



STANDARD TERMS AND CONDITIONS

**(These Terms and Conditions do not take
precedent over any other Terms and
Conditions which South Port NZ Ltd
may agree with individual parties)**

Revised 1 November 2016

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Standard Terms and Conditions

Revised 1 November 2016

1. Parties

- 1.1. South Port New Zealand Limited
- 1.2. The USER as defined. See clause 14.16.

2. Introduction

- 2.1. South Port New Zealand Limited, referred to as South Port hereafter, owns and operates wharves, berths, waterways, plant and equipment at Bluff and Invercargill.
- 2.2. The User wishes to use the services which South Port provides.
- 2.3. The provision of those services by South Port required by the User will be upon the terms and conditions which follow.

3. Price schedule

- 3.1. Unless otherwise agreed in writing, and at the expiry of any negotiated contracts, the charges for services provided will be South Port's Price Schedule of charges in force at the time of actual provision of service. The User acknowledges that particulars of such Price Schedule are available upon request.
- 3.2. Failure to negotiate a renewal contract within one month of an existing contract expiring will result in deferment to South Port's Price Schedule of Charges.

4. Payment for services/Credit Policy

- 4.1. Unless otherwise agreed to in writing prior to provision of the services requested, the terms of payment for services will be cash in full in advance of the service being rendered or of the cargo being released or of the vessel departing.
- 4.2. If the User has been granted credit, then payment for services rendered under this agreement will be by 20th of the month following the date of the invoice.
- 4.3. South Port reserves the right entirely at its discretion to apply a monthly interest charge on overdue accounts equal to overdraft rates.
- 4.4. The user shall become liable for all costs, expenses or fees reasonably incurred by South Port in recovering overdue accounts.

5. Obligations as to shipping

Access to South Port controlled waterways, berths, wharves, equipment and facilities is subject to the User warranting the following:

- 5.1. (a) that the User and the User's employees, agents or representatives have complied and will continue to comply with the provisions of all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever in all respects;
 - (b) that the User's vessel is in all respects seaworthy; and
 - (c) that the User will not take any steps which will or might place the User or the User's employees, agents or representatives in breach of all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever or which will or might render the User's vessel unseaworthy while the User is using South Port's facilities pursuant to this agreement.
- 5.2. The User will use such tug power, as South Port deems necessary for vessels arriving, departing or shifting at a South Port wharf or facility.
 - 5.3. The User will use the number of line handlers South Port determines for a vessel arriving, departing or shifting at a South Port wharf.
 - 5.4. The User will use such utilities, as South Port may deem necessary when the vessel is berthed at a South Port wharf.
 - 5.5. The User agrees to indemnify South Port from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against South Port, which arise out of or in connection with the failure of the User, its Agents, sub-contractors and employees, to comply with provisions of Clause 5.1 (including without limitation sub-clauses 5.1(a), 5.1(b) and 5.1(c)).

6. Berthage

South Port will provide berthage for the User's vessels at the port subject to the following:

- 6.1. South Port reserves the right to nominate the wharves at which the vessel will be berthed.
- 6.2. Berthage will be subject to the absolute right of South Port to require a vessel berthed at any wharf to be moved or relocated to another berth in the Port, or to vacate the allocated berth and to anchor at sea as directed and any such requirement will be carried out immediately by the User through the Master of the relevant vessel.

7. Obligations as to cargo

South Port will provide cargo handling and storage services and facilities subject to the following:

- 7.1. The User will adhere to the Cargo Operations Procedures that govern the receipt and handling of cargo through the Port. This procedural document outlines such aspects as hours of operation and documentation. (Copies available on request).
- 7.2. The User will ensure that all cargo and containers received at or delivered from South Port operational areas are properly packed and labelled, are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business and will comply with all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever.
- 7.3. All export containers to be loaded onto a vessel at South Port require a Verified Gross Mass to be submitted by the shipper or their delegated authority prior to loading. The shipper or their delegated authority, by ticking the pre-advice box, certifies that the declared weight is a Verified Gross Mass weight or VGM calculated in accordance with either SOLAS Method 1 or Method 2, and that the person is a deemed “authorised signatory” of the shipper for the purposes of responsibility under the SOLAS protocols and Maritime New Zealand Rule 24B – Carriage of Cargo.
- 7.4. The User will comply with any rules and directions made from time to time by South Port in respect of the handling of dangerous, hazardous and noxious goods and will also comply with any statute, statutory regulations or other legal requirement that may be in force whether presented by the New Zealand Government or any international agency or institution and also with rules, requirements or procedures set by owners of cargo as appropriate and in addition comply with all such procedures and rules as are good operating practice.
- 7.5. All activities to be undertaken on South Port wharves and land must have the prior written approval of the Port Operations Manager or his/her representative. South Port has established procedures in respect of operations. South Port agrees to use its best endeavours to keep the User informed of such procedures. To the extent that South Port's procedures are documented, copies of the same can be viewed at South Port's offices on the Island Harbour, Bluff. The User agrees to comply with all South Port procedures as advised to the User. In particular, but without limiting the foregoing:
 - 7.5.1. The User will notify South Port at least 24 hours before the arrival at the wharf of dangerous, hazardous or noxious export cargo or other export cargo requiring special care.

- 7.5.2. The User will give South Port at least 48 hours advance notice prior to the vessel's arrival of dangerous, hazardous or noxious import (including trans-shipment) cargo or other import (including trans-shipment) cargo requiring special care.
- 7.6. If any User fails to remove any containers or cargo from the wharves within the time allotted as detailed in South Port's applicable Price Schedule then South Port may at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such containers and cargo at the entire risk and expense of the User.
- 7.7. The storage business facilities operated by South Port NZ Ltd are managed by South Port NZ Ltd's R&D office. Access to and use of these storage areas requires that receiving and delivery be undertaken by South Port NZ Ltd or their authorised nominee.
- 7.8. All goods shall, immediately they come into possession of South Port or any subcontractor, be subject to a particular and general lien and right of detention for all monies due to South Port by the User or the consignee, consignor or owner, whether in respect of such goods or otherwise. If any moneys due to South Port are not paid within fourteen (14) days after notice has been given to the person from whom the moneys are due that such goods are being detained, then they may be sold by auction or otherwise at the sole discretion of South Port and at the expense of such person, and the net proceeds applied in or towards the satisfaction of any such indebtedness. Any such sale shall not prejudice hereunder or the cost of the said detention and sale. If at any time payment from the User to South Port shall be in arrears, any subsisting obligation of South Port shall be suspended and South Port shall not be under any liability to the User during such period.
- 7.9. The User hereby agrees to indemnify South Port in respect of all and any liability which South Port might incur pursuant to all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever (including the Hague Rules as set out in the Fifth Schedule to that Act) as a result of the operation of this agreement.

8. Liability regime

8.1. Liabilities of South Port

Subject to the provisions of clause 8.2 (maximum liabilities of South Port), clause 8.4 (user's liability), clause 8.5 (exclusions of liability) and clause 8.7 (notifications of claims) South Port will be liable for physical loss or damage (but not for indirect, special or consequential loss or damage) caused by the negligence of South Port, its employees, agents or subcontractors to:

- 8.1.1. The user's vessel and/or equipment.
- 8.1.2. Containers
- 8.1.3. Cargo

8.1.4. Ancillary equipment (including clip-on refrigeration units, refrigeration towers, generators, trailers and chassis) owned by the User or any other persons.

8.2. Maximum Liabilities of South Port

8.2.1. The maximum liability of South Port to the User or any person claiming through the User ("Maximum Liability"); and

8.2.2. The maximum aggregate liability of all claims for loss or damage by whomsoever made arising out of any one event ("Maximum Aggregate Liability"); and

8.2.3. The excess of any claim which sum will be deducted from the amount payable by South Port for any loss or damage will be in accordance with the Liability Table (as below).

8.2.4. All amounts of loss and damage referred to in this clause 8.2 including the Liability Table are in New Zealand dollars and are GST inclusive.

Liability Table

Loss/ Damage		Maximum Liability	Maximum Aggregate Liability	Excess
User's Vessels & Equipment		Lesser of reasonable cost of repair or market value	\$1,000,000	\$200,000
Containers		Lesser of reasonable cost of repair or market value or:		
	(i)	Refrigerated \$7,500	\$100,000	\$300
	(ii)	Insulated \$4,000	\$100,000	\$300
	(iii)	Other \$1,000	\$100,000	\$300
Cargo	(i)	In a closed or sealed container \$5,000	\$75,000	\$300
	(ii)	On board a vessel \$750 per manifest tonne or part thereof	\$50,000	\$300
	(iii)	Elsewhere \$1,000 per tonne or part thereof	\$50,000	\$300
Ancillary Equipment (cl8.1.4)		Lesser of reasonable cost of repair or market value or \$7,000	\$40,000	\$300

8.2.5. Overall Limit on Liability NZ \$2,000,000

South Port will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss caused in any manner whatsoever to any person or property, in respect of the sum claimed or the aggregate of sums claimed under whatsoever cause of action or entitlement including the negligence of South Port, its employees, agents or sub-contractors in respect of any one event or interconnected series of events, beyond the maximum aggregate sum of NZ \$2,000,000.

8.3. Towage

UK Standard Conditions of Towage and Other Services (revised 1986) as Amended 2008 terms apply (copy available on request). Any dispute arising under the UK Standard Conditions of Towage and Other Services will be resolved in accordance with New Zealand law.

8.3.1. The expression “whilst towing” as defined in the United Kingdom Standard Conditions shall also include any time where the tug is alongside the hirer’s vessel, whether or not the tug is in position to receive orders direct from the hirer’s vessel to commence pushing, holding, moving, escorting or guiding the vessel or to pick up ropes or lines.

8.4. User’s Liability

The User will reimburse/indemnify South Port in respect of any loss or damage caused by the negligence of the User, its employees, agents or sub-contractors or where such loss or damage is caused by the breach of these terms.

8.5. Exclusions of Liability

Notwithstanding clauses 8.1. and 8.2. South Port will not be liable in any circumstances whatsoever:

8.5.1. Where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the User to comply with any of these conditions;

8.5.2. For any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of South Port, its employees, agents or subcontractors but South Port will make every reasonable endeavour by liaison with Users, their carriers and others to achieve the orderly transportation of cargo and containers to or from the Port;

8.5.3. To pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure by any person, whether or not an agent, employee, or sub-

contractor of South Port to properly and adequately secure any cargo or container on any rail or road vehicle, or on any other form of transport;

- 8.5.4. For any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any failure to inspect cargo (inclusive of containers), any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any container, South Port undertakes no responsibility to inspect cargo (inclusive of containers) for damage or to report any damage to the User but will make every reasonable endeavour to refer all apparent damage to cargo and containers to the User and to take any appropriate step necessary to protect the cargo and contents of any container noted to be damaged; and
- 8.5.5. For indirect, special or consequential loss or damage howsoever caused including the negligence of South Port, its employees, agents or sub-contractors.
- 8.5.6. For any direct or indirect consequences of South Port's inability to provide services or facilities or equipment on demand.
- 8.5.7. Where the Towage Conditions so provide.

8.6. User Indemnifies South Port Where Liability Excluded or Liability is in Excess of Limits

The User hereby holds South Port, its employees, agents and sub-contractors free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and court expenses of South Port), damages, compensation or other monies whatsoever ("the Amount") in respect of all loss, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent that the liability of South Port for the Amount has been excluded under clause 8.4 and clause 8.5 or any other clause hereof and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability, or Overall Limit on Liability under clause 8.2.

8.7 Notification of Claims

- 8.7.1. For loss of or damage to cargo in terms of clause 8.1, South Port will be liable only if notice in writing of any loss or damage is given to South Port within 10 days after the delivery of the cargo or the date when the cargo should have been delivered to the consignee.
- 8.7.2. For all other loss, damage, expense, accident or injury in terms of clause 8.1, South Port will be liable only if notice in writing is given to South Port within 30 days after the date when the loss, damage, expense, accident or injury occurred.

8.7.3. If no such notice is given within the above periods any claim will be deemed waived and absolutely barred.

8.8. Benefits of Bills of Lading and Establishment of Bills of Lading

8.8.1. Without prejudice in any matter to the provisions and limitations contained in this agreement, the User agrees that South Port, its employees, agents or sub-contractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein and South Port for itself, its employees, agents and sub-contractors hereby accepts such benefit.

8.8.2. Where any cargo or container is received at or delivered from South Port operations areas prior to the establishment of a bill of lading or other contract of carriage, the benefit of the intended bill of lading or contract of carriage (and in particular as set out in sub-clause [8.8.1.] above) will apply in all respects and will bind all persons interested in the cargo or container as though such bill of lading or contract of carriage had then been established.

8.8.3. In respect of cargo to be received at the Intermodal Freight Centre for export or delivered to that facility for import, the User shall ensure that the bill of lading applies to the land transport to and from the Intermodal Freight Centre regardless of origin and destination.

8.9. User Responsible for Safe Management

8.9.1. Nothing in these conditions contained or implied will affect the User's responsibility for the safe navigation and proper management of the vessel including, without prejudice to the generality of the foregoing, her stowage, trim and stability and the operations of berthing, mooring, unmooring and unberthing.

8.9.2. The User warrants to South Port, that it will at all times comply with its duties and obligations under the Health and Safety at Work Act 2015 (including subsequent amendments) and that it will not do or omit to do anything which breaches or is likely to breach any duty or obligation under the Health and Safety at Work Act 2015 (including subsequent amendments) or which is likely to result in enforcement proceedings under the Health and Safety at Work Act 2015 (including subsequent amendments).

8.9.3. The User undertakes and warrants to South Port that it will comply fully with all directions, requirements and instructions notified to it by South Port in respect of health and safety or in respect of any duties or obligations of any person under the Health and Safety at Work Act 2015 (including subsequent amendments). The User acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations

under the Health and Safety at Work Act 2015 (including subsequent amendments).

- 8.9.4. The User undertakes and warrants to South Port that it will comply with the provisions of the South Port Drug & Alcohol Policy as amended from time to time. For the avoidance of doubt, this means that the User will ensure its employees will submit to testing and comply with the obligations and procedures contained in the South Port Drug and Alcohol Policy as if they were employees of South Port.
- 8.9.5. If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any such duty or obligation, the User agrees to immediately notify South Port and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 8.9.6. The User will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.
- 8.9.7. The User undertakes and warrants to comply fully with all directions, requirements and duties as to cleaning wharves at the conclusion of a vessels loading/unloading, placing and removal of rubbish skips on wharves, and to the Access policy of the Company. (Copy available on request).

9. User Environmental Warranties

- 9.1. The User warrants to South Port that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any applicable laws, orders, regulations or other requirements of the New Zealand Government and all local or Government Authorities whatsoever including but not limited to any duty or obligation under the Resource Management Act 1991, the Maritime Transport Act 1994 and the Resource Management (Marine Pollution) Regulations 1998 (including any amendments or substitutions to those Acts and Regulations) or which is likely to result in the issue of an abatement order to enforce proceedings under the Resource Management Act 1991.
- 9.2. If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in this clause 9.1., the User agrees to immediately notify South Port and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 9.3. The User will ensure that its agents, subcontractors and employees are aware of these conditions and will abide by them.
- 9.4. The User undertakes to comply with the South Port Discharge Agreement at all times when the User is using South Port's facilities pursuant to this agreement (copy available on request).
- 9.5. The User warrants to South Port that it will comply with all other relevant

standards, by-laws, local authority and other regulations and statutes including but not limited to regulations and statutes relating to sound environmental practice and the handling of dangerous, hazardous or noxious goods and substances.

- 9.6. The User agrees to indemnify South Port from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against South Port, which arise out of or in connection with the failure of the User, its agents, sub-contractors and employees to comply with the provisions of clause 8.9. and 9 (including without limitation, sub clause 8.9.2., 8.9.3., 8.9.4., 8.9.5., 8.9.6., 8.9.7., 9.1., 9.4. and 9.5.).

10. General

- 10.1. The User will ensure that all sub-contractors employed by it will co-operate with South Port and will comply with the safety precautions required by South Port at all times.
- 10.2. The User will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of South Port or any of South Port's agents or sub-contractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees of South Port. All such negotiations will be exclusively conducted by South Port.
- 10.3. These conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand and the parties hereto submit themselves to the exclusive jurisdiction of the New Zealand High Court.
- 10.4. Any dispute or disagreement between the parties in relation to this agreement in which the amount in issue, or the value of property in issue, or a combination of the amount in issue and the value of property in issue, is \$100,000 (GST inclusive) or less will be submitted to arbitration within 30 days of notice of the dispute being given by one party to the other. The arbitration shall be by a single arbitrator, if one can be agreed upon, or in the absence of agreement within 7 days of notice of the dispute, as appointed by the President for the time being of the Southland District Law Society or his or her nominee. The arbitration shall be carried out in Invercargill and the language of the arbitration shall be English. The Arbitration Act 1996 will apply, and the parties agree that the first and second schedules shall apply, but with the following amendments:

(a) First Schedule:

- (i) To the extent that the notice provisions in the agreement are inconsistent with article 3 of that schedule, the notice provisions of the agreement shall apply;

- (ii) Article 15(3) shall not apply in relation to the replacement of an arbitrator under Article 13 of that schedule;
 - (iii) The parties agree that either party may request the arbitratorial tribunal under Article 33(1)(b) to give an interpretation of a specific point or part of an award.
- (b) Second Schedule:
 - (i) Paragraphs 1 (4) and 1 (5) and Article 7 shall not apply; and
 - (ii) Paragraphs 4(2)(a) and 4(2)(b) apply in the alternative, not cumulatively.

Either party may pursue its common law rights in the event of any dispute or disagreement where clause 10.4 does not apply.

10.5. All notices under these conditions will be given by personal delivery or by ordinary mail or facsimile transmission or electronic mail (email):

10.5.1 To South Port at Bluff,

10.5.2 To the User at any of the User's last known places of business whether in New Zealand or elsewhere, or at the address of the User's last known agent in New Zealand, and will be deemed to have been received two days after dispatch by mail or on the day of dispatch by facsimile or email.

10.6. The Consumer Guarantees Act 1993 applies only to transactions where one party is in business and the other party is a consumer. South Port and the User agree that both are in business as defined in the legislation, and therefore that the legislation has no application to this agreement.

11. Force majeure

South Port will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any services, arising out of or contributed to by one or more of Act of God, earthquake, storm, flood, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, war, civil war, hostilities, acts of terrorists, breakdown of or accident or failure of any crane or plant or machinery or equipment or other facility from any cause whatsoever, improper or insufficient or erroneous marking or addressing of any Cargo or Container, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of South Port.

12. Variation of terms

South Port reserves the right to vary the terms of this agreement from time to time. Any such variation will be notified to the User in writing, which notice will give the User 30 days within which to:

- (a) agree to the variation; or
- (b) cancel the agreement;

provided that in the absence of written notice from the User of its election, within the 30 day notice period the User is deemed to have accepted and be bound by the variation.

13. Contracts Privity Act 1982

The Contracts (Privity) Act 1982 enable contracts to be enforced by non-parties who were intended to benefit under the contract. For the avoidance of doubt, South Port and the User agree that for the purposes of section 4 of that legislation, all terms in this agreement conferring benefits on South Port are intended to be for the benefit of South Port, its employees, authorised agents and representatives.

14. Definitions

In these Standard Conditions of Provision of Services the following meanings will apply (unless the context will otherwise indicate):

- 14.1. "Cargo" means any goods, merchandise or other property whatsoever whether or not within a container in respect of which South Port provides or is requested to provide services hereunder.
- 14.2. "Consignee" means a person, firm or Company to whom any goods are consigned.
- 14.3. "Container" means any article of transport equipment (including lift van, movable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation and having standard ISO means of top corner lifting.
- 14.4. "Dangerous Cargo" means dangerous, hazardous or noxious cargo as defined from time to time in the General Harbour Regulations and/or in the International Maritime Organisations Code of Dangerous Cargo and/or the Maritime Transport Act 1994 and/or any other relevant New Zealand legislation.
- 14.5. "Land and Re-stow" - where cargo is discharged from a vessel, placed where directed by South Port and re-loaded onto the same vessel during the same port call.
- 14.6. "Land and Re-stow Charges" - a charge levied whenever land and re-stow is undertaken.

- 14.7. "South Port" means South Port NZ Ltd and will include its employees, agents and sub-contractors.
- 14.8. "Port" means the wharves of Tiwai and Bluff and facilities owned by South Port NZ Ltd.
- 14.9. "Price Schedule" means the South Port Price Schedule of charges in force at the date of provision of the service.
- 14.10 "Redirected Cargo" is cargo that is delivered to South Port for export and is later redirected via road or rail to another point of loading. The cargo is received at South Port but not loaded on to a vessel.
- 14.11 "Redirected Cargo Charges" means redirected cargo shall pay one x R&D charge plus the cost of the additional lift as determined by South Port.
- 14.12 "Storage" means the area of open land and sheds used to accumulate cargo.
- 14.13 "Subcontractor" includes direct or indirect subcontractors and their respective employees and agents.
- 14.14 "Trans-shipment" of cargo is when cargo is discharged from one vessel and loaded onto another vessel at South Port without the cargo leaving the port operational area.
- 14.15 "Trans-shipment Cargo Charges" means trans-shipment cargo shall be levied wharfage, storage and R&D charges in one direction only on the outwards voyage.
- 14.16 "User" means any person for whom South Port provides or is to provide service hereunder or who requests South Port to provide services or any person who is or who appears on reasonable grounds to be an agent, employee, subcontractor or a representative of any one or more of the foregoing, and the obligations and liabilities under these conditions of all or any of such persons, if there be more than one, will be joint and several. Without limiting the generality of the foregoing, user will include the owner, lessee, charterer, operator or manager of any vessel, a road or rail carrier, a shipper, stevedore or a combination of any two or more of those parties.
- 14.17 "Wharfage" means the area of wharf and apron immediately adjacent to the wharf for use by the stevedore to load cargo onto and discharge cargo from the vessel.
- 14.18 "Wharfage Charge" means a charge for the use of wharfage that will apply to all cargo that is loaded onto or discharged from all vessels.