

Oregon Pellet Mills, LLC
Terminal Tariff No. 1
Ko-Kwel Wharf
Effective September 15, 2023

Oregon Pellet Mills, LLC

Terminal Tariff No. 1

Naming:

Rates, Terms & Conditions

Governing

**Terminal Services and Privileges,
Throughput & Other Terminal Charges**

Applying at

Ko-Kwel Wharf Terminal

North Bend, Oregon

Effective: September 15, 2023

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Item No. 1. Application of Tariff / Rate Schedule

- 1.1 Effective Date – This schedule of rates, terms and conditions (“**Tariff**”) is effective from the date as shown on the cover page.
- 1.2 Tariff – A copy of this Tariff is available at the offices Oregon Pellet Mills, LLC, 3201 Tremont Street, North Bend, Oregon 97459, for use of customers and users of the Ko-Kwel Wharf Terminal at North Bend, Oregon. This Tariff is also available online at <http://www.OregonPelletMills.com>.
- 1.3 Notice to the Public - This Tariff contains the schedule of charges and terms and conditions for handling of wood pellets, general cargo and other commodities, the rules and regulations for use of dock facilities, and the schedule of dockage and port charges at the Ko-Kwel Wharf Terminal, North Bend, Oregon (the “**Terminal**”). This Tariff and all additions, revisions or supplements thereto, is regularly published, disseminated and available to the public. This Tariff is due notice to the public, carriers and shippers that the rates, charges, rules and regulations contained herein apply to all general traffic and use without specific notice, quotation to or arrangement with shippers, carriers or others. Utilization of the facilities and services covered by this Tariff constitutes consent and agreement to the terms and conditions of the Tariff, confirms the agreement on the part of all users of the facilities and services to pay all charges specified herein and to be covered by all the rules and regulations contained in this Tariff.
- 1.4 Agreement to Tariff Terms - All Facility Users (as defined below) acknowledge and agree to the terms stated in this Tariff, except to the extent modified by a private contract in writing signed by the General Manager of Oregon Pellet. Oregon Pellet may modify or amend this tariff without notice, but any such modification or amendment will not apply to then ongoing cargo operations or Terminal use for a period of ten (10) days.
- 1.5 Reservation of Agreement Rights – Oregon Pellet reserves the right to enter into private agreements with common carriers, shippers or their agents and other Facility Users concerning rates and service providing such agreements are consistent with existing local, state and federal regulations.

Item No. 2. Performance of Services on Port Facilities

- 2.1 Rights of Operation Reserved – Oregon Pellet reserves the right to perform and furnish all equipment, supplies and material in connection with the operation of the Terminal. No person, firm or corporation is allowed to perform any services on the Terminal facilities without written

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permission from Oregon Pellet. Those permitted to perform services must apply, as well as adhere to, this Tariff and any additions, revisions, or supplements, together with posted safety and use rules.

Item No. 3. Abbreviations

Cts	-	U.S Cents
\$	-	U.S Dollar
%	-	Percent
Ft	-	Foot or Feet
Lbs.	-	Pounds
NOS	-	Not otherwise specified

Item No. 4. Certain Rules for Construction and Defined Terms. For all purposes of this Tariff, except as otherwise expressly provided herein or unless the context otherwise requires:

- 4.1 All persons defined or mentioned herein as parties hereto or to any other agreements, instruments, documents and the like mentioned herein shall include, as applicable, each and all of their respective heirs, legal representatives, successors and assigns.
- 4.2 All references to agreements, instruments, documents and the like herein means and includes all amendments, supplements and modifications thereto, restatements or extensions thereof and substitutions therefore, as such agreements, instruments, documents and the like are so amended, supplemented, modified, restated or extended in accordance with their respective terms.
- 4.3 The words “herein”, “hereof” and “hereunder”, and other words of similar import refer to this Tariff as a whole and not to any particular Item, section, or other subdivision. The word “shall” has a mandatory meaning.
- 4.4 All headings used in this Tariff are for the convenience of the parties only and may not be used in construing the meaning or intent of the terms and provisions hereof.
- 4.5 Except where the context otherwise requires, words importing the singular number include the plural, and vice-versa.

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- 4.6 The following terms have the respective meanings set forth or referred to below:
- (a) “Oregon Pellet” refers to the Oregon Pellet Mills, LLC.
 - (b) “Facility User” means all vessels, persons, entities or companies authorized, invited or providing services, labor, material, supplies or equipment on Oregon Pellet marine terminal facilities or who are using or receiving the services of Oregon Pellet or its marine terminal facilities. “Facility User” includes but is not limited to all ocean carriers, inland water and land carriers, and the owners, shippers, receivers and consignees of cargo or merchandise. Facility User includes all vessels docking at the Terminal and their owners, operators, charterers and agents.
 - (c) “Ton” or “short ton” is equivalent to 2,000 pounds.
 - (d) “Metric ton” is equivalent to 2,204.6 pounds.

Item No. 5. Conditions Governing Provision of Services or Conduct of Operations on Oregon Pellet Facilities Facility Users providing services, labor, material, supplies or equipment on Oregon Pellet marine terminal facilities or who are using or receiving the services of the Oregon Pellet or the Terminal (excluding only employees of the Oregon Pellet) do so subject to the following conditions: Independent Contractors – In any service relationship with Oregon Pellet Facility Users are independent contractors, each to the other, and they shall not be agents or employees, one for the other or for Oregon Pellet, for any purpose.

- 5.3 Use of Facilities Deemed Acceptance of Tariff – Uses of the terminal facilities shall be deemed an acceptance of this Tariff along with all the specified terms and conditions contained herein. Oregon Pellet reserves the right to set work and safety rules, conditions for use and operations procedures applicable to specific locations or operations within Oregon Pellet’s facilities in addition to commercial rules stated in this Tariff. It is the responsibility of the Facility User to be aware of the physical characteristics of the facilities, the terms of this Tariff and all rules or conditions applicable for activities at the facilities of Oregon Pellet.
- 5.4 Specific Commodity Rates Prevail – Rates provided for specific commodities or services will prevail over Not Otherwise Specified (“NOS”) rates and any general commodity rate. When no specific or NOS rates are set forth in this Tariff, such charges shall be based on a time, equipment and materials basis unless Facility User has entered into a private agreement with Oregon Pellet.

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- 5.5 Compliance with Law; Workmanlike Performance – As a condition to the right to conduct business or operate on or use the Terminal, Facility Users warrant that all operations by Facility User and its employees, agents, contractors or subcontractors, will be conducted at all times in compliance with applicable federal and state law or regulation and with necessary labor and equipment under competent supervision, with all proper dispatch and in a good and workmanlike manner. The conduct of such business or operations at the Terminal shall be deemed to be an offer of such warranty, and acceptance by Oregon Pellet. If any breach of these warranties causes or subjects Oregon Pellet to any losses, suits, claims, damages, expenses or liabilities, such Facility User must defend, indemnify and save harmless, and reimburse Oregon Pellet for and against any such any losses, suits, claims, damages or expenses or liabilities (including attorneys’ fees incurred by Oregon Pellet).
- 5.6 Indemnity – Each Facility User must indemnify and hold harmless Oregon Pellet, its employees or agents from and against any claims, damages, losses, and expenses (including attorneys’ fees) for injury to or death of any person, (including employees of Oregon Pellet), or from damage to or destruction of property (including the Terminal and property of Oregon Pellet), arising from or related to the operations of the Facility User, its employees, agents, contractors or subcontractors, regardless of the cause thereof, including the sole and concurrent negligence or other legal fault of the Oregon Pellet. In furtherance thereof, Facility User waives any immunity from suit afforded it by any workers compensation or similar statute.
- (a) The parties intend for the indemnity stated in Item 5.6, above, to apply to claims based on allegations of gross negligence to the extent permitted by applicable law; but claims based on willful or intentional misconduct are excluded from the above stated indemnity.
- 5.7 Scheduling and Cooperation – Facility User must cooperate fully with Oregon Pellet in all respects:
- (a) In making appropriate use of proper facilities and equipment in each operation,
- (b) In advising as far in advance as possible the types and quality of cargo to be handled,
- (c) In estimating the arrival and departure of vessels,
- (d) In giving advance information on any special problems which exist or arise,

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- (e) In restoring Terminal working areas to a clean, safe and orderly condition on completion of the operation.

Item No. 6. Responsibility for Loss or Damage of Merchandise

6.1 Oregon Pellet's Responsibility Limited – Oregon Pellet will not be responsible for any loss of or damage to merchandise which may arise from any cause beyond its direct authority and control, nor for any cause except for want of due diligence and subject always to the limitations of and exemptions from liability stated in this Tariff and otherwise provided by applicable law.

- (a) Further, except for want of due diligence, Oregon Pellet shall not be liable for any personal injury, damage or loss which results from
- (b) animals, insects, rodents or vermin;
- (c) decay, deterioration, evaporation, shrinkage or loss of quality or value for inherent vice of product cargo;
- (d) interruptions in electrical power, fire, frost, ice, leakage or discharge from fire protective sprinklers, oxidation or rusting;
- (e) civil disorder, insurrection, riot, strike, slowdown or labor action or stoppage of persons in the service of Oregon Pellet or others, pandemic or epidemic, quarantine, government health orders;
- (f) wind, flood, earthquake, governmental action, war, acts of God, or other causes of similar nature.
- (g) Oregon Pellet will undertake to furnish all services specified in this Tariff with reasonable promptness to the extent it has facilities, equipment and personnel available and in good working order. However, Oregon Pellet is not obligated to furnish services, nor is it liable for failure to do so.
- (h) Oregon Pellet does not undertake to receive, unload, load, handle or deliver cargo or goods within any particular time or to meet any particular schedule. Trucks, ships and barges will be set in and loaded or unloaded in regular turn of arrival except as provided elsewhere in this Tariff.
- (i) In furnishing the services of ordering, billing-out, loading and unloading trucks and of wood pellets, general cargo or other commodities to or from vessels and barges, no responsibility for

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any demurrage whatsoever on either trucks, vessels or barges will be assumed by Oregon Pellet; nor will delays in loading, delivery or handling entitle owners, shippers, consignees or carriers to waiver of storage or of any other expense or terminal charge that may be incurred.

- (j) Charges for services not specifically provided for herein and for services with respect to commodities other than logs and lumber will be furnished upon application, and will be commensurate with the extent and nature of the work involved.

6.2 Demurrage- Vessels

- (a) **Vessels** - Oregon Pellet assumes no responsibility whatsoever for any vessel demurrage, except for that caused solely by Oregon Pellet's own negligence in damaging a particular vessel. Oregon Pellet shall not be liable or responsible for demurrage caused by delays arising from strikes, slowdowns, labor actions or riots of any persons in the employ of Oregon Pellet or service of others. In the event a vessel is unreasonably delayed in its estimated time of departure from Oregon Pellet, due to a cause for which Oregon Pellet is solely legally liable, Oregon Pellet liability will be computed on the actual down time during regular terminal working hours only and such down time constitutes the extent and limit of Oregon Pellet liability
- (c) **Waiver of Charges for Delays** - Delays or losses in loading, unloading, receiving, delivering or handling of cargo arising from strikes, slowdowns, work stoppages or other labor actions by any persons in the service of Oregon Pellet or others or arising from any other cause shall not entitle owners, shippers, consignees, or carriers to waive any terminal charges or expenses.

6.3 Responsibility During Free Time Period – Except as limited by specific provisions in this Tariff, liability for loss, damage or delay to merchandise during free time periods as specified in the Tariff shall be limited as set forth in the ocean carrier's receipt or bill of lading.

6.4 Responsibility as Warehousemen – Except as limited by specific provisions, liability for loss, damage or delay to merchandise while in the care or control of Oregon Pellet at any time other than the free time periods specified in this Tariff shall be that of a warehouseman only.

6.5 Valuation of Cargo or Merchandise for Claims Purpose – Any claims against Oregon Pellet shall be based upon the actual cost of the

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merchandise plus freight, if paid. Claims for partial loss or damage of merchandise shall be prorated based upon the weight of the lost or damaged portion versus the entire shipment.

- 6.6 No Consequential Damages –Notwithstanding any other provision of this Tariff, and regardless of whether a claim, action or suit alleges breach of contract or tort, Oregon Pellet will not be liable for consequential, special or remote damages (including, without limitation, delay, loss of profits, loss of markets, diminution in value or loss of use and even if advised of the possibility of consequential, special or remote damages), punitive damages or indirect damages.

Item No. 7. Claims

- 7.1 Loss or Damage Claims – Unless notice of loss of or damage to cargo or merchandise is given in writing to Oregon Pellet at the time of removal of the goods from Oregon Pellet (or within three (3) days of removal if the loss or damage was not apparent) such removal shall be prima facie evidence of delivery of the goods in the same condition as received by or in Oregon Pellet facilities. Oregon Pellet shall be discharged from all liability in respect of cargo or merchandise unless suit is brought within one (1) year of the occurrence of the alleged loss or damage to cargo or merchandise.
- 7.2 Recovery of Overcharge Claims – Claims for recovery of overcharges must be filed in writing with Oregon Pellet within twelve (12) months following the date of the invoice against which the overcharge is claimed.

Item No. 8. Insurance and Indemnification

Rates named in this Tariff do not include insurance of any kind.

- 8.1 Insurance – Every Facility User or any other party using the Ko-Kwel Wharf Terminal must obtain and maintain the following insurance coverage:
- (a) Workers Compensation Insurance (including Longshoremen and Harbor Workers Act and/or Jones Act coverage, if applicable). This coverage is required under Federal and State statutes for all the party's employees performing its work. In addition, Employer's Liability insurance is required in an amount not less than \$1,000,000.
 - (b) Commercial General Liability insurance or equivalent liability insurance, with coverage of at least \$5,000,000 for each occurrence. This coverage includes automobile liability, broad

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form contractual liability and broad form property damage covering property in the insured's care, custody, and control. This insurance shall cover claims against the insured for bodily injury, personal injury, death or property damage occurring on, in or about any vessels being loaded by a party on Oregon Pellet premises and adjoining areas.

- (c) Every party shall submit to the terminal certificate(s) of insurance as evidence of the required coverage upon request. Such insurance shall name the terminal as an additional insured as respects use of facilities and shall provide that the terminal is to be given 30 days prior written notice of cancellation.

8.2 Vessel Insurance – Every Facility User mooring a vessel at Ko-Kwel Wharf Terminal must obtain and maintain the following insurance coverage for the vessel:

- (a) Marine or Commercial general liability coverage for bodily injury, death and property damage and contractual liability in limits of not less than \$5,000,000.00 for any one occurrence, with any water craft exclusion deleted;
- (b) Workers' compensation insurance as required by state and federal law including, without limitation, coverage under the Longshoremen and Harbor Workers' Compensation Act;
- (c) Protection and indemnity insurance on the Vessel, including coverage for crew member liability, pollution liability and wreck removal in the amount equal to the value of the Vessels, but in no event less than \$5,000,000.00 for any one occurrence;
- (d) Pollution liability insurance in limits of not less than \$5,000,000.00 any one occurrence.
- (e) Hull and machinery insurance on all Vessels using the Berth to the full fair market value of each vessel.

8.3 Prior to the Vessels' arrival at the Terminal, Facility User will provide Oregon Pellet with certificates of insurance evidencing the above coverages; and will cause the insurers (i) to name Oregon Pellet as an additional insured except on Workers Compensation coverage, (ii) to waive subrogation against Oregon Pellet on all insurance coverages, and (iii) to designate Facility User's insurance as primary and noncontributory with any insurance maintained by Oregon Pellet.

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- 8.4 Indemnity – Facility User must defend (using legal counsel reasonably acceptable to Oregon Pellet), indemnify, and hold harmless Oregon Pellet and its parent, affiliated and subsidiary companies from and against, and reimburse Oregon Pellet for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, or penalties (collectively “Costs”) which may be imposed upon or claimed against or incurred by Oregon Pellet and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following: (a) any act, omission or negligence of the Facility User; (b) any use, occupation, management or control of the portions of the Terminal by the Facility User, whether or not due to the Facility User’s own act or omission and whether or not occurring on the marine terminal facility; (c) any breach, violation or nonperformance of the regulations, rules and terms of this Tariff; or (d) any damage caused by the Facility User on or to the marine terminal facility. For purposes of this Item 8.4, “Facility User” shall be deemed to include Facility User and Facility User’s respective partners, officers, directors, agents, employees, invitees and/or contractors and subcontractors.
- 8.5 Himalaya Clause – It is hereby expressly agreed between Oregon Pellet and each ocean carrier, inland water carrier and inland land carrier (collectively “**Carriers**”) using Oregon Pellet’s facilities that as a condition and in consideration of using those facilities, Oregon Pellet, as well as any and all of its employees, servants, agents, parent,, affiliated or subsidiary companies, and/or independent contractors (hereinafter as used in this paragraph, “Oregon Pellet Parties”) used or employed in connection with the performance of any of the Carriers’ obligations under their various Bills of Lading shall be treated as and shall be express beneficiaries of those Bills of Lading. As such, Oregon Pellet and Oregon Pellet Parties shall have the benefit of all rights, defenses, exemptions from or limitations on liability and immunities of whatsoever nature to which the Carrier(s) are or may be entitled under the provision of any Bill of Lading or by law so that Oregon Pellet and Oregon Pellet Parties shall not, under any circumstance, be under any liability in either contract or tort greater than that of the Carrier(s) themselves. Each Carrier shall indemnify Oregon Pellet and Oregon Pellet Parties from and against, and reimburse Oregon Pellet and Oregon Pellet Parties for, any liability, damage and claim (and all expenses connected therewith, including reasonable attorneys’ fees and costs) arising out of loss or damage of cargo if such Carrier fails to incorporate in its bill of lading, or through contract or otherwise fails to apply to the cargo, such rights, defenses, exemptions and immunities and as a result Oregon Pellet or any Oregon Pellet Parties are unable to take advantage of any such rights, defenses, exemptions and immunities that would otherwise be available to Oregon

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Pellet or Oregon Pellet Parties. In the event of conflict between the protections afforded by Bills of Lading issued by ocean and inland carriers, Oregon Pellet may elect to rely upon the Bill of Lading affording the lower limit of liability.

- 8.6 Excess Cargo Value – Carrier will indemnify Oregon Pellet from and against, and reimburse Oregon Pellet for, any liability, damage and claim (and all expenses connected therewith, including attorneys’ fees and costs) arising out of cargo loss or damage occurring on Oregon Pellet’s marine terminal facilities or as a consequence of services provided by Oregon Pellet at such facilities in excess of \$500 per package lawful money of the United States, or in case of goods not shipped in packages per customary freight unit, if the shipper has declared a value in excess of \$500 per package or customary freight unit and paid to Carrier a higher freight rate by reason of such excess value declaration.
- 8.7 Other Cargo or Merchandise – Oregon Pellet will have no liability for and each Facility User will indemnify Oregon Pellet from and against, and reimburse Oregon Pellet for, any liability, damage and claim (and all expenses connected therewith, including attorneys’ fees and costs) arising out of loss or damage to cargo or merchandise that is not moving as cargo by ocean or inland marine carrier occurring on the Terminal or as a consequence of services provided by Oregon Pellet at such facilities, in excess of \$500 per package lawful money of the United States, or in case of goods not shipped in packages per customary freight unit.

Item No. 9. Rights of Terminal

- 9.1 Rights Reserved – Oregon Pellet reserves the right to furnish all equipment, supplies, and materials and to perform all services in connection with the operation of the Terminal under the rates and conditions named herein. If a rate is NOS, the terms and conditions stated in this Tariff will apply, with the rate to be calculated on a time and materials basis, or as otherwise agreed in writing with the Facility User by private agreement.
- 9.2 Right to Refuse Cargo – Oregon Pellet reserves the right without responsibility for demurrage, loss or damage attaching, to refuse to accept, receive, or unload:
- (a) cargo for which previous arrangements for space, receiving, unloading or handling have not been made by shipper, consignee or Carrier;
 - (b) cargo deemed extra offensive, perishable or hazardous;

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- (c) cargo having a value be determined as less than the probable terminal charges; or
 - (d) cargo placed in packages that is not suitable for or capable of withstanding standing the ordinary handling incident to its transportation.
- 9.3 Hazardous cargo - Oregon Pellet reserves the right to exclude explosives, hazardous and inflammable commodities. Facility User may propose in advance special arrangements to handle explosive, hazardous or inflammable commodities provided such arrangements comply with federal, state and local laws and regulations. Whether to accept such special arrangements remains at Oregon Pellet's option.
- 9.4 Right to Remove, Transfer or Warehouse Cargo – Cargo remaining after expiration of free time, and cargo shut out at clearance of vessel may be piled or re-piled to make space, transferred to other locations or receptacles with all expense and risk of loss or damage for account of owner, shipper, consignee, agent or Carrier as responsibility may appear.
- 9.5 Right to Withhold Delivery of Cargo – Oregon Pellet reserves the right to withhold delivery of cargo until all accrued terminal charges or advance charges or deposits against the cargo have been paid in full.
- 9.6 Right to Sell for Unpaid Charges – Cargo on which unpaid terminal charges have accrued may be sold to satisfy such charges and costs.
- 9.7 Owners' Risk – Cargo on open ground is at Facility User's sole risk for loss or damage.
- 9.8 Responsibility for Property Damage – Users damaging Oregon Pellet property will be responsible for costs of repair. User will be billed for repairs to damaged property at cost plus a 15% overhead and administrative fee.
- 9.9 Piling Damage Replacement – Vessels and their owner's/operators will be responsible for and charged for the replacement of any dock structures or pilings damaged during vessel arrival, occupancy or departure of a Terminal berth. Damage identified during or after a vessel's departure will be deemed to have occurred during the vessel's berthage unless Oregon Pellet is notified by the vessel's agent in writing prior to tie-up, of any pre-existing damage to dock structures or pilings.

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Item No. 10. Collection & Guarantee of Charge – Responsibility For

- 10.1 Terms of Payment – Use of terminal facilities or service is conditioned upon satisfactory assurance to the terminal that all charges will be paid when due. Charges are due and payable as they accrue or on completion of service or use.
- 10.2 Payment Terms – All payments are due in available U.S. currency in advance or on the specified due date. Facility Users, prior to the use of facilities or receiving supplies, may receive extended payment terms, provided they have established credit worthiness or have posted adequate security acceptable to Oregon Pellet. In the case of delay or failure to pay invoices when due, Oregon Pellet reserves the right to demand payment of charges in advance before further services will be performed or before delivery of cargo against which charges have accrued. Any pending or alleged claims against Oregon Pellet will be allowed as an offset against invoices or accrued charges.
- 10.3 Invoices Due – Invoices issued by Oregon Pellet are due and payable upon presentation.
- 10.4 Minimum Charges – Oregon Pellet charges, and Facility User's agree to pay, a \$1,500.00 minimum charge for fees, rates, services, or a combination of same as provided under this Tariff.
- 10.5 Freight Prepayment – The right is reserved by Oregon Pellet to demand prepayment of all charges against perishable cargo, cargo of doubtful value, and household goods.
- 10.6 Responsibility for Charges – Facility Users shall be responsible, jointly and severally, for the payments of charges assessed in accordance with this Tariff. Rates, rules and regulations of this Tariff and liability for charges apply without regard to the provisions of any bills of lading, charter party agreement, contracts or any other conflicting provisions. All charges named in this Tariff will be assessed against cargo or merchandise, and are due from the Facility User, which specifically includes the Carrier, owner, shipper or consignee of the cargo or merchandise
- 10.7 Service Charges on Delinquent Accounts – All charges will be delinquent thirty days after the date of the invoice and, as such, may be charged a service charge of 1% for each month or portion thereof that the particular invoice remains delinquent. All extra expense, including attorney fees and legal expense, litigation costs, or costs of agents employed to effect collection shall also be assessed to, and payable by, the Facility User.

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10.8 Payment in Advance – The terminal at its discretion may require payment in advance for any and all services.

Item No. 11. General Cargo Interchange

11.1 Miscellaneous Rates – applicable to all general cargo and unspecified cargo, based on suitability of handling equipment and the prior agreement of Oregon Pellet to handle or receive such cargo. All rates stated as NOS require a separate service agreement between Oregon Pellet and Facility User.

- (a) Round trip throughput. Throughput inbound by barge or vessel and outbound by barge or vessel. \$NOS
- (b) One way throughput (inbound or outbound) in one direction. \$NOS
- (c) Extra yard handling. This charge will apply to any movement of a lumber not described in the throughput made at the request of a steamship line, shipper, carrier, owner, agent or consignee, if rate not agreed to by separate service agreement. \$NOS
- (d) Equipment cleaning (if service not covered by separate service agreement) \$NOS
- (e) After-hours service provided by Oregon Pellet at the request of the shipper, receiver, transporter or owner of the goods will be at the charges and under the conditions shown below:
 - from 5:01 p.m. to 7:59 a.m. Monday thru Friday and all hours on Saturday, Sunday and holidays.
 - Note: minimum of 2 hours per call-out for after-hours labor.
- (f) General labor not otherwise specified - during regular hours of operation. \$NOS
 - General labor not otherwise specified - after hours (from 5:01 p.m. to 7:59 a.m. Monday thru Friday and all hours on Saturday, Sunday and holidays). \$NOS
 - Note: minimum of 2 hours per call-out for after-hours labor.
- (g) Subcontracted labor, materials and services Cost plus 10%

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Item No. 12. **Holidays** – Where reference is made in this Tariff to the term “holidays,” the following holidays are referred to:

New Years’ Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Any other legal holidays or work closure days that are prearranged by Oregon Pellet at the Terminal or other facility used by the Facility User.

Item No. 13. **Storage, Warehouse and Handling Charges** – All rates stated as NOS require a separate service agreement between Oregon Pellet and Facility User.

Lumber – per _____ unit, per day \$NOS _____

General Cargo – per _____ unit, per day \$NOS _____

Storage charges will commence 10 days after receipt or delivery of the cargo in to Oregon Pellet facility. All storage is open yard.

13.1 Covered or Warehouse Storage – Due to the varied product, volume, and equipment needs, all covered or warehouse storage is by request only and will be rated by separate service agreement for warehouse or covered-in-yard storage.

13.2 Cargo and Merchandise Handling – Due to the varied product, volume, and equipment needs, all breakbulk cargo or merchandise handling is by request only and will be rated by separate service agreement.

Item No. 14. **Wharfage Charges**

14.1 Wharfage Defined – Wharfage is a charge assessed on all cargo passing or conveyed over, onto, or under wharves or terminal grounds or between vessels when berthed at a wharf, piling, structure, pier, bulkhead structure, bank, or slip at or adjacent to terminal. Wharfage is solely the charge for use of wharf or terminal and does not include charges for any other service.

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- 14.2 Cargo Not Loaded to Vessel – When cargo in transit is received on wharf and is not delivered to vessel but is loaded out again for overland carriage, full wharfage charges will be assessed.
- 14.3 Wharfage Rates – Rates per ton or cubic yard, whichever provides the higher revenue, unless otherwise specified:

<u>Commodity</u>	<u>Rate</u>
General Cargo, in bulk or breakbulk,	\$NOS_____

Item No. 15. Dockage Rules

- 15.1 Dockage Definition – Dockage means the charge assessed against the vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.
- 15.2 Basis For Establishing the Vessel’s Length – Dockage charges are based upon the vessel's length overall. Length overall means the linear distance from the most forward point of the bow to the aftermost point on the stern of the vessel, measured parallel to the baseline of the vessel. Oregon Pellet may obtain the length overall from Lloyd's Register of Ships, the Vessel's Register, or by measuring the vessel.
- 15.3 Dockage Period – The Dockage period is the period of time upon which dockage will be assessed and commences when the first line is made fast to any mooring facility or when a vessel is made fast to a vessel already berthed and continues until such vessel is completely free (last line free) from and has vacated such berth. No deductions will be allowed for Saturdays, Sundays, holidays, or because of weather or other conditions. Dockage periods are calculated in 24-hour periods beginning with the first line.
- 15.4 Charge On Vessel Shifting – When a vessel is shifted directly from one berth to another berth operated by Oregon Pellet, the total time at such berths will be considered together in computing the dockage charge.
- 15.5 Berth Assignments – Berth Assignments will be issued at Oregon Pellet’s sole discretion to the owners, agents, or operators of vessels for use of a specific berth by a specific vessel. Vessels with regularly scheduled appointments will be given preference to dock access over vessels requesting dock appointments on a tramp or non-revolving schedule basis.
- 15.6 Vessels Required to Obtain Berth Assignments

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- (a) No person may make fast, or cause or permit any vessel to remain fastened to any wharf or pier structure, or to bring a vessel, or cause or permit a vessel to remain, at a berth or in a waterway controlled by Oregon Pellet, without prior consent of Oregon Pellet.
- (b) Vessel Berth Applications are required to obtain berth assignments and must be submitted as far in advance of the arrival of vessel as possible. Vessel Berth Applications must specify arrival and departure dates and the nature and quantity of the cargo to be loaded or discharged, and must include a fully completed Vessel Berth Application found at <http://www.OregonPelletMills.com>, and available upon request.

15.7 Vessels Required to Vacate Berths

- (a) Oregon Pellet reserves the right to order a vessel to shift its position at a wharf, to change berths, or to vacate a berth when:
 - (b) Not actually engaged in loading or discharging cargo.
 - (c) When occupying a berth beyond the time limitation named in the assignment permit.
 - (d) When a vessel holding an agreement granting the preferential use at that berth at that time presents itself at the berth.
 - (e) Any vessel refusing or failing to shift, change berth, or vacate berth at Oregon Pellet’s request may be shifted or moved by means of a tug or otherwise, with all expenses incurred and all risk of damage for the account of such vessel.

15.8 Rafts, Barges, Scows, or River Craft – Rafts, barges, scows, or river craft may not be moored to wharves or piers or tied up to any vessel berthed without express permission of the Port, which permission may be issued by e-mail.

Item No. 16. Dockage Charges – Dockage charges will be assessed against vessels and barges and their owners, operators, charterers and agents in accordance with the Dockage Rules in Item 15 and the following schedule, which schedule may be modified from time to time:

Vessel Length Overall					
Meters	Feet		Meters	Feet	Rate per 24 hour Day
0	0	To	60.96	200’ 0”	\$607.00
60.96	200’ 0”		91.44	300’ 0”	\$954.00

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91.44	300' 0"		106.68	350' 0"	\$1,270.00
106.68	350' 0"		114.30	375' 0"	\$1,584.00
114.30	375' 0"		121.92	400' 0"	\$1,744.00
121.92	400' 0"		129.54	425' 0"	\$1,932.00
129.54	425' 0"		137.16	450' 0"	\$2,145.00
137.16	450' 0"		144.78	475' 0"	\$2,312.00
144.78	475' 0"		152.40	500' 0"	\$2,539.00
152.40	500' 0"		160.02	525' 0"	\$2,882.00
160.02	525' 0"		167.64	550' 0"	\$3,099.00
167.64	550' 0"		175.26	575' 0"	\$3,361.00
175.26	575' 0"		182.88	600' 0"	\$3,735.00
182.88	600' 0"		190.50	625' 0"	\$4,258.00
190.50	625' 0"		198.12	650' 0"	\$4,951.00
198.12	650' 0"		205.74	675' 0"	\$5,634.00
205.74	675' 0"		213.36	700' 0"	\$6,359.00
213.36	700' 0"		220.98	725' 0"	\$7,368.00
220.98	725' 0"		228.60	750' 0"	\$8,427.00
228.60	750' 0"		236.22	775' 0"	\$9,563.00
236.22	775' 0"		243.84	800' 0"	\$10,736.00
243.84	800' 0"		259.08	850' 0"	\$12,331.00
259.08	850' 0"		274.32	900' 0"	\$14,030.00
274.32	900' 0"		289.56	950' 0"	\$15,809.00

Dockage charges for vessels over 289.56 meters in overall length will be \$16.65 per day for each foot of overall length (or fraction thereof) in excess of 289.56 meters, in addition to the above rate of \$15,809.00

Item No. 17. General Services and Charges

- 17.1 Electrical Service – Oregon Pellet does not and will not provide electric service. Oregon Pellet is not liable for injury, loss or damage resulting from any facility user’s connection to shoreside electrical power.
- 17.2 Labor Services – Labor Services not otherwise specified herein will be billed at rates in Items 11, 13, and 14 of this Tariff.
- 17.3 Disposal of Vessel’s Oily Waste and Garbage – Vessels requiring discharge at Oregon Pellet of slops, grey or black water, oily waste or garbage, as defined in Annex V of MARSPOL 73/78 or any applicable state or federal law or regulation, shall obtain the services of a liquid waste or garbage hauler that meets all Coast Guard and other government laws and regulations in effect at the time of the disposal. The liquid waste or

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garbage hauler is not an agent or employee of Oregon Pellet, nor shall Oregon Pellet be liable for any act, omission, or negligence of any such oily waste or garbage hauler. Vessels shall comply with all rules and regulations applicable to vessel management and disposal of ballast water. Oregon Pellet assumes no responsibility or liability for the provision of facilities for the receipt or management of ballast water, slops, grey or black water, oily waste or garbage.

- 17.4 Rates for Cleaning Dock or Yard Areas – The service performed will be billed at the labor rates and equipment rates shown in Items 11, 13, and 14 of this Tariff. In addition, disposal costs will be assessed the Facility Users when they do not clear the dock or yard areas of dunnage, gear, equipment or material upon completion of operations by Facility User.
- 17.5 Vessel Maintenance Work – Limited vessel maintenance work may be allowed at the Oregon Pellet marine facility upon written permission from Oregon Pellet. No spray painting, sandblasting or exterior hull painting of vessels will be permitted. Dockage rates for vessel maintenance will be subject to negotiation. Any vessel undergoing maintenance must possess a valid Certificate of Financial Responsibility and it must be on file with United States Coast Guard. Any entity performing vessel maintenance work must provide Oregon Pellet with proof of insurance as required under Item 8, prior to the commencement of work.

Item No. 18. Security Charges

- 18.1 In order to fully implement procedural and physical changes to comply with the Maritime Transportation Security Act of 2002, 46 U.S.C. §§ 70101 et seq. and related regulations 33 C.F.R. §§ 101, 104, and to maintain the any Terminal's Facility Security Plan required of Oregon Pellet, a security fee may be assessed for each ocean vessel loading at the Terminal in the amount quoted by Oregon Pellet.
- 18.2 Ocean vessels and all barges and tugs, and their owners/operators, accept and acknowledge that all such vessels shall occupy the Terminal at their own risk. Oregon Pellet does not provide comprehensive security service. Oregon Pellet makes no warranties whatsoever regarding security and does not assure the safety of vessels and is not responsible for any security related losses suffered by vessels while at the Terminal.
- 18.3 Prior to occupying the Terminal berth, all ocean vessels shall advise Oregon Pellet of the Vessel Security Officer. In addition, all ocean vessels shall have an approved Vessel Security Plan. Ocean vessels shall follow instructions that may be given by the Facility Security Officer as the circumstances may necessitate. Nothing herein shall be construed to alter

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the obligation of all vessels, and that of their owners and operators, to remain fully compliant with all international and local security laws and regulations. The foregoing applies to ocean going barges unless excluded from the federal security requirements by applicable law.

- 18.4 The Vessel Security Officer is to ensure that ocean vessel officers, crew or any other personnel shall remain onboard the vessel at all times while at berth, and shall only disembark vessel with permission of the applicable regulatory authorities and in strict compliance with the Vessel Security Plan and the Facility Security Plan.

Item No. 19. Information to be Supplied to Oregon Pellet

Facility Users at Oregon Pellet terminal are required to provide Oregon Pellet with the following documentation, which the supplying party warrants to be accurate:

- 19.1 Manifests –Complete copies of vessels’ manifests showing cargo descriptions, names or consignees and/or consignors, and the weights or measurements of all cargo loaded or discharged at the terminal facilities must be furnished to Oregon Pellet for each vessel loaded or discharged. Manifests must also designate the basis (weight or measurement) on which rates were assessed. In addition, manifests should identify billing party. In lieu of manifests, certified cargo lists, copies of ocean bills of lading, or “boat notes” or “mates’ receipts” containing all information as required above may be accepted. Such information must be received by the time of cargo’s arrival at the terminal.
- 19.2 Vessel Stowage Plan – Must be received prior to vessel arrival.
- 19.3 Dangerous Cargo List – Must be received and approved for receipt by Oregon Pellet prior to vessel or shipment arrival.
- 19.4 Accuracy of Information – Each Facility Users warrant the accuracy and completeness of all information, instructions and particulars relating to the goods, including their nature, description, special characteristics, marks, number, weight, volume and quantity, etc., upon all of which Oregon Pellet shall rely while performing services hereunder. Facility User shall reimburse Oregon Pellet for any loss or expense (including additional charges) resulting from any such inaccurate or incomplete information, instructions or particulars. Freight, storage, handling and/or other charges which had been based upon inaccurate or incomplete descriptions, instructions or particulars from Facility User may be recalculated by Oregon Pellet at any time without advance notice.
- 19.5 Hazardous Goods – Facility User is subject to compliance where applicable with Federal Hazardous Materials Regulations, Code of Federal

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Regulations, Title 49, Parts 100 through 180, and Federal Hazardous Waste Regulations, Code of Federal Regulations, Title 40, Part 262, including as the same are regulated by the U.S. Coast Guard, U.S. Department of Transportation and Environmental Protection Agency.

- (a) The term “HazMat laws” refers to any international, federal, state, (Canadian) provincial, local, tribal or other treaty, law, statute, regulation, rule or ordinance relative to the transportation of hazardous goods and the term “hazardous goods” refers to any goods which have any hazardous, dangerous, explosive, flammable, poisonous, infectious, noxious, spontaneously combustible, radioactive, corrosive or oxidizing character or effect whatsoever, including without limitation any material or substance listed on the federal Hazardous Material Table (49 C.F.R. §172.101), as amended, or otherwise identified by a HazMat law as being a marine or other pollutant, an explosive, dangerous or hazardous material or hazardous waste.
- (b) Notwithstanding anything to the contrary, Oregon Pellet reserves the right to refuse any goods at any time which, in its sole judgment, are likely to cause bodily injury or property damage. No shipment shall contain any mix of goods which are non-compatible, including those identified as such by the Federal Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), Code of Federal Regulations, Title 49, Parts 100-177, or any other federal, state or local environmental statute, regulation, department or agency.
- (c) Facility User shall otherwise be responsible for providing Oregon Pellet with complete, comprehensive and approved shipping papers with respect to hazardous goods tendered for transportation, which papers shall include without limitation all information, descriptions, instructions, disclosures and documentation required by HazMat laws and a full description and identification of the hazardous goods, including their type, quantity, proper shipping name, classification, packing group, chemical group, identification number(s) as well as their hazardous and subsidiary hazardous nature(s).
- (d) Without limitation upon the above, Facility User shall obtain and provide the following to Oregon Pellet prior to any performance in relation to hazardous goods: (1) a copy of Facility User’s registration under 49 U.S.C. §5108 as an offeror of hazardous goods for interstate transportation (or an applicable federal approval/exemption); (2) the full name and street address,

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telephone and contact name for the owner, consignor and consignee of the hazardous goods; (3) a full description of the hazardous goods, including their identity and quantity; (4) booking confirmation number(s) assigned by Oregon Pellet; (5) complete and clear written instructions for the loading, handling, storing, movement, transportation and unloading of the hazardous goods as well as for response, clean-up, mitigation, remediation, alleviation, removal and restoration in the event of a spill or release of the hazardous goods; and (6) the full name and telephone number for a contact person who has comprehensive knowledge with respect to the hazardous goods, including their hazardous nature and emergency incident response requirements. The contact person identified by Facility User must be immediately available at all times during the performance of transportation services by Oregon Pellet, and his/her telephone number must be available and monitored at all times, and must not be a beeper number or otherwise involve any answering or call-back service.

- (e) If the hazardous goods include hazardous waste, the shipping papers from Facility User must include original Manifest(s) upon EPA Form(s) 8700-22 and/or 22A and all other paperwork required by HazMat laws and/or any government, terminal and/or Oregon Pellet agency or authority applicable to the transportation of hazardous waste.
- (f) If the hazardous goods include any of the types/classes enumerated in 49 C.F.R. §172.800 or otherwise requiring a security plan, the shipping papers provided by Facility User must include a written security plan conforming with 49 C.F.R. §172.802 and other HazMat laws.
- (g) Facility User shall be solely responsible for offering, describing, identifying, naming, classifying, documenting, packing, packaging, marking and labeling all hazardous goods tendered to Oregon Pellet in strict compliance with HazMat laws. The foregoing specifically includes Facility User's responsibility for the performance of pre-transportation functions to assure safe transportation as well as complete, clear and accurate instructions as to all receiving, handling, loading, transloading, storage or unloading, upon which Oregon Pellet shall be entitled to rely. Facility Users are responsible for making all certifications and declarations required under 49 C.F.R. §172.204.
- (h) Oregon Pellet shall be liable only for loss/damage occurring to the goods themselves, where applicable under this Tariff and

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applicable law. Facility User shall be liable for, and shall indemnify and hold Oregon Pellet harmless from and against, including legal fees and costs, all other loss, damage, expense, fee, cost, liability, suit, fine and/or penalty resulting from or in any way relating to any hazardous goods and/or their transportation, including without limitation any loss, damage, expense, fee, cost, liability, suit, fine and/or penalty resulting from or in any way relating to Facility User's failure to comply with its responsibilities herein and/or under HazMat laws. The foregoing includes, but is not limited to, property damage, bodily injury, illness and/or death claims, as well as all pollution/environmental matters such as response, clean-up, mitigation, remediation, alleviation, removal and restoration.

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Regulations for Use of the Terminal Dock Facilities

Item No. 20. Vessels and Berth Applications

- (a) “OCEAN COMMON CARRIERS,” as defined by the Shipping Act of 1984, as amended (46 U.S.C. App. § 1701, et seq.), MAY NOT APPLY AND SHALL NOT BE ACCEPTED AT THE TERMINAL.
- (b) All ocean going vessels, their owners, charterers or agents, desiring to berth at the Terminal’s ship dock shall file an original Vessel Berth Application (facsimile or copies will not be accepted), on forms supplied by Oregon Pellet, at Oregon Pellet’s office at 3201 Tremont Street, North Bend, Oregon 97459, between 9:00 a.m. and 4:00 p.m. Mondays through Fridays, and between 9:00 a.m. and 12:00 noon Saturdays, all exclusive of the holidays listed under Item 12 of this Tariff. As used for purposes of Berth Applications, “vessel” shall include oceangoing vessels or barges and/or those vessels towing ocean going barges, unless otherwise specified herein. As used herein, “Terminal” and “Terminal equipment” shall include, without limitation, the ship dock, conveyor loader, and all of the equipment located at the Terminal. Berth Applications do not apply to dockage at the Terminal’s barge dock. Dockage or mooring of tugs, barges or other vessels at the Terminal’s barge dock shall only be by private contract or arrangement with Oregon Pellet.
- (c) The original Berth Application must be signed and certified by or on behalf of the Master of the vessel, sealed with the vessel’s seal and also signed by an authorized representative of the vessel owner(s), operator(s), charterer(s) or agent. When acknowledged in writing by Oregon Pellet, and/or the berthing of the vessel, this Berth Application and the certifications made therein, are entitled to be relied upon by Oregon Pellet and shall constitute a contract between Oregon Pellet and the vessel’s owner(s), operator(s), charterer(s), and agent(s) (jointly and severally) to abide by the provisions and requirements of, and to be liable for the charges in, this Tariff.
- (d) A signed Berth Application shall constitute a certification that the owner(s), charterer(s) and operator(s) of the vessel are not ocean common carriers as defined in paragraph 1 above and that the vessel is not being operated in ocean common carrier service under the Shipping Act of 1984, as amended.

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- (e) Except as otherwise provided in this Tariff, vessels shall be assigned a berth in the chronological order in which they file with Oregon Pellet a signed Berth Application (facsimile transmission will not be accepted), accompanied at the time of filing by the documents and the advance deposit listed below. The Berth Application will not be considered properly filed unless accompanied by the required documents and deposit.
- (f) Ship's Notice of Readiness to Load issued by or on behalf of the Master of the vessel;
- (g) Certificate that all cargo compartments are free of insect infestation and objectionable odor, and are clean and dry, and fit for the cargo, issued by the an independent cargo surveyor
- (h) Certificate of readiness in all compartments, issued by the National Cargo Bureau, Inc.
- (i) A current and valid International Ship Security Certificate (ISSC) with certificate number, the flag state issued, and date of issuance
- (j) Evidence to the effect that the vessel has been entered at the United States Customs House.
- (k) Evidence to the effect that the vessel has been tendered to and accepted by the charterer.
- (l) Payment of an advance deposit for Terminal charges in the amount previously agreed to and provided by Oregon Pellet.
- (m) Overtime request form (optional).
- (n) Written description of vessel and proposed stowage.
- (o) Bunkering request form (optional).
- (p) Any one or more of the above documents are subject to renewal, at Oregon Pellet's option, if the vessel has not commenced loading within seven (7) days of the filing of the Berth Application.

Item No. 21. **Terminal Convenience** – Oregon Pellet, in its sole discretion, may change the turn of ocean vessels (i) when confronted by a reasonable operating need to receive or ship a particular grade or kind of wood pellets or other cargo (ii) to facilitate conditions at the dock or (iii) when Oregon Pellet determines there is not on hand in the conveyor stocks of the proper kind, quantity or grade of wood pellets or other cargo to load the ocean

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vessel without delay to the vessel or to Oregon Pellet. Any ocean vessel ordered to vacate a berth or change its turn for any of the foregoing reasons will return to berth after the vessel loading immediately thereafter, if any, completes loading or vacates the berth for other reasons, provided the aforesaid circumstances requiring the vessel to vacate the berth are found by Oregon Pellet no longer to exist. Should any vessel fail or refuse to vacate the berth in order to do so, a berth delay charge shall be assessed against the vessel and/or vessel owners and agents as provided in Item 30 of this Tariff.

Item No. 22. **Continuous Loading** – Oregon Pellet, in its sole discretion, reserves the right to require continuous loading of wood pellets or other cargo by an ocean vessel through 24 hours per day, and may require a vessel to work overtime at the vessel’s expense. Any vessel then in berth which refuses to work overtime shall vacate the berth on order of Oregon Pellet. Should any vessel fail or refuse to vacate the berth when ordered to do so, a berth delay charge shall be assessed against the vessel and/or vessel owners and agents as provided in Item 30 of this Tariff. A vessel losing its right to berth by refusal to work overtime shall lose its turn in favor of the next vessel that is willing to work overtime, which vessel shall retain the berth so long as it is willing to work successive straight time and overtime periods until loading is completed. The vessel so losing its turn shall be entitled to the berth first available thereafter, subject to the same overtime provisions set forth above if the circumstances requiring overtime work are then found to exist by Oregon Pellet.

Item No. 23. [reserved]

Item No. 24. **Assignment of Berth** – Assignment of berth under this Tariff, and port charges as described in this Tariff at the Terminal’s ship dock, are predicated upon the ocean vessel’s continuous readiness to receive wood pellets or other cargo at full normal rate throughout the entire time in berth. Should a vessel, while in berth, fail to maintain such continuous readiness, the vessel shall vacate the berth on order of Oregon Pellet. Should any vessel fail or refuse to vacate the berth when ordered to do so, a berth delay charge shall be assessed against the vessel and/or its owners and agents as provided in Item 30 of this Tariff.

Item No. 25. **Ordering to Berth** – If, after filing a Berth Application and/or Notice of Readiness, an ocean vessel refuses or, for any reason whatsoever, is unable to proceed once called into berth by Oregon Pellet, Oregon Pellet may assess Delay Penalties, reassign berth/berthing order, or exercise any other right or remedy under this Tariff.

Item No. 26. **Assist Tug Service**

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- 26.1 Vessel owners and agents will be responsible for scheduling and ordering all assist tug services directly through their chosen tug service provider's dispatchers.
- 26.2 Vessels shall be required to use no less than 2 tugs when docking or undocking. All tug usage is at the vessel's sole risk and expense. The actual number and size of tugs to be used will be determined at the discretion of the vessel and/or pilot based on the size of the vessel, the prevailing tide, current and weather conditions and all other relevant conditions. Oregon Pellet may impose tug rules, regulations, requirements or practices in response to safety and security concerns.
- 26.3 Oregon Pellet shall not be liable for any damages and/or losses of whatsoever nature that may result from any tug service, including but not limited to, errors of tugs, captains and crewmembers, breakdowns, negligence or any act or omission of the tugs or their operators while vessels are docking, undocking, or shifting while in berth or while lying at the berth, or any delays or failures in the provision of tug services by the designated tug service provider.

Item No. 27. Barges

- 27.1 Dockage or mooring of tugs, barges or other vessels at the Terminal's barge dock shall only be by private service contract or arrangement with Oregon Pellet. Except as otherwise agreed in writing in such private service contract, berthing of a tug, barge or other vessel at the Terminal's barge dock shall constitute a contract between Oregon Pellet and such vessel, its owner, operator, charterer or agent (jointly and severally) to abide by the regulations of this Tariff. The Dockage rates under Item 16 shall not apply to tugs, barges or other vessels moored at the barge dock.
- 27.2 All barges must be presented in a seaworthy condition, and comply in all respects with all applicable regulations issued pursuant to the Occupational Safety and Health Act of 1970, as amended.
- 27.3 A barge which has been unloaded or loaded must be picked up within 24 hours of the time the unloading or loading is complete. If the barge is not removed within this time limit, Oregon Pellet shall have the right to have the barge switched to a nearby commercial fleeting location at the risk and expense of the barge operator.

Item No. 28. Limitation of Liability and Indemnity

- 28.1 Oregon Pellet shall not be liable for demurrage, damages for delay or loss of despatch time or other consequential damages incurred by any vessel or

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its owner or charterer for any causes other than willful acts of Oregon Pellet.

- 28.2 Oregon Pellet shall not be responsible for loss or damage to wood pellets or other cargo or to barges, ships or other waterborne vessels moored at the Terminal except if caused solely by the willful acts of Oregon Pellet. Appropriate officers and crew of any vessel so moored shall be prepared at all times to assume control of the vessel in case such moorings come loose for any reason whatsoever.
- 28.3 In all other matters Oregon Pellet shall not be responsible for delay or damages caused by any cause, however or wherever arising except if caused solely by the willful acts of Oregon Pellet.
- 28.4 Vessels and their respective owners and operators shall assume sole responsibility and liability for injury to or death of any person whomsoever, or damage to or destruction of any property incident to, arising out of or in connection with (i) the vessel, its crew or its agents or licensees berthing at, entering upon or using Terminal property; (ii) the vessel, its crew or its agents or licensees having custody of or using or operating Terminal equipment; or (iii) operations, acts or omissions of the vessel, its crew or its agents or licensees. Vessels and their respective owners, operators and charterers shall protect, indemnify and save Oregon Pellet harmless from and against any and all suits, claims, damages or liabilities (including, without limitation, reasonable attorneys' fees) for or in respect of the same and all other matters for which Oregon Pellet is not liable under this Tariff, whether based on a theory of tort, contract, warranty, strict liability or absolute liability, by operation of law or otherwise, including, without limitation, all suits, claims, damages or liabilities alleged to have been caused by Oregon Pellet's sole, comparative or contributory negligence or fault. The foregoing applies at all times, including but not limited to, while the vessel is berthed at the Terminal dock and/or during berthing at and departing from the Terminal dock.

Item No. 29. General Berth Use and Loading

- 29.1 Oregon Pellet makes no warranties or representations regarding the fitness of any berth, depth of water at the berth or adjacent thereto, or depths of any approaches or channels, or absence of obstructions, and Oregon Pellet disclaims any implied warranties of fitness or depth. All vessels are solely responsible for determining the fitness of the berth for safe mooring and determining fitness and depth of channels, approaches and the berth for safe maneuvering cargo operations.

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- 29.2 An ocean vessel in berth shall at all times maintain appropriate officers and crew aboard to vacate the berth or to permit reception of cargo at any time of day or night (including providing adequate lighting), including Saturdays, Sundays and holidays.
- 29.3 The signing of a Terminal mate's receipt by an officer of the ocean vessel shall confirm such vessel has ceased loading operations having utilized all its available cubics to reach vessel's desired draft.
- 29.4 If in the opinion of Oregon Pellet the weather conditions so warrant, any vessel in berth may be ordered at any time of day or night to vacate said berth at vessel's risk and expense and anchor in the approved anchorage area until such time as weather conditions permit the vessel to return to berth. Appropriate officers and crew shall be maintained aboard all ocean vessels for this purpose.
- 29.5 If in the opinion of Oregon Pellet the weather, river conditions, vessel propulsion or stability problems or other conditions so warrant, each vessel upon entering, lying at or upon leaving a berth shall be required to make use of a sufficient number of tugs depending on the size of the vessel, at vessel's risk and expense.
- 29.6 Vessels are responsible for providing their own safe boarding gangways, ladders or other boarding devices. Vessels must provide safe boarding access for Terminal workers involved in cargo loading operations. Oregon Pellet has no responsibility for vessel gangways or other boarding devices and Facility User must indemnify, defend and hold harmless Oregon Pellet from claims resulting from use of a vessel's gangway or other boarding devices. Oregon Pellet will not provide a boarding gangway except by separate special agreement in writing signed by the Oregon pellet general manager.
- 29.7 If a strike or other labor disturbance involving a vessel in berth or awaiting a berth (by vessel crew or otherwise) will, in Oregon Pellet's judgment tie up or impede operations at the dock, Oregon Pellet may order such vessel out of berth or may refuse to accept it at the berth. Should an ocean vessel fail or refuse to vacate the berth when ordered to do so, a berth delay charge shall be assessed against the vessel and/or vessel owners and agents as provided in Item 30 of this Tariff.
- 29.8 Ocean vessels shall not "blow out their tubes" in the vicinity of the Terminal dock or omit stack gases, exhausts or particulate matter in excess of applicable air quality regulations or guidances. Any vessel doing so shall be responsible for any fines or claims, governmental or otherwise, for such action, and in addition shall pay Oregon Pellet Terminal air

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quality assessment of \$10,000.00, to compensate Oregon Pellet for administrative, investigation, inspection, testing and cleaning costs.

- 29.9 While discouraged, ocean vessels may be allowed to take on bunkers while in berth, on a case-by-case basis, as determined solely by Oregon Pellet. If so allowed, vessel will be required to submit a signed Bunkering Agreement (in a form as provided by the Terminal) in advance of bunkering operations. Charges for bunkering shall be as determined by Oregon Pellet.
- 29.10 Delivery of ship stores or supplies across the Terminal ship dock to ocean vessels is allowed only after prior approval from Oregon Pellet. Delivery of bunker fuels, lube oil, or any other volatile or flammable material(s) in this manner is prohibited.
- 29.11 Upon signing of the Terminal mate's receipt or upon order of Oregon Pellet, ocean vessels shall vacate the berth within one (1) hour of completion of loading or order to vacate. Should a vessel fail or refuse to vacate the berth, a berth delay charge shall be assessed against the vessel and/or vessel owners and agents as provided in Item 30 of this Tariff.
- 29.12 Should any ocean vessel fail or refuse to vacate the berth when so ordered, an hourly berth delay charge as outlined in Item 30 of this Tariff shall be assessed to the vessel for each hour, or fraction thereof, that the vessel remains in berth. This charge shall be assessed against the vessel and/or its owners and agents because of delay at the berth and failure to vacate. This charge (which shall be assessed continuously until the ocean vessel vacates the berth, regardless of intervening circumstances) shall not constitute a waiver by Oregon Pellet of any additional costs or damages it may sustain as a result of the vessel's failure or refusal to vacate. Such failure or refusal shall constitute a trespass entitling Oregon Pellet to compel removal of the vessel from the berth.
- 29.13 Should any ocean vessel refuse to sign an un-claused mates receipt presented to it by the Terminal, this refusal shall constitute a berth delay and a berth delay charge may be assessed against the vessel and/or its owners and agents as provided in Item 30 of this Tariff.
- 29.14 The Terminal reserves the right to add to the Statement of Facts any applicable rain times or other weather related delays, such as high winds and effecting safe conveyor loading. A rainfall instrument is in use at the Terminal and will be used to assist in calculating weather working days for lay time calculation. Terminal management may declare rain or weather delay for the protection of wood pellet cargo based on its experience in managing wood pellet sensitivity to moisture. If Terminal

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management declares conditions safe for loading, but the vessel refuses to receive cargo, an hourly berth delay charge as outlined in Item 30 of this Tariff.

- 29.15 Ocean vessels must maintain continuous readiness to receive cargo from the Terminal at full normal rate throughout the entire time in berth and comply with the directions of Oregon Pellet. Any delay in loading caused by the vessel's failure to have holds open for inspection, failure to pass final inspection alongside the Wharf, maintain continuous readiness, or failure to follow directions of Terminal management, shall subject the vessel to a hourly delay charge as outlined in Item 30 of this Tariff for every hour or fraction thereof. This charge will include delays due to discharge or loading of ballast, fuel or fresh water.
- 29.16 At the end of, or near completion, of loading, there will be one fifteen (15) minute period allowed for each ocean vessel for the purpose of checking such items as draft and stability to determine the vessel's cargo requirements. If additional time is needed for this purpose, it shall be considered a delay of berth and a berth delay charge may be assessed against the vessel and/or its owners and agents as provided in Item 30 of this Tariff.
- 29.17 At no time while an ocean vessel is in berth at the Terminal ship dock shall a member of such vessel's crew be permitted or allowed to work on the vessel from the ship dock.
- 29.18 Ocean vessels loading are not permitted to engage in fitting operations, including strapping or bundling while in berth. In the event a vessel must partially be loaded before such operations can be completed, the vessel will be required to vacate the berth and return after completion of fitting operations with all shifting and/or delayed completion expenses for the account of the vessel owner(s). Vessels that require strapping or bundling must advise Oregon Pellet at filing of the Berth Application and must present a stowage plan evidencing same.
- 29.19 There shall be no work or repair of any nature on a vessel on berth at any Terminal dock when such work or repair involves welding, burning, scraping, or any "hot" work nor any work or repair where there is a possibility of flame or sparks unless prior express written approval is obtained from Oregon Pellet. No painting shall be conducted to the exterior of any vessel while the vessel is on berth. The vessel owner(s)/Master/operator(s) will be held fully responsible for any violation of this regulation.

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Item No. 30 **Berth Delays** – In order to compensate Oregon Pellet for berth disruptions and loss of business opportunity, for any berth delays as identified in this Tariff, a berth delay charge of \$12,000 per hour (or fraction thereof) will be assessed on vessels until the cause of the delay is corrected.

[end of Tariff]