



**PORT MELVILLE TERMS & CONDITIONS FOR USE OF PORT
& PORT FACILITIES & SUPPLY OF SERVICES**

**NT PORT AND MARINE PTY LTD
(ABN 33 146 391 219)
"Port Operator"**



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1. **APPLICATION**

- (a) These Terms and Conditions shall apply to the use of the Port and Port Facilities and supply of Services by the Port Operator in and/or around the Port.
- (b) In the event of any conflict between these Terms and Conditions and any other terms and conditions of the User then these Terms and Conditions shall prevail.
- (c) By the execution of these Terms and Conditions the User acknowledges and agrees to the provisions of these Terms and Conditions.

2. **DEFINITIONS & INTERPRETATIONS**

- (a) In these Terms and Conditions unless the context otherwise requires the following words and phrases have the following meanings:

“Business Day” means a day which is not a Saturday, Sunday or public holiday or bank holiday in the Northern Territory of Australia.

“Claim” means any claim, demand, action, suit or proceeding, whether in contract, tort or otherwise.

“Event of Force Majeure” shall mean an event or circumstance beyond the reasonable control of the Port Operator including, without limitation:

- (i) war (declared or undeclared), civil commotion, military action, act of sabotage or vandalism;
- (ii) an act or potential or threatened act of terrorism which could impact in any way on the Port and/or the Port Facilities or which could impact on the provision of the Services;
- (iii) a strike, lockout, blockade, picketing action or industrial action, dispute or disturbance of any kind;



- (iv) an act or omission of a Government Authority including any change of Law;
- (v) an act of God;
- (vi) storm, tempest, fire, flood, earthquake or other natural calamity; or
- (vii) breakdown or failure of any plant, services, machinery or equipment or unavailability of essential goods, supplies or services.

“Fees” shall mean the Fees and charges applicable to access the Port and/or the Port Facilities and (if applicable) use the Services as set out in the Schedule of Port Charges of the Port Operator published on the Port Operator website from time to time.

“Government Authority” shall mean the Crown, a Minister, a government or government department, authority constituted for a public purpose, including the regional Harbour Master, a local authority or a court.

“Harbour Master” shall mean the Harbour Master appointed for the Port from time to time.

“Law” shall mean international and domestic laws and requirements, Statutes, Regulations, requirements, by-laws, policies and ordinances of Government Authorities and principles of law or equity established by decisions of courts.

“Loss” shall mean any damage, loss (including special, direct or consequential loss or loss of profits), liability, compensation, cost, charge, expense or other obligation whether arising under contract, tort or otherwise and whether arising directly or indirectly.

“Notice of Arrival” shall mean the online notification generated upon the completion of the berthing application located at the Port Operator Website at <https://www.ntportandmarine.com/capability/berthage/>.

“Notices to Port Operator”:



- (i) all notices and other communications to the Port Operator in relation to these Terms and Conditions must be in writing and sent to:

Name: Port Manager

Address: AusGroup, Level 1 18, 32 Parliament Place West Perth

Facsimile Number: +61 6862 5211

E-mail details: nathan.pike@ausgroup.com

AND

Name: Port Manager

Address: 31 Maramats Road, East Arm, Northern Territory 0822

Facsimile Number: +61 8 8930 6511

E-mail details: portmanager@ntportandmarine.com

or to such other address or persons specified in the Port Operator Website from time to time;

- (ii) notices are deemed to be received by the Port Operator at the time when they are actually received by the Port Operator.

“Party” or “Parties” shall mean the parties to these Terms and Conditions including the Port Operator and the User and may be used inter-changeably.

“Payment Terms and Conditions” shall mean the Payment Terms and Conditions as set out in the Port Operator Access Policy.



“Permitted Use” shall mean the purpose of using the Port and/or the Port Facilities and (if applicable) the Services specified by the User in the Notice of Arrival submitted by the User.

“Pilot” shall mean any Pilot providing Pilotage Services.

“Pilotage Services” shall mean Pilotage Services provided by the Port Operator approved service provider at the Port.

“Port” shall mean the land, the wharf and the waters within the boundaries of Port Melville, Northern Territory, Australia as varied from time to time.

“Port Facilities” shall mean the facilities within the Port used to provide Services.

“Port Operator” shall mean NT Port & Marine Pty Ltd.

“Port Operator Access Policy” shall mean the Port Operator Access Policy of the Port Operator as amended from time to time and published on the Port Operator Website.

“Port Operator Website” shall mean the website maintained by the Port Operator with respect to the Port.

“Port Requirements” shall mean any notice or notices or other directions or notice issued by the Port Operator or any other notices, directions or regulations issued by the Harbour Master or any Governmental Authority having jurisdiction over the Port or the Port Facilities.

“Priority Principles” shall mean

- (a) Subject to paragraph (b), the Port Operator may grant:
 - a. priority access to a Service or to a Service that uses a particular Port Facility;
 - b. lower-priority access to a Service or to a Service that uses a particular Port Facility and to which another User has been granted access of higher priority;



- c. any combination of (i) and (ii) in relation to various Services or in relation to various Port Facilities.
- (b) Priority of access will be determined taking into account:
 - (i) the time the Berthing application was completed;
 - (ii) the time at which access is sought;
 - (iii) the availability of other access to equivalent Services;
 - (iv) the requirements and legitimate business interests of the Port Operator;
 - (v) the financial and other contribution of each User to the development of the relevant Facility; and
 - (vi) the effect of granting the priority of access sought upon competition in the relevant markets.

“Services” shall mean those Services that the User has requested the Port Operator to provide to the User and which the Port Operator has agreed to provide to the User.

“Terms and Conditions” shall mean these Terms and Conditions.

“Time of Arrival” shall mean the date and time of arrival specified by the User in a Notice of Arrival.

“Time of Departure” shall mean the date and time of departure specified by the User in a Notice of Arrival.

“Towage Services” shall mean Towage Services provided by the Port Operator approved service provider at the Port.

“User” shall mean any user of the Port, the Port Facilities and/or the Services, including but not limited to visiting Vessel entering the Port, berthing, anchoring or mooring therein for any purpose.

“Utility Services” shall mean any utility services provided at the Port including services for water, electricity, gas, telephone or computer connections or such other utility services as may be specified by the Port Operator from time to time.



“Vessel” shall mean any vessel with respect to which the User orders Services or with respect to which the User requests that access to the Port or Port Facilities be granted.

- (b) Headings and underlinings are for convenience only and do not affect the interpretation of these Terms and Conditions.
- (c) Words importing the singular include the plural and vice versa.
- (d) Words importing a gender include any gender.
- (e) other parts of speech and grammatical forms of a word or phrase defined in these Terms and Conditions have a corresponding meaning.
- (f) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental authority or agency.
- (g) A reference to any thing includes a part of that thing.
- (h) A reference to a Recital, Part, Clause, Sub-Clause, Party, Annexure, Exhibit or Schedule is a reference to a part and clause of and a Party, annexure exhibit and schedule to these Terms and Conditions, and a reference to these Terms and Conditions includes any annexure, exhibit and schedule.
- (i) A reference to a statute, regulations, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.
- (j) A reference to a document includes all amendments, variations or supplements to, or replacements or novations of, that document.



- (k) A reference to a party to a document includes that party's executors, administrators, substitutes, successors and permitted assigns.
- (l) Where the day on or by which any thing is to be done is not a Business day, that thing must be done on or by the next Business Day.
- (m) No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of these Terms and Conditions or any part of them.
- (n) A covenant or agreement on the part of two or more persons binds them jointly and severally.
- (o) A reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing.
- (p) A reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- (q) A reference to "dollars" or "\$" is to an amount in Australian currency unless otherwise specified.

3. REQUEST FOR USE OF THE PORT AND/OR PORT FACILITIES AND/OR SERVICES

- (a) A User may request the Port Operator to access and use the Port and/or Port Facilities and/or to provide Services to the User by submitting to the Port Operator at least seven (7) days prior to the earliest requested time for the provision of Services and/or access to the Port and/or Port Facilities a completed Notice of Arrival together with all information required by the Port Operator which Notice of Arrival must be submitted to the e-mail address published on the Port Operator Website from time to time.



- (b) The User shall ensure that the information in the Notice of Arrival and all other information provided by the User or its agent(s) is complete, accurate, up to date and not misleading.
- (c) The Port Operator may accept or reject a Notice of Arrival in accordance with the Port Operator Access Policy.
- (d) A User may submit a written request to the Port Operator to vary or withdraw a Notice of Arrival previously submitted by the User provided always that the Port Operator may accept or reject a request to vary or withdraw a Notice of Arrival. If a Notice of Arrival is varied or withdrawn (other than where such variation or withdrawal is due solely to a delay caused by the Port Operator or due solely to failure on the part of the Port Operator to provide the Services in accordance with these Terms and Conditions) the User will be liable for all Loss incurred by the Port Operator in connection with that variation or withdrawal.
- (e) The User will only use the Port and/or the Port Facilities and/or request the Services for the Permitted Use.
- (f) Any grant by the Port Operator to the User of use of the Port and/or the Port Facilities shall not be exclusive and the Port Operator may at its discretion allow access to the Port and/or Port Facilities to any other person for any purpose specified by the Port Operator.
- (g) If the Services requested by the User are in the nature of Pilotage Services then such Pilotage Services shall be provided by the Port Operator approved service provider at the Port.
- (h) If the Services requested by the User are in the nature of Towage Services then such Towage Services shall be provided by the Port Operator approved service provider at the Port.

4. ACCESS TO THE PORT, PORT FACILITIES & SERVICES PROVIDED BY THE PORT OPERATOR



- (a) Subject to these Terms and Conditions the Port Operator will provide to the User access to the Port and/or Port Facilities and/or provide the Services as requested by the User.
- (b) Priority of provision of access to the Port and/or access to Port Facilities and/or provision of Services to the User will be determined by the Port Operator in accordance with the Priority Principles.
- (c) The User acknowledges and agrees that the Port Operator may alter the order of berthing of vessels for access to the Port and/or Port Facilities and/or Services.
- (d) If required by the Port Operator the User shall permit the Port Operator to conduct an inspection or inspections of the User's vessel and if such inspection is conducted then the User shall pay to the Port Operator all costs incurred by the Port Operator as a result of such inspection or inspections.
- (e) The Port Operator may in its discretion alter the Port Facilities to be used by the User by giving to the User prior notice and in such circumstances the Port Operator will use its reasonable endeavours to make alternative facilities available for the use by the User.
- (f) If the Port Operator agrees to provide Port Facilities to the User and then subsequently alters the arrangements in this regard in accordance with Sub-Clause (e) hereof then the Fees to be charged by the Port Operator to the User will be determined by reference to the Fees originally applicable to the Port Facilities which were originally to be provided.

5. PAYMENTS TO PORT OPERATOR

- (a) All payments to be made by the User to the Port Operator for the use of the Port and/or Port Facilities and/or provision of Services shall be in accordance with the Payment Terms and Conditions.



- (b) The User shall pay the Port Operator the Fees as invoiced by the Port Operator without any deduction or right of set-off.
- (c) The User will pay the Port Authority or any relevant Utility Service provider the charges for any Utility Services used by the User at the Port at the rate applicable to use of those Services from time to time.

6. GOODS AND SERVICES TAX

- (a) In this Clause the following terms and expressions shall have the following meanings:

“Basic Consideration” means the Consideration to be paid or provided to the Provider for any Taxable Supply under this Agreement (other than GST payable pursuant to this Clause).

“Consideration” has the meaning, which it bears in Section 195-1 of the GST Act.

“GST” shall mean the goods and services tax payable under the GST Act.

“GST Act” means A New Tax System (Goods and Services Tax) Act, 1999 and any legislation substitute for, replacing or amending that Act.

“GST Law” has the meaning which it bears in Section 195-1 of the GST Act.

“Recipient” means any party who receives a Taxable Supply under this Agreement.

“Provider” means any person who provides a Taxable Supply under this Agreement.

“Taxable Supply” has the meaning which it bears in Section 195-1 of the GST Act.



“Tax Invoice” has the meaning which it bears in Section 195-1 of the GST Act.

- (b) Unless expressly stated otherwise in this Agreement the Consideration payable is exclusive of GST.
- (c) All Parties to this Agreement shall if not already registered register under the GST Act.
- (d) If GST is payable on the Basic Consideration or any part thereof or if the Provider is liable to pay GST in connection with any Taxable Supply provided to any Recipient under this Agreement, then:
 - (i) the Provider may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST payable; and
 - (ii) the Recipient shall pay the increased Basic Consideration on the due date for payment by the Recipient of the Basic Consideration.
- (e) Where the Basic Consideration is to be increased to account for GST pursuant to Sub-Clause (d) hereof, the Provider shall, upon receipt of such amount, issue a Tax Invoice to the Recipient.

7. **OBLIGATIONS OF USERS**

- (a) The User shall ensure that at all times within the Port all Vessels utilising the Port and/or Port Facilities and/or Services have on board all relevant certifications applicable to those Vessels current and effective at all times whilst the Vessels are in the Port and/or utilising the Port Facilities and/or receiving Services.
- (b) In the event that the User has any vehicles or equipment within the Port or using the Port Facilities or receiving Services then the User shall ensure that such

vehicles and/or equipment possesses all relevant certifications so that they may be operated in accordance with Law.

- (c) The User will promptly provide to the Port Operator all information reasonably required by the Port Operator to enable the efficient and orderly use of the Port and/or Port Facilities and provision of the Services in coordination with other users of the Port and/or Port Facilities and/or Services including, without limitation, any changes to the Time of Arrival or Time of Departure and will provide the Port Operator with full details of any item or substance on a Vessel or which may be handled at the Port and/or Port Facilities and/or with respect to which Services may be provided of a hazardous, toxic or dangerous nature.
- (d) The User shall ensure that the User and the User's contractors, agents, employees and representatives:
 - (i) use the Port and/or Port Facilities in a manner which prevents damage (including any environmental damage, contamination or pollution) to the Port and/or Port Facilities;
 - (ii) keep and maintain the Port Facilities in good condition (having regard to the age of the Port Facilities and their general condition) and leave the Port Facilities in a good, clean and operational condition after use; and
 - (iii) leave the Port Facilities clean of all rubbish and in the same condition as they were in prior to use.
- (e) The User must not operate or leave equipment at the Port Facilities without obtaining a "permit to occupy" from the Port Operator and in the event that a User is permitted to and leaves any equipment, machinery or other thing at the Port Facilities then such equipment, machinery or thing shall be left at the Port at the entire risk of the User and the User releases the Port Operator from and against all claims in connection with such equipment and/or machinery.
- (f) The User being a visiting Vessel into the Port must comply with the Port Vessel Rightship vetting process if applicable to such Vessel and the other



requirements set out in the Port Operation Access Policy and Comply with the requirements of Australian Port State Control pursuant to the provisions of the Australian Navigations Act, Marine Orders thereunder, the Australian Maritime Transport Facilities Security Act 2003 (ISPS) and any other applicable Australian or Northern Territory Legislation.

8. USE OF PORT, PORT FACILITIES & SERVICES

- (a) The Port Operator will provide access to the Port and Port Facilities and provide the Services in accordance with good industry practice and all applicable Laws.
- (b) The Port Operator does not make or give any representation or warranty regarding the Port and/or the Port Facilities and/or the Services and, to the fullest extent permitted by Law, excludes any representations or warranties provided or implied by Law.
- (c) The User shall have access to the Port and/or Port Facilities and shall use the Services at the sole risk of the User and to the fullest extent permitted by Law the Port Operator shall not be liable to the User and the User releases the Port Operator in relation to all Claims that may be made against the Port Operator and all Loss incurred by the User at any time arising out of or in connection with, directly or indirectly, access to the Port and/or the Port Facilities and/or the provision of the Services to the User or in connection with these Terms and Conditions including without limitation Loss:
 - (i) to any property;
 - (ii) arising from or in connection with injury or damage done or suffered to any person including death, environmental damage, pollution or contamination or a failure to deliver or delay in the provision or delivery of access to the Port and/or the Port Facilities and/or the Services;
 - (iii) suffered by the User as a result of termination of access to the Port and/or the Port Facilities and/or provision of the Services by the Port Operator;



- (iv) as a result of any delay in provision of access to the Port and/or the Port Facilities and/or provision of the Services;
- (v) as a result of any delay in provision of access to the Port and/or the Port Facilities and/or provision of the Services due to the application of the Priority Principles; and
- (vi) arising in connection with the exercise or attempted exercise of, failure to exercise or delay in exercising a consent or approval under these Terms and Conditions.

9. INDEMNITY BY USER

- (a) The User shall indemnify, keep indemnified and hold harmless the Port Operator from and against claims by any person against the Port Operator in respect of personal injury or death or loss of or damage to any property;

caused by or contributed to or arising out of or as a consequence of the access, occupation or use of the Port and/or the Port Facilities by the User its employees, contractors, agents or representatives or the provision of Services by the Port Operator.

- (b) The User will also indemnify, keep indemnified and hold harmless the Port Operator from against any loss or damage caused by or contributed to by:
 - (i) any breach by the User of any contract between the User and the Port Operator;
 - (ii) the negligence of the User;
 - (iii) fraud or criminal conduct by the User for which the User is responsible;
 - (iv) any breach of any applicable Laws by the User; and



- (v) any pollution or contamination caused by the User.

- (c) The User acknowledges the existence of equipment at the Port and the Port Facilities and equipment including vessels and tugs used to provide the Services which may not be owned by the Port Operator and the User shall indemnify, keep indemnified and hold harmless the Port Operator from and against all Claims that may be brought by any person against, and all Loss incurred by the Port Operator, directly or indirectly, whether in contract, tort or otherwise, in relation to or arising from the use of the equipment referred to in this Sub-Clause by the User its employees, contractors, agents or representatives or resulting from any damage to or destruction of such equipment or any part of such equipment if caused by any Vessel or its equipment or cargo or any floating object or any material belonging to or associated with a Vessel or its equipment or cargo or any person employed in on or in relation to such Vessel or equipment or floating object or material or cargo and whether or not the loss or damage or destruction is caused by the wilful or negligent act or omission of the User or any person for whom the User is responsible.

10. STRICT LIABILITY FOR DAMAGE TO PORT PROPERTY

- (a) This Clause applies if any Port Facility or other property of the Port or the environment in or around the Port or Port Facilities is damaged or destroyed by:
 - (i) A Vessel or its equipment or cargo; or
 - (ii) Any floating object belonging to or associated with a Vessel or its equipment or cargo; or
 - (iii) Any material belonging to or associated with a Vessel or its equipment or cargo; or
 - (iv) Any person employed in, on or in relation to, a thing referred to in Sub-Clause (i), (ii) or (iii) hereof.



- (b) If this Clause applies, the User is answerable in damages to the Port Operator for the whole of the damage or destruction whether or not the damage or destruction is caused through a person's wilful or negligent act or omission.

- (c) In an action under this Clause the damages recoverable are to be determined on the basis of:
 - (i) The actual cost incurred in repairing or replacing the damaged or destroyed Port Facility or property without taking into account any betterment or depreciation or in the case of damage to the environment the cost of remediating such damage; and
 - (ii) Any economic loss suffered by the Port Operator as a result of the damage or destruction.

- (d) Without limiting any other provision of these Terms and Conditions, the Port Operator is not liable for any loss or damage caused to a Vessel in the Port:
 - a) That results from:
 - (i) The master of the Vessel complying with a direction given in good faith; or
 - (ii) A thing done or omitted to be done in good faith in respect of the Vessel,

By the Harbour Master or a member of the staff of the Port Operator; or
 - b) That results from a defect in a mooring, anchorage or berth, or anything else, provided by the Port Operator.

- (e) The Port Operator is not liable for any loss or damage caused to any goods that a person (other than the Port Operator):
 - a) Loads onto or unloads from a Vessel at the Port; or



b) Stores at the Port.

and the Port Operator does not become liable for any loss or damage caused to any goods referred to in Sub-Clause (e)(ii) hereof stored in an uncovered or unprotected manner at the Port because the Port Operator provides, or attempts to provide, any temporary cover or protection for those goods.

(f) The Port Operator is not liable for any loss caused by or relating to a delay in the delivery of any goods loaded onto or unloaded from a Vessel at the Port.

(g) The Port Operator is not liable for any loss or damage resulting from an event outside the control of the Port Operator, including:

- a) An act of God; or
- b) An act of war; or
- c) An act of public enemies; or
- d) Any insurrection, revolution or civil disorder; or
- e) The unlawful seizure of control of any people or any vessels, vehicles or other property; or
- f) Any industrial disputes of any kind, including strikes, lockouts, stoppages or restraints of labour (whether partial or general) from any cause; or
- g) The use for the purpose of war or defence, or training or preparation for war or defence, of any Port Facilities or other property of the Port Operator.

11. NOTIFICATIONS TO PORT OPERATOR

(a) The User must report to the Port Operator any incidents in relation to or arising from the use by the User of the Port and/or the Port Facilities and/or the provision of the Services as soon as reasonably practicable in writing.

(b) In the event of any emergency, accident or threat to security the User must notify emergency services by dialling 000 and contacting the Port Operator and



the User must provide the Port Operator and any emergency services with all access, assistance and information as either the Port Operator and/or emergency services may lawfully and reasonably require.

12. INSURANCE

- (a) Prior to being granted access to the Port and/or the Port Facilities and/or being provided with the Services the User must obtain and maintain comprehensive public liability insurance including coverage for sudden and accidental pollution for an amount of at least Twenty million dollars (\$A20,000,000) and any other insurance that may be required by the Port Operator.
- (b) The User warrants and represents to the Port Operator that any stevedore or other contractor engaged or used by the User in relation to the Port and/or the Port Facilities and/or the Services has appropriate insurance with a reputable insurance company in relation to:
 - (i) workers compensation or similar employee insurance as required by any Laws; and
 - (ii) damage caused by the contractor at the Port and/or the Port Facilities including damage arising from the use of vehicles, cranes or any other machinery.
- (c) The User warrants that the owner of all Vessels have Protection and Indemnity insurance with entry in an International Group Member P&I Club covering protection and indemnity risks for such Vessels connected with the use by the User of the Port and/or the Port Facilities and/or provision of the Services including coverage for pollution, spillage and wreck removal, for an amount of at least Five Hundred million dollars (\$A500,000,000.00) or, in the case of recreational vessels One Hundred million dollars (\$A100,000,000) and for the purposes of this Sub-Clause the term "owner" includes the User, and Vessel owners and charterers.
- (d) The insurances referred to in this Clause must be for any single event and cover



all operations by the User in or about the Port and/or the Port Facilities and/or whilst receiving the Services and such insurance policies must be with reputable insurance companies and relevant Certificates of Currency must be provided to the Port Operator upon request. If the Port Operator requests a copy of the policy of insurance then the User must also provide such copy to the Port Operator along with any other relevant documentation prior to the User being granted access to the Port and/or the Port Facilities and/or receiving the Services.

13. CONDUCT OF THE USER AT THE PORT

The User must ensure that the User and the User's employees, contractors, agents and representatives:

- (a) comply with all:
 - (i) Laws and Port Requirements; and
 - (ii) directions from or on behalf of the Port Operator including directions which may be published on the Port Operator Website from time to time as port notices, safe work procedures, policies, security arrangements and ancillary procedures or directions related to any system of induction to the Port,
- (b) not obstruct or endanger any person at the Port;
- (c) take all reasonable steps to prevent interference, nuisance, unreasonable noise and disturbance to any other User or other person at the Port; and
- (d) coordinate the activities of the User in consultation with other users of the Port and/or Port Facilities and/or Services.

14. TERMINATION BY PORT OPERATOR



- (a) Without in any way limiting any other rights of the Port Operator, the Port Operator may terminate or refuse to provide access to the Port and/or the Port Facilities and/or refuse to provide Services to the User if:
- (i) the User commits any breach of these Terms and Conditions and such breach creates a material safety issue or materially adversely affects the ability of the Port Operator to provide access to the Port and/or the Port Facilities and/or provide Services to other users of the Port;
 - (ii) the User commits any breach of these Terms and Conditions and, if capable of remedy, but other than in the circumstances described in Sub-Clause (a)(i) hereof the User fails to remedy such breach within any period of time notified to the User by the Port Operator;
 - (iii) the Port Operator considers that an Event of Force Majeure is such that it will prevent the Port Operator from providing access to the Port and/or the Port Facilities and/or providing the Services to the User within the time period originally contemplated by the Parties and the Port Operator does not consider that it is practicable to reschedule the provision of access to the Port and/or the Port Facilities and/or provide the Services until such time as the Event of Force Majeure ceases;
 - (iv) the Vessel has not arrived within a period of time that the Port Operator considers to be a reasonable time after the Time of Arrival and the Port Operator does not consider that it is practicable to reschedule access to the Port and/or the Port Facilities and/or provision of the Services.
- (b) The Port Operator shall notify the User of any termination or refusal to provide access to the Port and/or the Port Facilities and/or provide the Services referred to in this Clause.
- (c) Where access to the Port and/or the Port Facilities and/or provision of Services has been terminated or refused pursuant to this Clause the User shall be entitled to submit a new application or Notice of Arrival.



15. EVENTS OF FORCE MAJEURE

If the Port Operator is prevented or delayed in providing access to the Port and/or Port Facilities or provision of the Services by an Event of Force Majeure then for so long as that situation continues the Port Operator shall be excused from providing access to the Port and/or the Port Facilities and/or providing the Services to the extent that the Port Operator is so prevented or delayed.

16. ASSIGNMENT, NOVATION & SUB-CONTRACTING

- (a) The Port Operator may sub-contract to any person or entity whomsoever any of its obligations referred to in these Terms and Conditions.
- (b) The User shall not be entitled to assign or novate any rights or obligations under these Terms and Conditions without the prior express written consent of the Port Operator which consent may be withheld by the Port Operator as the Port Operator may in its absolute discretion think fit.
- (c) A User will be deemed to have assigned or novated its rights or obligations in breach of these Terms and Conditions if, without the prior express written consent of the Port Operator there is a Change in Control of the User.

17. SAFETY, STEVEDORES & OTHER CONTRACTORS

- (a) The User must ensure that the User and its employees, contractors, agents and representatives maintain a safe environment at the Port and the Port Facilities at all times.
- (b) The User shall ensure that the User's worksite(s) at the Port and the Port Facilities are fit for purpose prior to undertaking any activities at the Port or the Port Facilities including, without limitation, undertaking appropriate and adequate risk assessments and preparing appropriate safety plans having regard to the Permitted Use and foreseeable risks ("Safety Plan"). Safety Plans must include a consideration of, and risk mitigation strategies in respect of:



- (i) mooring and letting go of Vessels;
 - (ii) stevedoring operations;
 - (iii) receiving and delivery of cargo
 - (iv) appropriate numbers of suitably qualified and competent personnel to perform the activities intended to be carried out at the Port and/or the Port Facilities;
 - (v) site access and management of that access (including for contractors, invitees and agents);
 - (vi) stores to Vessel(s); and
 - (vii) evacuation plans.
- (c) Upon request by the Port Operator the User shall provide to the Port Operator its Safety Plan(s).
- (d) The User shall ensure that all stevedores and other contractors engaged by the User or who use the Port and/or the Port Facilities:
- (i) are reputable;
 - (ii) have sufficiently experienced personnel to properly undertake their duties at the Port and/or the Port Facilities; and
 - (iii) operate under the conditions of all applicable permits issued in relation to the User at the Port and management plans relevant to their operation.

18. PILOTAGE SERVICES

- (a) This Clause applies where the Services provided or to be provided to the User are Pilotage Services. Pilotage for vessels using the Port is compulsory and in entering the Port the user accepts compulsory pilotage as set out herein as applicable under Statute Law and Common Law;
- (b) the User shall not bring any Claim against a Pilot or the provider or the employer of the Pilot involved in the provision of Services whether in tort, contract or otherwise;
- (c) the User and not the Pilot or the provider or employer of the Pilot or the Port Operator shall be liable for any Loss caused by a Vessel or by a fault in the navigation of the Vessel whilst under pilotage (whether compulsory or otherwise) even if there is negligence or an error or breach of duty on the part of the Pilot.
- (d) The User shall be responsible for the safety and wellbeing of the Pilot during the provision of the Pilotage Services.
- (e) The User shall ensure that the Pilot is provided with safe access to the Vessel(s) and a safe operating environment whilst on the Vessel(s) and the User shall ensure that any equipment used by the Pilot in the provision of the Pilotage Services is safe and fit for purpose.
- (f) Prior to a Pilot boarding the Vessel(s) the User must provide to the Pilot, the provider or employer of the Pilot and the Port Operator:
 - (i) complete, up to date and accurate information about the Vessels, the Vessel(s) requirements, the Vessels sailing condition, access, safety procedures and any other matters that may reasonably be expected to affect the provision of the Pilotage Services; and
 - (ii) details of any policy of the Vessel(s) that the User requires the Pilot to comply with provided always that such policy has received the prior express written approval of the Port Operator.

- (g) Without in any way limiting any other provisions of this Clause the User acknowledges and agrees that any Pilot providing any Pilotage Services is acting as pilot of the Vessel(s) and that neither the Pilot, the Pilotage Authority that licensed the Pilot or the entity or entities that provided or employed the Pilot or the Port Operator will be liable for any loss or damage caused or suffered by a Vessel(s) and the User will be solely responsible for such loss or damage.
- (h) An approved Pilot who as pilot has control of a Vessel in the Port is subject to the authority of the master of the Vessel, and the master is not relieved from responsibility for the conduct and navigation of the Vessel by reason only of those circumstances.
- (i) The owner or master of a Vessel moving under compulsory pilotage in the Port and the User are liable for any loss or damage caused by the Vessel, or by a fault in the conduct or navigation of the Vessel, in the same manner as the owner or master or User would be liable if pilotage were not compulsory.
- (j)
 - (1) The Port Operator is not liable for any loss or damage resulting from an act or omission by a person approved as a Pilot in the conduct or navigation of a Vessel of which the person is the pilot.
 - (2) An approved Pilot is not personally liable for any loss or damage resulting from an act or omission by him or her in the conduct or navigation of a Vessel of which he or she is the pilot.
 - (3) The employer of a person who is an approved Pilot is not liable for any loss or damage resulting from an act or omission by the person in the conduct or navigation of a Vessel of which the person is the pilot.

19. HARBOUR MASTER

(1) The principal functions of the Harbour Master are:

- a) To control the movement and mooring and berthing of Vessels in the Port; and



- b) To ensure that the Port is kept free of obstructions or possible obstructions to Vessels using the Port; and
 - c) To ensure that the operations of the Port in relation to Vessels are conducted safely and efficiently.
- (2) The Harbour Master has such other functions as the Port Operator determines.
- (3) For the purpose of performing his or her principal functions the Harbour Master may direct the owner, master, or person in charge of a Vessel to do any or all of the following:
- a) to ensure that the Vessel does not enter the Port;
 - b) to navigate the Vessel in a specified manner while it is in the Port;
 - c) to moor the Vessel in the Port at a specified place and in a specified manner;
 - d) to move the Vessel out of the Port or to another place in it;
 - e) to take any action specified by the Harbour Master in relation to the means by which the Vessel is moored in the Port.
- (4) When the safety of people or property is in danger from a Vessel in the Port and no other direction is reasonable in the circumstances, the Harbour Master may direct the User or owner, master, or person in charge of the Vessel to scuttle it immediately.

20. LIMITATION OF LIABILITY

The maximum liability of the Port Operator for any Loss or Claim under any contract formed upon the acceptance by the User of these Terms and Conditions is limited to the amount of the fees charged by the Port Operator to the User for access to the Port and/or the Port Facilities and/or provision of the Services with respect to the Vessel concerned.



21. AGENT

If the person signing these Terms and Conditions on behalf of the User is an agent of the User then such agent is not the User and is not liable to carry out the obligations of the User however such agent does warrant to the Port Operator that at all times it has full authority to bind the User to the provisions of these Terms and Conditions.

22. UNDERTAKINGS AND WARRANTIES

Notwithstanding the completion or termination of any use of the Port or the Port Facilities or the Services the warranties and undertakings of the User herein contained or referred to shall continue to subsist as long as shall be necessary for the purpose of giving effect to each and every one of them.

23. RIGHTS AND OBLIGATIONS AFTER TERMINATION

The expiration or determination of any use of the Port or the Port Facilities or the Services howsoever arising shall not in any way affect such of the provisions hereof as are expressed to operate or have effect hereafter and shall be without prejudice to any right of action already accrued to either Party in respect of any breach of these Terms and Conditions by the other Party.

24. GOVERNING LAW

The Terms and Conditions shall be governed by and construed in accordance with the laws for the time being of Western Australia and the Parties hereby submit to the non-exclusive jurisdiction of the Courts of Western Australia and any Courts which may hear appeals from those Courts in respect of any proceedings in connection with this Agreement.

25. NOTICES

If either Party shall desire to give to or serve on the other Party any notice, claim or demand hereunder or in connection herewith then such notice, claim or demand shall be sufficiently given if forwarded by registered post or facsimile transmission to such



Party at his address stated herein or last known to the Party desiring to give such notice or in the case of any Party being a company to its registered office. Every notice shall be deemed to have been received and given at the time when in the ordinary course of post or transmission it should have been delivered or received at the address to which it was sent PROVIDED THAT if the day on which such notice or other communication as aforesaid is or is by this Clause deemed to have been received falls on a Saturday, Sunday or day which is a public holiday in the intended place of service or receipt, then the notice or other communication aforesaid shall be deemed to have been received on the day next following which is not a Saturday, Sunday or public holiday as aforesaid irrespective of whether or not such notice or other communication has been accepted by the addressee thereof.

26. VALIDITY OF TERMS AND SEVERABILITY

In the event that any of the terms, conditions or provisions contained in these Terms and Conditions shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

27. VARIATIONS

These Terms and Conditions may be amended or varied only by agreement in writing executed by all the Parties hereto.

28. WAIVER

No waiver of any provision of these Terms and Conditions nor consent to any departure therefrom by any of the Parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the Parties in exercising any rights powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right power or privilege.



29. FURTHER ASSURANCES

The Parties hereby mutually agree to execute all documents and to do all such acts and things as shall be necessary or appropriate in order to implement and to give full effect to the provisions and purposes of these Terms and Conditions.

30. REMEDIES AND RIGHTS TO BE CUMULATIVE

All remedies, rights, undertakings, obligations or agreements of the Parties hereto arising by law, these Terms and Conditions or otherwise shall be cumulative and none thereof shall be in limitation of any other right, remedy, undertaking, obligation or agreement of such Party. Each Party may follow any remedy to which such Party is entitled by law, these Terms and Conditions or otherwise concurrently or successively at that Party's option.

These Terms and Conditions are acknowledged and agreed by the User.

Date

Signature

Print name of Signatory and
position in the User

Print full name of User



Print full address and contact details of User (including fax, e-mail and telephone details and name of contact person at office of User)