

Capitalised words are defined and the definitions can be found at the end of the document.

THIS AGREEMENT is made between:

Port of Portland Pty Ltd ACN 072 507 012 ("POPL")

and

The Vessel Owner or person named at Part 2 of the Application and all of them if more than one ("Principal") and the Shipping Agent named at Part 2 of the Application ("Shipping Agent") (for itself and the Principal)

IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Agreement on the Standard Terms and Conditions

- 1.1 This Agreement commences when POPL receives an Application (see Contract Formation Notice Part 1).
- 1.2 Without affecting clause 1.1, POPL requires each Application to be in the required form. This Agreement consists of Parts 1-7 of 14 pages headed "Application for Berth".
- 1.3 By submitting the Application (including by the Shipping Agent) the Principal and the Shipping Agent each acknowledge that they have received, read, understood and agree to abide by the POPL Information.
- 1.4 On receipt, POPL must consider the Application. Despite clause 1.1, access to or use of any part of the Facility or the Channel is prohibited unless and until POPL has in its absolute discretion approved the relevant Application.

2. Appointment of Shipping Agent and warranty of authority

- 2.1 The Principal and the Shipping Agent each warrant for themselves and for each other that the Principal has engaged the Shipping Agent to act as its agent on the Principal's behalf with the Principal's full authority for all purposes of and in connection with this Agreement.
- 2.2 Each of the Principal and the Shipping Agent must notify POPL immediately of:
 - (a) any termination of such engagement;
 - (b) the name of any replacement Shipping Agent the Principal appoints following such termination; and
 - (c) any change in the ownership or management of a Vessel during the Term.
- 2.3 The warranties in clause 2.1 are continuing warranties.

3. Shipping Agent's responsibilities

- 3.1 The Shipping Agent must:
 - (a) inform itself and the Principal:
 - (i) of the POPL Information;
 - (ii) of all other documents and procedures of POPL that are or may be relevant to the Principal;

- (b) notify the Principal of the Port Charges and collect from the Principal and pay all relevant disbursements, fees and charges including the Port Charges to POPL within the time required;
- (c) ensure the Principal is informed promptly of any directions from the harbour master or his delegate;
- (d) not less than 24 hours before access by the Vessel provide to POPL a copy of all Required Certificates;
- (e) promptly give to POPL a copy of all notifications and information required by law in respect of the Vessel and the Principal and its/their activities including but not limited to those that can affect human health, safety and the environment; and
- (f) provide these terms and conditions to the Principal for each ship visit to Portland.

3.2 The Shipping Agent is jointly and severally liable with the Principal to make all payments that are due to POPL pursuant to clause 3 and clause 7 of these terms.

3.3 The Shipping Agent must not endanger or permit its agents, contractors or visitors to endanger another user of the Facility and the Channel and any part of it or them including but not limited to multi-user areas and the wharf apron. The Shipping Agent indemnifies POPL for all costs and consequences of their breach of this clause.

3.4 Clause 3 does not affect clause 1.

4. Use of Facility

4.1 Access to and use of the Facility and the Channel and any part of it or them is granted only for purposes that are:

- (a) lawful; and
- (b) permitted by POPL in its sole discretion.

4.2 The Principal or Vessel never has any right of exclusive occupation or use of any of the Facility, the Channel or any part of them.

4.3 No representation or warranty is made by POPL concerning the adequacy or suitability of the Facility or the Channel or any part of them for the Vessel or for or in connection with any use or intended use. This includes when information is provided verbally or in writing from time to time by POPL, its servants, agents and contractors.

4.4 The Principal and the Shipping Agent must each make its own enquiries and at its own cost take any necessary advice concerning

- (a) all matters referred to in clause 4.3; and
- (b) as to the relevance, applicability, meaning, effect and consequences of the POPL Information and all other documents, procedures and directions of POPL.

4.5 The Principal must not endanger or permit its agents, contractors or visitors to endanger another user of the Facility and the Channel and any part of it or them including but not limited to multi-user areas and the wharf apron. The Principal indemnifies POPL for all costs and consequences of its breach of this clause.

4.6 Access to and use of the Facility and the Channel or any part of them (including but not limited to withdrawal, change and the imposition of any conditions) is always subject to the direction of the harbour master or his delegate which may be given at any time.

5. **Term**

This Agreement commences when POPL receives an Application and continues (subject to clause 31.3), unless sooner terminated under clause 28, until the completion of the safe disembarkation of the outward pilot as the Vessel departs (or when exempt pilotage, passes the point at which outward bound vessels customarily drop the outward pilot).

6. **Withdrawal of access or hire**

POPL reserves the right to grant, refuse, withdraw or impose and change conditions in respect of access to or use of the Facility or the Channel (or any part of either or both of them) when:

- (a) The Facility or any part of it is unsuitable for use;
 - (b) the Channel or any part of it is unsuitable for use; or
 - (c) when necessary for any other reason;
- all in the sole opinion of the harbour master or his delegate.

6.2 The Principal and the Shipping Agent must abide by the harbour master's direction (or that of his delegate) in all matters pertaining to use and access to the Facility or the Channel (or any part of either or both of them).

6.3 POPL will refund to the Principal or the Shipping Agent any monies paid in advance in the event of a refusal or withdrawal of access. The amount of any such refund will be calculated by POPL (acting reasonably) and the Principal agrees to abide by POPL's decision.

6.4 No compensation is ever payable by POPL in respect of any grant, refusal, withdrawal or imposition and change of conditions in connection with access to or use of the Facility or the Channel, including without limitation in connection with any change in the Facility, the Channel (or any part of them) or in connection with any discretion or direction of the harbour master or his delegate.

6.5 POPL is never liable in any circumstances for any remote, consequential or indirect loss or damage

including but not limited to loss of hire, loss of profit, or loss of or additional costs of use.

7. **Port Charges**

7.1 The Principal must pay the Port Charges promptly and in full as soon as they fall due.

7.2 POPL has the right in its discretion to invoice a Principal for advance payment of Port Charges before arrival of a vessel. When POPL does so, payment of those Port Charges are due on receipt of the relevant invoice.

7.3 Subject to clause 7.2 Port Charges are due for payment within:

- (a) 14 days from the date of invoice for wharfage; and
- (b) 30 days from the date of invoice for any other Port Charges.

7.4 Port Charges must always be paid in full in cleared funds and without discount, deduction, counterclaim or set-off, and regardless of any dispute between any of POPL, the Principal and the Shipping Agent.

7.5 The Principal must reimburse POPL for POPL's costs incurred as a result of complying with any law in relation to a Vessel. The costs referred to in this clause include but are not limited to costs incurred by POPL in connection with the provision of security or security related services.

7.6 In the event of late payment of any Port Charges or other sums the Principal must pay interest on monies exceeding the Company's trading terms at rates prescribed from time to time in the Penalty Interest Act 1983.

8. **Cargo Manifests and documentation**

8.1 The Principal must ensure that:

- (a) Each Inward Manifest in the required form is lodged by fax or email no later than 24 hours after a Vessel berths.
- (b) Each Outward Manifest in the required form is lodged by fax or email no later than 24 hours after departure of a Vessel from Portland.

8.2 The Principal must lodge with POPL any additional information reasonably requested by POPL concerning any Cargo within 24 hours of a written request.

9. **Acknowledgements by the Principal and the Shipping Agent**

9.1 The Principal and the Shipping Agent each acknowledge and agree that they are responsible for the acts and omissions of each of their respective servants, agents, contractors and visitors to the Vessel.

9.2 The Principal and the Shipping Agent each warrant that any information they provide or will

provide to POPL is accurate and complete. The Principal and the Shipping Agent each acknowledge that any and all such information will be relied on by POPL.

9.3 The Principal must indemnify POPL against loss caused by the Principal's act, omission or conduct in the course of its access to or use of the Facility or the Channel or otherwise in connection with the Vessel or Cargo including but not limited to:

- (a) loss or damage to the property of POPL including the Facility and the Channel or any part of them;
- (b) claims by any person against POPL in respect of personal injury or death or loss of or damage to any property;
- (c) claims by any person against POPL in respect of loss of use, interruption or delay;
- (d) costs incurred by POPL in defending such claims;
- (e) POPL's loss, damage or expense of any kind whatever and however arising in connection with any Pollution.

9.4 Fair wear and tear is excepted from clause 9.3(a).

10. Compliance with Legislative Requirements and directions

10.1 The Principal and the Shipping Agent must each comply with all applicable laws and the POPL Information.

10.2 The Principal and the Shipping Agent must each immediately and strictly comply with every:

- (a) direction of the harbour master or his delegate;
- (b) direction of POPL's port security officer (including any acting port security officer);
- (c) direction of POPL in connection with access to or use of the Facility;
- (d) direction of any person authorised by statute to give directions including pursuant to the Marine Act 1988 (Vic) and Port Services Act 1995 (Vic) as in force from time to time provided that nothing in clause 10.2 affects the master's duty and lawful discretion concerning the safety of a Vessel, persons and Cargo.

10.3 The Principal and the Shipping Agent must each ensure compliance by each of their respective servants, agents, employees, contractors and visitors with all applicable laws, Port regulations, the POPL Information and the terms of this Agreement.

11. Hazardous substances

11.1 The Principal must not, without POPL's prior written consent use or allow the Facility, or any Port waters to be used for the use, transfer, handling, movement, carriage, placement or storage of any hazardous, dangerous, flammable, explosive,

noxious, damaging, toxic, corrosive, irritating, offensive, radioactive, oxidising, poisonous, or infectious substance, whether or not defined as any such by the IMDG Code or any other published source.

11.2 The Principal must continually comply with all applicable codes and conventions for the permitted use transfer, handling, movement, carriage, placement or storage of such substances.

12. Environmental Obligations

12.1 The Principal must not cause or permit any Pollution.

12.2 The Principal must immediately and on becoming aware of any Pollution give written notice to POPL with sufficient particulars of each such occurrence and then:

- (a) promptly provide such further information as POPL may reasonably require;
- (b) upon lawful request from POPL or a competent authority at the Principal's own expense clean-up and rectify any Pollution; and
- (c) comply with any lawful direction issued by POPL or a competent authority in connection with any Pollution and its consequences including as to the time to carry out any such direction.

12.3 POPL is appointed pursuant to the Marine Act 1988 (Vic) as first response for any Pollution incident in the sea area from the South Australia border with Victoria to Cape Otway.

13. Safety

13.1 The Principal and the Shipping Agent each acknowledges that occupational health and safety on and in connection with a Vessel is at all times the responsibility of the Principal and the master of the Vessel.

13.2 The Principal must obtain any permits when required by law.

13.3 The Shipping Agent acknowledges that occupational health and safety of the Shipping Agent's employees, contractors and agents is at all times the responsibility of the Shipping Agent.

13.4 The Principal must:

- (a) use best endeavours to ensure that its employees are not exposed to conditions or practices that have the potential to cause personal injury;
- (b) fully comply with all occupational health and safety laws;
- (c) use best endeavours to ensure that its employees and invitees comply with all applicable occupational health and safety requirements;
- (d) immediately notify POPL of any matter which is notifiable to WorkSafe Victoria (or successor

entity) or notifiable pursuant to the provisions of any occupational health and safety law.

14. **Emergency**

The Principal and the Shipping Agent must, in the event of emergency, accident or threat to security, provide POPL and any emergency services with such access, assistance and information as either of them may lawfully and reasonably require.

15. **Notification of damage and injury**

The Principal and the Shipping Agent must:

- (a) promptly on becoming aware of any damage to property of POPL or the Facility or any injury to any person advise POPL of such damage or injury; and
- (b) no later than 24 hours after the occurrence of such damage or injury cause a detailed written report to be lodged with the harbour master or his delegate at POPL.

16. **Port Security**

- 16.1 The Principal must inform itself of and strictly comply with the requirements of the Maritime Transport and Offshore Facilities Security Act 2003 (Cth) as in force from time to time including any modification or substitute.
- 16.2 The Principal acknowledges that the Port is a Security Regulated Port within the meaning of that Act.

17. **Service providers to Vessels**

- 17.1 Access for third parties engaged by the Principal to provide services may be given, withheld or given subject to conditions by POPL, acting lawfully.
- 17.2 The Principal and the Shipping Agent must each inform visitors of POPL's security and induction requirements.

18. **Towage**

- 18.1 Towage services will be provided on Standard Conditions for Towage, dated 20 September 2010, which are available at POPL's web-site at www.portofportland.com.au, or on request.
- 18.2 POPL offers and the Principal accepts the provision of towage service on these terms, in the event POPL determines towage services are required, or the Principal requests them.
- 18.3 The Principal releases POPL its servants, agents and contractors from claims and liability in connection with towage of vessels to the extent permitted by law.
- 18.4 Where POPL is precluded from excluding its liability by law, the liability of POPL is limited to the value of the re-supply of the services.

19. **Pilotage**

- 19.1 Pilotage is compulsory for vessels over 35m LOA unless the vessel's Master has exemption under the relevant legislation.
- 19.2 POPL offers and the Principal accepts provision of compulsory pilotage services.
- 19.3 The Principal agrees to abide by the duty pilot's discretion in decisions as to the cessation of operations due to weather and operational circumstances.
- 19.4 The Principal releases POPL, its servants, agents and contractors from all claims and liability in connection with pilotage of vessels to the extent permitted by law.
- 19.5 Where POPL is precluded from excluding its liability by law, the liability of POPL is limited to the value of the re-supply of the services.

20. **Stevedoring**

- 20.1 When POPL provides stevedoring services, the Principal releases POPL and its servants, agents and contractors from claims and liability in connection with stevedoring to the extent permitted by law.
- 20.2 Where POPL is precluded from excluding its liability by law, the liability of POPL is limited to the value of the re-supply of the services.
- 20.3 When POPL does not provide stevedoring services, the Principal is responsible to agree terms with the provider of such services and POPL is under no obligation or responsibility of any kind in respect of any provider of such services, or in respect of any statement, act or omission of any provider of such services.

21. **Linesmen and Mooring**

- 21.1 The Principal releases POPL and its servants, agents and contractors from any claim or liability in connection with the shifting and mooring of vessels to the extent permitted by law.
- 21.2 Where POPL is precluded from excluding its liability by law, the liability of POPL is limited to the value of the re-supply of the services.

22. **Supply of water and other services**

- 22.1 The Principal must ensure that fresh water supplied at the Facility is not used for industrial or commercial purposes such as washing down decks or ballast.
- 22.2 The Principal and the Shipping Agent must each carry out and abide by all relevant requirements of the POPL information in connection with the provision by POPL of any services including but not limited to water, waste disposal, quarantine, bunkering, power supply and use of gangways or other equipment.

23. Insurance

- 23.1 The Principal warrants continuously that it has in force at all times Marine P&I, and Marine Hull and Machinery cover in respect of a Vessel.
- 23.2 The Principal must provide evidence, to the reasonable satisfaction of POPL, of the provider's identity and of the currency of such insurances.

24. Release and Force Majeure

- 24.1 POPL is not liable for any delay or failure in the performance of any obligation under this Agreement if such delay or failure arises in whole or in part from Force Majeure. If affected by Force Majeure POPL must give the Principals and the Shipping Agent notice in writing without delay and must take all reasonable steps to minimise the delay or failure of performance.
- 24.2 The Principal and the Shipping Agent release POPL from all actions, suits, claims arising directly or indirectly as a consequence of Force Majeure.

25. GST

25.1 In this clause:

- (a) **"GST"** means GST within the meaning of the GST Act;
- (b) **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999.

25.2 Except where stated otherwise an amount payable by a party for a taxable supply made by another party under this Agreement is expressed as a GST exclusive amount.

25.3 If this Agreement requires a party to pay an amount in respect of an expense or liability ("Reimbursable Expense") incurred by another party ("Payee") to a third party, the Reimbursable Expense must be net of any input tax credit to which the Payee is entitled in respect of the reimbursable expense.

25.4 If a party makes a taxable supply under this Agreement, then the party liable to pay for the taxable supply must also pay to the supplier the GST payable in respect of the taxable supply at the time payment for the taxable supply is due.

25.5 A party is not obliged under this clause to pay the GST on a taxable supply to it, until given a valid tax invoice for the supply.

26. Notices

26.1 The provisions of clause 26 do not apply to any direction or communication of an operational nature by servants, agents or contractors of POPL.

26.2 A notice under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;

- (b) sent by pre-paid mail to that person's address; or
- (c) transmitted by facsimile to that person's address.

26.3 A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
- (b) if sent by pre-paid mail, on the third business day after posting; or
- (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

26.4 A business day is a day that is a business day in Portland.

27. Dispute Resolution

27.1 This Agreement and any disputes arising under or in connection with it shall be subject to the laws in force in the State of Victoria.

27.2 Each party submits to the non-exclusive jurisdiction of the Courts in Victoria.

28. Termination

28.1 This Agreement may be terminated by POPL on not less than 7 days' notice.

28.2 If the Principal or the Shipping Agent is affected by an Insolvency Event POPL may terminate this Agreement immediately by notice to the affected party.

29. Entire Agreement

Access, use, and any services are only provided pursuant to this Agreement. This Agreement constitutes the entire agreement of the Parties as to its subject matter and supersedes all prior representations, communications and agreements (if any) between the Parties in connection with its subject matter.

30. Severability of provisions

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

31. General provisions

31.1 Nothing in this Agreement, whether express or implied, and no conduct of POPL affects the responsibility of the master of a Vessel for the safety of the Vessel.

31.2 All rights, immunities, indemnities and limitations of liability in this Agreement continue to have their full force and effect in all circumstances and notwithstanding any breach of this Agreement by

- POPL or any other person entitled to the benefit of such provisions.
- 31.3 Each provision of this Agreement capable of having effect after termination of this Agreement survives the termination of this Agreement.
- 31.4 This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties. The Principal or the Shipping Agent may not assign this Agreement without POPL's consent.
- 31.5 Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.
32. **Definitions**
- 32.1 In this Agreement:
- (a) **Application** means the standard form Application for Berth of POPL.
- (b) **Cargo** means anything carried or intended to be carried on a Vessel as well as any item in or on which they are contained or with which they are stored or handled.
- (c) **Facility** means such part of the land area declared by Order in Council made under section 5(1) of the Port Services Act 1995 as the port land of the Port of Portland as is usually made available by POPL for commercial shipping purposes together with the Channel.
- (d) **Force Majeure** means an event, circumstance or contingency beyond the reasonable control of POPL including but not limited to strike, ban, lockout, riot, civil commotion, difference with or between workmen or other industrial action; accidents to or breakdown of machinery, infrastructure, plant or equipment; interruption or disruption to the supply of electric, gas, water and telecommunication services; blockage, stoppage, accident or hazard in navigable waters; earthquake, lightning, flood, adverse sea and weather conditions, fire, natural disaster, drought, storm, flood, act of God, embargo, blockade, sanctions; terrorism or piracy or the prevention of them; policies or restrictions of governments, action or inaction in connection with any licence, permit or approval; actions, directions, orders or inaction of any lawful authority; war; and all consequences of any of such.
- (e) **Channel** means the customary shipping lanes and deep-water approaches at Portland, the harbour basin, fairway, anchorage, turning areas and alongside any berth or mooring.
- (f) **IMDG Code** means the International Maritime Dangerous Goods Code of the International Maritime Organisation.
- (g) **Inward Manifest** – means the completed electronic cargo inward manifest for Australian Customs for the relevant port call.
- (h) **Insolvency Event** means being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act 2001 (Cth)) or a person appointed to it or any of its property, being taken under section 459F(1) of that Act to have failed to comply with a statutory demand, being unable to pay its debts, or otherwise insolvent and any analogous act in any jurisdiction.
- (i) **Outward Manifest** – means the completed electronic cargo outward manifest for Australian Customs for the relevant port call.
- (j) **Principal** includes the registered owner, beneficial owner, manager, operator, charterer or hirer on any basis that is the subject of this Agreement or any Application.
- (k) **POPL Information** means information all as published by POPL from time to time including at www.portofportland.com.au, copies of which are also available on request and includes the Port Safety Regulations, Standard Conditions for Towage dated 20 September 2010, and any documented protocols and procedures of POPL (a list of which, current as at August 2012, is in the Schedule, Part 7).
- (l) **Pollution** means the release or escape of any substance which is or might become hazardous, dangerous, radioactive, oxidising, poisonous, infectious, flammable, explosive, noxious, toxic, corrosive, irritating, offensive, or damaging to health or to property whether or not defined as such by the IMDG Code or any other published source.
- (m) **Port Charges** means the schedule of the charges of POPL as published from time to time by POPL and available at www.portofportland.com.au and on request.
- (n) **Required Certificates** means in relation to a Vessel, a current certificate of entry with a P&I club, a current certificate of Marine Hull and Machinery insurance, and if so requested by POPL any other certificate including but not limited to a current classification society's certificate, ISPS certificate and ISM certificates.
- (o) **Vessel** means any ship owned, managed, operated, chartered or hired on any basis, or under the control or direction of the Principal that is the subject of this Agreement.