to the above, any term in an interchange receipt, warehouse receipt, tariff or other Provider document limiting liability for damage to cargo, vessels or other property shall be invalid unless specifically assented to by Ingram in the Agreement.
19. **Confidentiality.** As part of the business relationship between Provider and Ingram, either party may be in or come into possession of information or data that constitutes trade secrets, know-how, confidential information, marketing plans, pricing, or anything else otherwise considered proprietary or secret by the other ("Confidential Information"). In consideration of the receipt of such confidential Information and potential business, each Party agrees to protect and maintain such Confidential Information in the utmost confidence, to use such Confidential Information solely in connection with their business relationship, and, to take all measures reasonably necessary to protect the Confidential Information.

20. **Miscellaneous.** Any notice provided hereunder shall be deemed fully given if in writing and sent by either courier, registered or certified mail, postage prepaid, or sent via email addressed to the address stated below or such other addresses as the parties may designate in writing:

- a. **Amendments.** This Agreement cannot be amended without a written agreement signed by Provider and ILS.
- b. **Counterparts.** This Agreement may be executed in counterparts and all such counterparts executed constitute one agreement binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the original or to the same counterpart.
- c. **Governing Law. Jurisdiction and Venue.** These SWST and the relationship of the parties shall be construed according to the laws of the State of Tennessee, without regard to its conflict of law principles. Provider and Ingram hereby (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Tennessee; (b) agree that any action relating to the Services performed by Provider, can only be brought in said courts; (c) consent to the exercise of in personam jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgment of such court may be instituted in any jurisdiction.
- d. **No Assignment or Subcontracting.** No party may assign, subcontract, or transfer any of its rights or obligations under this Agreement to any other party without prior written consent from the other party, which will not be unreasonably withheld. Any change in control of Provider resulting from a merger, consolidation, or equity transfer or any sale of all or substantially all of Provider's asset shall be deemed an assignment for purposes of this Agreement that requires Ingram's prior written consent.
- e. **Integration.** The Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations, and discussions of the parties, whether oral or written.
- f. **Modification.** If any provision of this Agreement, or the application of any such provision to any person or circumstance is held invalid, illegal, or unenforceable for any reason whatsoever, the remaining provisions of this Agreement and the application of such provision to other persons or circumstances will not be affected thereby and to the fullest extent possible the court finding such provision invalid, illegal or unenforceable must modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to the party or parties affected within the bounds of validity, legality and enforceability.
- g. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall confer upon any third party any benefits, rights, or remedies.
- h. **Headings.** Headings are for convenience only and shall not affect the interpretation of this Agreement.
- i. **Interpretation.** In entering this Agreement both parties have had a full and fair opportunity to negotiate at arm's length and to have legal counsel of respective choice review the terms and conditions herein. Accordingly, the parties hereby waive any argument or claim based on one or the other being considered the draftsman of this Agreement, and/or any argument or claim that ambiguity should be preferentially interpreted against the other party.

- j. The relationship between Provider and Ingram will remain that of independent contractors and no employer/employee or principal-agent relationship exists or is intended.
- k. No Waiver. Delay or failure to exercise any right or remedy hereunder will not impair such right or remedy or be construed as a waiver thereof or as acquiescence in a breach of this Agreement. Any single or partial exercise of any right or remedy will not preclude any other or further exercise thereof or the exercise of any other right or remedy.
- l. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the heirs, assigns, and successors in interest of the parties.
- m. Authority. Each party hereby represents and warrants to the other party as follows: (i) such party, through the representative agreeing to the Agreement, has the requisite authority to enter into and perform the obligations of the Agreement; (ii) the Agreement constitutes the legally binding obligation of each party; and (iii) such party's performance under the Agreement will not result in a breach of any obligation to any third party or infringe or otherwise violate any third party's rights.