



**VULCAN CONSTRUCTION MATERIALS, LLC
PORT OF HOUSTON – HOUSTON, TEXAS
STANDARD TERMS AND CONDITIONS,
INCLUDING ADDENDUM NO.1 (RATE SHEET)
(15 NOVEMBER 2019)**

******* PLEASE NOTE DRAFT AT BERTH *****
HOUSTON: 40 FEET
CORPUS CHRISTI: 39 FEET**

VULCAN CONSTRUCTION MATERIAL LLC’s (“Vulcan”) STANDARD TERMS AND CONDITIONS (“STC”) (LATEST REVISIONS: 15 NOVEMBER 2019) APPLY TO ALL VESSELS CALLING AT VULCAN’S LAYBERTH, PORT OF HOUSTON, HOUSTON, TEXAS.

1. Filing Application For Layberth

An Applicant intending to use as a layberth Vulcan’s Port of Houston dock (“**Layberth**”) shall file a separate Application with Vulcan’s steamship agent, Host Agency, LLC. (“**Host**”), via E-mail or fax. Host’s E-mail address and fax number are as follows:

E-mail address: **houston@hostagency.com**
Fax No.: **713-893-6269**

The signed Application, when received and accepted by Vulcan, and/or the berthing of the vessel, or barge, or tug, or any other watercraft (“**vessel**”) acceptable to Vulcan, shall constitute a binding contract between Vulcan and the Applicant, the vessel, and the vessel’s Owners / Operators / Managers / Charterers / agents (collectively “**all Parties**”). The Applicant, the vessel, and all Parties agree to abide by the rules and regulations of the STC, and to be jointly and severally liable, including financial responsibility, for the charges of whatsoever kind or nature in the STC, and for any and all liabilities arising therefrom. All charges incurred by the vessel, as set forth in the STC, Addendum No. 1 (Rate Sheet) to the STC, and the Application, shall be the responsibility of, and payable by the representative of the vessel that files the Application, and also by the vessel, *in rem*, and by all parties, and it is expressly acknowledged that Vulcan is relying upon the credit of the vessel, and shall have a maritime lien on the vessel, for all charges incurred and due hereunder.

Applicant’s Application and ISPS Certificate must be received and approved by Vulcan at least one (1) day in advance of the vessel’s arrival at the Vulcan dock.

Additionally, it is the sole responsibility of the Applicant to obtain any and all required authorizations, permits, and approval from the U.S. Coast Guard (“**USCG**”), U.S. Customs & Border Protection (“**CBP**”), the Port Captain of the Port of Houston, the Houston Pilots, and



from any other relevant local, state, or federal entities, and to provide appropriate documentation evidencing same to Vulcan at least 24 hours in advance of the vessel's arrival. Such required authorizations, permits and approval must at all times remain current / valid prior to the vessel's arrival at the Vulcan Layberth, while at the Vulcan Layberth, and when departing the Vulcan Layberth.

The Applicant and all Parties guarantee the seaworthiness of the vessel, which seaworthiness is subject to Vulcan's approval.

2. Cargo Operations at the Vulcan Layberth

Cargo operations, including the loading, restowing, and discharge of cargo, will only be permitted with Vulcan's prior approval. The request that cargo operations be allowed at the Vulcan Layberth must be made in writing at the time the Application is submitted, and written authorization from Vulcan must be obtained prior to conducting cargo operations while at the Vulcan Layberth.

The Applicant and the vessel guarantee that the vessel will be loaded / discharged / restowed, whichever is applicable, so that the vessel remains in safe and seaworthy trim prior to the vessel's arrival at the Vulcan Layberth, while at the Vulcan Layberth, and when departing the Vulcan Layberth.

The Applicant, the vessel and all Parties shall be responsible for any and all damages to the Vulcan Layberth, Vulcan, and / or to any third other parties by reason of the cargo operations.

The vessel shall inspect and supervise, continuously, all cargo loading, discharging or restowing operations, shall be in charge thereof, and shall have sole responsibility, along with the Applicant, and all Parties, for any damage to property or persons resulting therefrom.

In the event that there is an incident / accident of any kind at the Vulcan berth arising out of cargo operations at the Vulcan Layberth, the Applicant, the vessel, and all parties shall be legally and financially responsible for all resulting claims, damage, costs, expenses, fines, penalties, etc., arising out of the incident / accident.

Vulcan shall not be responsible for any marine loss or damages whatsoever to cargo, barges, ships or other water borne vessels, or to equipment of any kind used in cargo operations, moored at / alongside / in the vicinity of the Vulcan Layberth, for purposes of the loading, unloading, or restowing of cargo on the Applicant's vessel.

A vessel berthed at the Vulcan Layberth shall at all times maintain appropriate officers and crew aboard to permit loading, discharge or restowing of cargo at any time of the day or night including Saturdays, Sundays or holidays, and to move the vessel safely in and out of the berth.



Furthermore, the Applicant shall disclose to Vulcan the cargo or cargoes onboard the vessel its intends to discharge at the Vulcan Layberth at the time the Application is submitted, and / or those cargo or cargoes it attends to load at the Vulcan Layberth, whichever is applicable. If the vessel is carrying hazardous material / cargo or cargoes, the cargo or cargoes must be carried / stowed / discharged / loaded in compliance with all applicable international and local, state, and federal regulations.

The Applicant, the vessel and all Parties shall be financially / legally responsible for any and all costs arising out of cargo operations at the Vulcan Layberth.

3. Bunkering at the Vulcan Layberth

Bunkering operations at the Vulcan berth will only be permitted with Vulcan's prior approval. Should the Applicant request that bunkering operations be performed at the Vulcan berth, the request must be made in writing at the time the Application is submitted, The Applicant must indicate the quantity of fuel to be bunkered and the estimated time required for this operation in the request for bunkering operation, and written authorization from Vulcan must be obtained prior to taking on bunkers while at the Vulcan Layberth. In the event there is a pollution incident at the Vulcan Layberth arising out of the bunkering operations, and / or from spillage of any kind whatsoever from the vessel, and / or from the bunker barge, the Applicant, the vessel, the barge, and all Parties shall be legally and financially responsible for cleaning up the pollution, and for all resulting claims, damage, costs, expenses, fines, penalties, etc., arising out of the incident.

Bunkering operations, if permitted by Vulcan, must be performed in full compliance with all applicable international, local, state and federal regulations, including, but not limited to, the Oil Pollution Act of 1990 ("OPA 90"). Furthermore, the Applicant should be prepared to provide, upon Vulcan's request, with a copy of a valid Certificate of Financial Responsibility, USCG and state Vessel Response Plan documentation, proof of EPA Vessel General Permit compliance and any other international, federal, state and local required documentation.

Furthermore, the vessel shall not "blow out tubes" or discharge any smoke, soot, liquid or solid waste, pollutant, or contaminant in the vicinity of the Vulcan Layberth. The Applicant, the vessel and all Parties shall be liable for any pollution or response cost, cleanup or remediation cost or any other costs or expenses so occasioned.

The vessel shall inspect and supervise, continuously, all bunkering operations, shall be in charge thereof, and shall have sole responsibility, along with the Applicant, and all Parties, for any damage to property or persons resulting therefrom.

In the event that there is an incident / accident of any kind at the Vulcan berth arising out of bunkering operations at the Vulcan Layberth, the Applicant, the vessel, and all parties shall be legally and financially responsible for all resulting claims, damage, costs, expenses, fines, penalties, etc., arising out of the incident / accident.



The Applicant, the vessel and all Parties shall be financially / legally responsible for any and all costs arising out of bunkering operations at the Vulcan Layberth.

4. The Taking of Water / Stores, the Disposal of Garbage / Waste, and Ballasting Operations at the Vulcan Layberth

The taking / receiving of water / stores, and / or the disposal of garbage / waste, and / or ballasting operations will be permitted at the Vulcan Layberth with Vulcan's prior approval, and written authorization from Vulcan must be obtained prior to conducting such operations while at the Vulcan Layberth.

In the event there is any discharge of any kind from the vessel and/or any other incident / accident of any kind at the Vulcan Layberth, including personal injury, death, illness, and / or property damage, arising out of the taking / receiving of water / stores, and / or the disposal of garbage / waste, and / or ballasting operations, the Applicant, the vessel, and all Parties shall be legally and financially responsible for cleaning up the discharge, personal injury, death, illness, and / or property damage, and for all resulting claims, damage, costs, expenses, fines, penalties, etc., arising out of the incident.

The vessel shall inspect and supervise, continuously, the taking of water / stores, the disposal of garbage / waste, and ballasting operations at the Vulcan Layberth, shall be in charge thereof, and shall have sole responsibility, along with the Applicant, and all Parties, for any damage to property or persons resulting therefrom.

In the event that there is an incident / accident of any kind at the Vulcan berth arising out of the taking of water / stores, the disposal of garbage / waste, and ballasting operations at the Vulcan Layberth, the Applicant, the vessel, and all parties shall be legally and financially responsible for all resulting claims, damage, costs, expenses, fines, penalties, etc., arising out of the incident / accident.

Any taking / receiving of water / stores, and / or the disposal of garbage / waste, and / or ballasting operations, including the transiting of the Vulcan Layberth to accomplish any of the operations set forth in this particular provision, if permitted by Vulcan, must be performed in accordance with all applicable international, local, state, and federal regulations. Furthermore, the following provisions must be complied with:

a. If the vessel desires to discharge oily waste, it shall arrange for the discharge with a company approved by the Captain of the Port, United States Coast Guard.

b. If the vessel desires to dispose of ship-generated garbage, it shall arrange in advance with a company approved by the Captain of the Port, United States Coast Guard.



c. Reception facilities for food, plant, meat and other potentially infectious waste shall be arranged with a company approved by the Animal and Plant Health Inspection Service (“APHIS”) meeting all local, state, federal and international requirements.

5. Crew Change at the Vulcan Layberth

Crew changes at the Vulcan berth will only be permitted with Vulcan’s prior approval. Should the Applicant request that a crew change(s) take place at the Vulcan berth, the request must be made in writing at the time the Application is submitted, and written authorization from Vulcan must be obtained prior to conducting such crew changes while at the Vulcan Layberth. In the event of an emergency / unexpected crew change beyond the Applicant’s control that arises after the Application is submitted, Vulcan will not withhold permission where the Applicant has shown good cause / reason for the crew change.

Assuming that Vulcan has authorized the crew change, the crew will not be allowed to walk freely at the Vulcan dock. Crew will need to be escorted by a transportation service which meets the TWIC requirements as prescribed by the USGC, and in full compliance with all U.S. Customs and Border Protection requirements. Departing crew will be met on the vessel by the transportation service and escorted directly to the transport vehicle. Boarding crew will exit the transport vehicle and be escorted by the transportation service directly to the vessel. At no time will crew be allowed to deviate from a direct path (vessel to transport vehicle or vice versa).

The vessel shall supervise, continuously, all crew changes, shall be in charge thereof, and shall have sole responsibility, along with the Applicant, and all Parties, for any damage to property or persons resulting therefrom.

In the event that there is an incident / accident of any kind at the Vulcan berth arising out of a crew change, the Applicant, the vessel, and all parties shall be legally and financially responsible for all resulting claims, damage, costs, expenses, fines, penalties, etc., arising out of the incident / accident.

Any crew change, if permitted by Vulcan, must be performed in accordance with all applicable international, local, state, and federal regulations, including, but not limited to any U.S. Customs and Border Protection regulations.

6. Hold Harmless and Indemnity

Vulcan expressly conditions its contract for the vessel’s berthage and other support services upon the basis of insured liabilities and terms as set forth below. All terms stated in this offer are final and deemed material to the formation of a berthage and service contract, and cannot be varied, altered or changed by implication or by any means other than by an express, written agreement signed by Vulcan. The following provisions apply to, and are made a part of the STC:



a. The Applicant, vessel, and all Parties are responsible and obligated to maintain the cleanliness of the berth during its stay at the berth.

b. Vulcan is not liable for any death, personal injury or illness of any kind to any person or party whatsoever, including, but not limited to the following: the vessel's crew, the Applicant's agents and employees, invitees, vendors, suppliers, repairmen, contract laborers, contractors, subcontractors, or other personnel, or any of their employees.

c. Vulcan is also not responsible for the damage to any property belonging to any party whatsoever, including, but not limited to any damage caused by cargo operations at the Vulcan Layberth, bunkering at the Vulcan Layberth, the taking of water / stores, the disposal of garbage / waste, and ballasting operations at the Vulcan Layberth, crew change at the Vulcan Layberth, or a pollution incident. In no event shall Vulcan be liable to any person or entity for any consequential damage whatsoever, including, but not limited to, delay, detention, demurrage, towage or pilotage. Vulcan is not liable for any damage / loss sustained by anyone, including, but not limited to, the vessel's Owners / Operators / Managers / Charterers / Underwriters / Agents, or by any parties in interest, and to any vessel / property, whether directly or indirectly, in contract, tort or otherwise.

d. The Applicant, and the vessel's Owners / Operators / Managers / Charterers shall indemnify, defend and hold harmless Vulcan, its parent, subsidiaries, divisions, affiliates, joint ventures, and / or insurers, including their respective officers, directors, employees, shareholders, agents, insurers, successors and assigns, and all persons, firms, or other entities which may manage, own, control or operate the Vulcan Layberth, from any and all liability, loss, claims or damages of any nature / kind whatsoever, including death, personal injury or illness to any person or party whatsoever, penalties, fines, costs, expenses, attorney's fees and court costs, directly or indirectly arising out of, or in any way connected with the vessel's use of, and / or call at Vulcan's Layberth, whether through negligence, strict or absolute liability, or otherwise wrongful acts or omissions, including a transportation security incident, terrorist act, or breach of security, directly or indirectly arising out of, related to and / or resulting from the negligent or intentional tort or criminal act of vessel personnel, crewmembers, stowaways, or passengers, or acts of concurrent fault or negligence by Vulcan, and including any violation of air or water quality statutes or regulations. Nothing herein shall be deemed to constitute a waiver of Vulcan's maritime lien against the vessel berthed at its facility.

7. Non-Liability of Vulcan

Vulcan shall not be responsible / liable in any way for any loss or damage whatsoever or howsoever caused to any cargo, or to any individuals on or near the Vulcan berth, or on or near any vessels berthed at the Vulcan Layberth, or to any vessel or vessels moored at, or in the process of being moored at, or adjacent to the Vulcan Layberth, or to any vessels, or conveyances, or equipment performing any service for any vessel moored at the Vulcan Layberth.



8. Damage to Vulcan Construction Materials' Property

The Applicant and all Parties shall pay, on demand of Vulcan, for any and all damage done to Vulcan's Layberth, property or facilities by the Applicant, the vessel, all Parties, or by the Applicant's, vessel's, or all Parties' agents, invitees, contractors, subcontractors, or any other party howsoever connected with the Applicant, the vessel, or all Parties.

9. Applicant's, Vessel's and all Parties' Insurance

The Applicant, the vessel, all Parties, and any and all other parties whatsoever, including, but not limited to security guards, invitees, other contractors and / or subcontractors of the Applicant, the vessel, all Parties, and any and all other parties whatsoever, shall be required to procure and maintain prior to the vessel's arrival at the Vulcan Layberth, during the duration of the vessel's stay at Vulcan's Layberth, and when departing the Vulcan Layberth, minimum insurance as set forth below – the Applicant, the vessel, all Parties, and any and all other parties are to procure and maintain the insurance that is appropriate to the specific party:

- a.** Hull and machinery insurance equivalent in an amount not less than the value of the vessels;
- b.** P&I insurance pursuant to the SP-23 form or the equivalent in an amount not less than \$25 million per accident or occurrence, with the "as owner" clause deleted; and including coverage for crew; and coverage for pollution contamination and clean up;
- c.** If applicable, maritime employers' liability / workers compensation insurance, including Jones Act and LHWCA coverage;
- d.** Stevedore's legal liability insurance with \$1 million per occurrence single limit is required in the event that longshoremen visit the vessel at the Vulcan berth;
- e.** Oil pollution insurance in an amount sufficient to comply with all international, local, state and federal laws / regulations;
- f.** Certificate of Financial Responsibility that is valid and current and has been accepted by USCG and Federal Laws.

In the event that a U.S. government entity mandates that armed security guards be assigned to a vessel prior to berthing, or while the vessel is berthed at Vulcan's Layberth, Vulcan requires that the vessel's agent provide Vulcan with a Certificate of Insurance evidencing CGL coverage with limits of no less than one million dollars (\$1,000,000.00) per occurrence for the security firm it has contracted with to provide security services onboard the vessel.

Vulcan shall be named as an additional insured with a waiver of subrogation in each of the policies listed above. Copies of certificates of insurance evidencing the above coverages shall be



furnished to Vulcan prior to the commencement of berthing activities at Vulcan's Layberth and will be maintained on file by Vulcan's agent. All such policies shall be with first class underwriters subject to Vulcan's approval, and shall provide that notice of cancellation shall be provided to Vulcan at least 30 days prior to the effective date of cancellation, except that 10 days notice shall be sufficient in the event cancellation is for non-payment of premium. Failure to meet the requirements of this paragraph can result in Vulcan refusing to allow the vessel to berth at Vulcan's Layberth, and if the vessel is already at Vulcan's Layberth, Vulcan is allowed to order the vessel to immediately depart the Layberth.

10. Payment of Fees

The Applicant guarantees the payment of all charges and fees associated with the berthing of the above mentioned vessel in accordance with the STC, Addendum No. 1 (Rate Sheet) to the STC, and the Application.

Vulcan requires the payment of charges in advance, or alternatively, Vulcan requires the posting of a bond approved by Vulcan to secure the payment of charges. There shall be deposited with Vulcan or its agent, contemporaneous with the filing of the Application, a sum determined by Vulcan or its agents to approximate the estimated charges in accordance with the terms and conditions of the STC, Addendum No. 1 ("**Rate Sheet**"), and the Application. If such prior deposit is not made, Vulcan reserves the right to refuse the berthing of the vessel.

In the event that an Application is received in less than the required 24 hour period because the Applicant did not know that a layberth would be needed outside of the 24 hour period, or the layberth became available on short notice / in less than 24 hours, Vulcan reserves the right to consider, and if the Application's terms / conditions are met, approve such Application. While Vulcan requires the payment of these charges in advance, or alternatively, Vulcan requires the posting of a bond approved by Vulcan to secure the payment of charges, Vulcan further reserves the right in these circumstances to waive the advance payment requirement, and instead, require the payment of all invoices arising out of the vessel's calling at the Vulcan Layberth within 15 days of presenting the invoices to the Applicant, or the vessel, or all parties.

11. Dockage

Dockage rates and associated costs are set forth in Addendum No. 1 (Rate Sheet) to the STC.

12. Security Guard, Linesmen, Tug, Port Fees and Related Charges

The Applicant will pay for two (2) guards while the vessel is berthed at Vulcan's Layberth at a rate of \$25 per hour per guard. This is a homeland Security requirement and is not negotiable. This will be a separate charge, and is not included in the Dockage fees.

Applicant is responsible for all linesmen, mooring and associated costs at the Vulcan Layberth.



Furthermore, the Applicant is responsible for all berthing tug(s), shifting tug(s), and departing tug(s) costs at the Vulcan Layberth.

Port fees, charges and expenses shall be at the sole expense / responsibility of the vessel and / or its Owners / Operators / Managers / Charterers / Agents.

13. Failure to Vacate Layberth

Vulcan's ships / vessels / barges / watercraft of any kind will **ALWAYS** be senior to / take precedence over vessels seeking to dock at Vulcan's Layberth.

The assignment of a berth is predicated upon Vulcan approving the Application, and not having a Vulcan ship at its Layberth, or a Vulcan vessel waiting to berth, as this berth is a working terminal. If Vulcan orders the applicant to vacate Vulcan's Layberth for any reason whatsoever, the applicant will have six (6) hours to vacate. If the applicant does not depart the Layberth in the six (6) hour period, Vulcan shall be entitled to charge and recover as liquidated damages the sum of US\$5,000.00 (five thousand U.S. dollars) per hour for each hour or fraction thereof. The six (6) hour period shall commence after receipt of the notice to vacate, and run until the vessel leaves the Layberth, regardless of intervening circumstances of any nature.

At any time a US\$5,000.00 per hour dockage charge is assessed for the reasons set forth above, that charge shall be assessed continuously until the vessel vacates the berth, regardless of intervening circumstances. Said dockage charge represents liquidated damages and is a reasonable estimate of what the damages are, and is not in any way to be construed as a penalty.

14. Remedies for Enforcement of Application

A maritime lien attaches on any vessel for all charges which may accrue hereunder, whether or not such charges are billed to the vessel's Owner, Charterer, Operator, Manager, or agent. In the event the charges hereunder are not paid within 15 days after presentation of the invoices, and Vulcan places its claim in the hands of an attorney for collection, the Owner, Charterer, Operator, Manager of the vessel to which the services of the vessel have been rendered, and / or the vessel's agents shall pay all expenses of collection, including reasonable attorney's fees, costs, and interest. Furthermore, acceptance of this offer shall constitute a waiver of immunity and prejudgment arrest / attachment under the Foreign Sovereign Immunity Act, 28 U.S.C. Section 1602 et seq.

15. Failure to Complete Application Form

Please be advised that failure to complete the Application form may result in Vulcan rejecting the Application.

16. Port Safety Guidelines



The Applicant is advised that safety guidelines are set by the Pilots Association regarding vessel length, draft, beam, air draft, and other factors that may affect the transit of the vessel on the Houston Ship Channel. The Applicant should therefore consult with the Pilots Association to determine if any restrictions apply.

Vulcan does not guarantee the safety of the Port of Houston, nor of its Layberth.

Vulcan Construction Materials LLC follows all Facility Security rules USCG 33 CFR Part 105.

17. Governing Law

Vulcan's STC and the Application shall be construed in accordance with the General Maritime Law of the United States.

18. Arbitration

Any controversy or claim arising out of or relating to Vulcan's STC and / or the Application, or the breach thereof (a "**Dispute**") shall be settled by arbitration before a panel of three arbitrators administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the panel may be entered in any court having jurisdiction thereof, provided, however, that the panel's determination may be reviewed by any court of competent jurisdiction and may be set aside if it is determined to result from a plain error of law or fact or if it is determined that the evidence is not sufficient to support the panel's findings. The arbitration proceedings provided hereunder shall be held in Houston, Texas. Upon conclusion of its proceedings, the panel shall issue a reasoned award setting forth the basic findings of fact and conclusions of law. The panel may award the prevailing party its costs and reasonable attorney fees incurred to resolve the Dispute. Nothing herein shall be construed to prevent any party to a Dispute from seeking from a court a temporary restraining order or other temporary or preliminary relief pending final resolution of a Dispute pursuant to this Section.

19. Standard Terms and Condition's and the Application's Provisions

Any invalid provision or provisions in the STC and the Application shall not affect, impair, or invalidate the remaining provisions in STC and the Application.



ADDENDUM NO. 1 (RATE SHEET) to the STC

By signing the APPLICATION FOR LAYBERTH, the Applicant agrees that it has read and understood, has accepted, and shall comply with, and be responsible for all of the terms and conditions of the STC, including the Rate Sheet attached to the STC as Addendum No. 1. Dockage Rates are as follows:

1. Dockage

Dockage will be assessed at the following rate:

Vessel LOA	Rate
(feet)	(per foot per day)
0 - 199	\$2.42
200 – 399	\$3.17
400 – 499	\$4.32
500 – 599	\$5.80
600 – 699	\$6.74
700 – 799	\$8.56
800 – 899	\$10.30

The applicable daily dockage rate will be assessed based on the LOA of the vessel for each berthing of the vessel multiplied by the rate per foot per day, which will then be multiplied by the number of days the vessel is berthed at Vulcan’s Layberth.

$$\text{Vessel LOA (in feet)} \times \text{Rate (per foot)} = \text{Dockage rate per day}$$

Volume discounts will apply only for dockage as below:

Volume Discount on Dockage	
Usage	Discount
1-10 days	0%
11-15 days	35%
15+ days	40%

A vessel will be considered in berth beginning when the first line is on the dock and counting until the last line is off the dock. A partial day, i.e., less than 24 hours, will be counted as one full day. The LOA of vessels used for the calculation of the dockage charges will be based on the vessel’s information / particulars found in Lloyd’s Register. The minimum dockage charge for a berthing is one day (24 hours), or \$1,000.00, whichever is greater.



Wharfage will be assessed at the following rate:

Wharfage	\$/ST
Liquid Bulk	\$1.75
Dry Bulk	\$2.25