

Standard Terms and Conditions

1. Application

1.1. Application of these Standard Terms and Conditions

- 1.1.1. These Standard Terms and Conditions form part of the Agreement between Ports Victoria, on the one part; and the Shipping Agent and Owner, jointly and severally, on the other part.
- 1.1.2. The Agreement is established when the Shipping Agent acting as agent for the Owner, or the Owner, submits an Application to access and use the Regional Channels.

2. Defined Terms and Interpretation

2.1. Definitions

The following terms used in these Standard Terms and Conditions are defined as follows:

Access Period means the period commencing from the earliest time at which the Vessel enters Ports Victoria Facilities to which the Application refers and expires when the Vessel departs the relevant Ports Victoria's Facilities.

Agreement means the agreement constituted by the Application and these Standard Terms and Conditions.

Application means the submission of an application to access Ports Victoria Facilities via PortVIEW.

Booking Confirmation has the meaning given in clause 5.2.3(c) of these Standard Terms and Conditions.

Certificate of Registry means the certificate issued pursuant to the national law of the Vessel's port of registry.

Certificate of Tonnage means the tonnage and measurement of the Vessel carried out by, and recorded in a certificate prepared by, class societies or recognised organisation with the equivalent standing of Lloyds Register of Shipping or Det Norske Veritas.

Channel means 'channel' as defined by section 3 of the PMA and for the purpose of this agreement includes the Regional Channels.

Channel Fee means 'channel fee' as defined in section 3 of the PMA.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, Ports Victoria, including any information designated by Ports Victoria as confidential, which is disclosed, made available, communicated or delivered to the Owner or the Shipping Agent, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) which the Owner or the Shipping Agent can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the Owner or the Shipping Agent can demonstrate was independently developed by the Owner or Shipping Agent; or
- (d) which is lawfully obtained by the Owner or the Shipping Agent from another person entitled to disclose such information.

Consequential Loss means any indirect or consequential loss, including without limitation loss of profits, loss of opportunity, loss of productivity, business interruption and any other indirect loss or damage.

Contamination means the presence in the Environment at a level above background levels of any substance which is potentially harmful to human health and comfort, detrimental to the well-being of flora or fauna and/or detrimental to the beneficial uses of the Environment, irrespective of whether the quantity of the substance does or does not exceed statutory or industry criteria applicable to commercial or industrial land use.

Demise Charter means the hire of a Vessel by which the charterer obtains possession and control of the Vessel and is responsible for the Vessel, its operation and maintenance.

Designated Anchorage means the anchorage designated in the document titled 'Harbour Master's Directions' as amended from time to time and published on Port Victoria's website.

Environment means the physical factors of the surroundings of human and non- human life forms, including without limitation the land, soil, plants, habitat, waters, atmosphere, climate, sound, odours, tastes, biodiversity and the social and aesthetic values of landscape.

Environmental Hazard means a potential danger to human health or the Environment, whether imminent or otherwise, resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious, irritant or otherwise dangerous or damaging characteristics.

Environmental Laws means any Legislative Requirement relating to the Environment including any law relating to:

- (a) land use and planning, including but not limited to the *Planning and Environment Act 1987 (Vic)*;
- (b) pollution of air, water, soil or groundwater, including but not limited to *the Environment Protection Act 2017 (Vic)*;
- (c) chemicals, waste, and the transport, storage or handling of dangerous goods, including but not limited to the *Dangerous Goods Act 1985 (Vic)* and *Industrial Chemicals Act 2019 (Cth)*;
- (d) the health or safety of any person, including but not limited the *Occupational Health and Safety Act 2004 (Vic)* and other OH&S Laws; and
- (e) any other matters relating to but not limited to the protection of the Environment, health or property.

H&M Cover means insurance covering loss and damage to the hull and machinery of a vessel from marine perils including sinking, burning, stranding and collision.

Harbour Master means a 'harbour master' as defined by section 3 of the MSA.

Legislative Requirements means:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the state of Victoria;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the State of Victoria;
- (c) the obtaining or terms of any permit or licence concerning use of Port Facilities, the Common User Wharves or Common User Terminals;
- (d) directions of the Harbour Master;
- (e) directions of the Port Authorised Officer;
- (f) requirements of the Port Rules;
- (g) directions of any statutory bodies or authorities with relevant jurisdiction; and
- (h) the Ports Victoria Guidelines.

Loss means any and all liability, loss, damage, penalties, payments, costs (including the cost of any settlement and legal costs and expenses on a solicitor- client basis), charges and expenses.

MSA means the *Marine Safety Act 2010 (VIC)*

OH&S Laws means all legislation, regulations, by- laws, orders and legal requirements concerning the health, safety and welfare of people at work, including but not limited to the:

- (a) *Occupational Health and Safety Act 2004 (Vic)*;

- (b) *Occupational Health and Safety Regulations 2007* (Vic);
- (c) *Dangerous Goods Act 2000* (Vic);
- (d) *Dangerous Goods Regulations 2000* (Vic); and
- (e) any other Laws concerning occupational health and safety in connection with the Common User Wharves and Common User Terminals.

Owner means each of:

- (a) the party or parties identified as the Owner in the Application who is the 'owner of a vessel' as defined by section 4 of the PMA; and
- (b) any charterer, master or operator of a vessel that enters Port Waters.

P&I Clubs means those mutual insurance associations which provide P&I Cover.

P&I Cover means protection and indemnity insurance that, in the case of Vessel owners, covers liabilities concerning or arising from the following risks:

- (a) death and personal injury to seamen, passengers and third parties;
- (b) in respect of stowaways or persons rescued at sea;
- (c) collisions;
- (d) groundings;
- (e) damage to fixed and floating objects;
- (f) pollution;
- (g) wreck removal;
- (h) towage operations; and
- (i) Cargo damage.

Permitted Use means:

- (a) the embarking and disembarking of passengers;
- (b) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo;
- (c) provedoring and bunkering;
- (d) ship repair and maintenance; and
- (e) crew change,

as notified by Ports Victoria to the Shipping Agent and/or Owner in the Booking Confirmation.

Personnel means any agent, representative, officer, employee, contractor or subcontractor.

PMA means the *Port Management Act 1995* (Vic) as amended from time to time.

Pollution Incident means the occurrence of pollution within the meaning of *Environment Protection Act 2017* (Vic).

PortVIEW means the online management system for ship berth bookings within Port Waters which is located at <https://www.portview.com.au/PortView/start/index.php>.

PortVIEW Terms and Conditions means the terms and conditions that apply to the access and use of PortVIEW.

Port Authorised Officer means an authorised officer as defined in Part 5C of the PMA.

Port Charges means any fees or charges published on the Reference Tariff Schedule and or provided for in this Agreement in respect of the activities under in this Agreement.

Ports Victoria Facilities means the Regional Channels, Regional Anchorages, and all other facilities owned, managed or controlled by Ports Victoria for which services are provided by Ports Victoria within Port Waters,

Port of Geelong means the 'port of Geelong' as defined by section 3 of the PMA.

Port of Hastings means the 'port of Hastings' as defined by section 3 of the PMA.

Port Rules means the port rules of Ports Victoria published on Ports Victoria's Website, as amended from time to time.

Ports Victoria means Ports Victoria ABN 51 347 220 146

Ports Victoria Guidelines means:

- (a) Bunker and (non-cargo) Liquid Transfer Management Guidelines (incorporating ship/road vehicle liquid transfers);
- (c) other guidelines as listed on Ports Victoria's website.

Ports Victoria's Website means www.ports.vic.gov.au.

Port Waters means the Regional Waters and where the context permits, the commercial port of Melbourne waters as that term is defined in section 3 of the PMA.

Reference Tariff Schedule means the current Ports Victoria Reference Tariff Schedule, as amended from time to time and published on the Ports Victoria Website.

Regional Anchorages means anchorages within Regional Waters designated in the document titled Harbour Masters Directions as amended from time to time and published on Ports Victoria's Website.

Regional Channels means the Channels Regional Waters.

Regional Ports means Port of Geelong and Port of Hastings or each separately as the context permits.

Regional Waters are the port waters declared under section 3 of the PMA as port waters of the port of Geelong and the port of Hastings and includes the Regional Channels, Regional Anchorages and Port Facilities.

Shipping Agent means the shipping agent (if any) set out in the Application, who is authorised by the Owner to manage the Vessel on behalf of the Owner.

Standard Terms and Conditions means the terms and conditions as set out in this document.

Time Charter means the hire of a Vessel by which the charterer obtains possession and control of the Vessel for an agreed period of time or an agreed voyage.

Vessel means any vessel:

- (a) in relation to which the Owner holds a legal or equitable interest; or
- (b) which is subject to charter by the Owner (including by way of Demise Charter or Time Charter), and which calls at or enters Port of Melbourne Waters.

Vessel Traffic Services or **VTS** means the VTS Authority with responsibility for the Port safety infrastructure as defined under the MSA.

2.2. Joint and several obligations of the Owner and the Shipping Agent

Any obligation imposed on Owner or Shipping Agent contained in this Agreement must be construed as imposing joint and several liability upon the Owner and the Shipping Agent.

3. Owner

3.1. Owner Obligations

- 3.1.1. The Owner agrees that it has engaged the Shipping Agent to act as its agent for all relevant purposes concerning the Vessel, including for the duration of the Access Period and while the Vessel is under the control of the Owner.
- 3.1.2. The Owner must perform all the obligations of the Owner in this Agreement.
- 3.1.3. The obligations of the Owner pursuant to this Agreement survive the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent.
- 3.1.4. A reference to the Owner is a reference to each of the entities comprising the Owner jointly and severally.

- 3.1.5. As soon as practicable after the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent, the Owner must notify Ports Victoria of that termination and the name of any replacement Shipping Agent appointed or to be appointed. In such circumstances, the Owner must cooperate with Ports Victoria in respect of any existing booking in place and procure that the new Shipping Agent promptly accepts the terms of this Agreement.
- 3.1.6. Ports Victoria may cancel any existing booking made by the previous Shipping Agent without liability if the new Shipping Agent has not confirmed it agrees to be bound by this Agreement prior to any existing booking being confirmed with a Booking Confirmation.

4. Shipping Agent

4.1. Shipping Agent Obligations

- 4.1.1. The Shipping Agent warrants that it is the shipping agent on behalf of the Owner and is fully and legally authorised to act on behalf of the Owner and to bind the Owner to these Standard Terms and Conditions.
- 4.1.2. The Shipping Agent must:
- (a) advise the Owner of all Port Charges and rules of entry;
 - (b) collect from the Owner and pay to Ports Victoria all relevant disbursements, fees and charges, including the Port Charges and any Wharfage Fee (concerning the Cargo for which it is the shipping agent);
 - (c) inform the Owner of any directions from the Harbour Master or any other person issued under Clause 11.2; and
 - (d) at the time of submitting an Application, provide a copy to Ports Victoria:
 - (i) proof to Ports Victoria's satisfaction, of current P&I Club and H&M Cover for each Vessel;
 - (ii) the current Certificate of Registry and Certificate of Tonnage, unless the current Certificate of Registry and Certificate of Tonnage are unamended following the previous visit of the Vessel to Port of Melbourne Waters; and
 - (iii) any other documents reasonably requested by Ports Victoria.
- 4.1.3. The Shipping Agent must:
- (a) use best endeavours to ensure that its Personnel understand and comply with any security requirements of the Ports Victoria's Facilities.
 - (b) ensure that its Personnel comply with the Shipping Agent's obligations under these Standard Terms and Conditions;
- 4.1.4. The Shipping Agent must co-operate with Ports Victoria and all other users of Ports Victoria Facilities to ensure compliance with all Legislative Requirements.
- 4.1.5. The Shipping Agent must at all times cooperate with Ports Victoria and other users of Ports Victoria's Facilities, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements.

5. Grant of Use of Ports Victoria's Facilities

5.1. Grant of Permitted Uses

- 5.1.1. The Owner is permitted to use such part or area of Ports Victoria Facilities as directed by Ports Victoria for a Permitted Use for the duration of the Access Period, unless otherwise directed by Ports Victoria.
- 5.1.2. The Vessel shall be permitted to access Ports Victoria Facilities and the Owner or the Shipping Agent shall be granted access to use Ports Victoria Facilities on the dates and times determined by Ports

Victoria in its discretion in accordance with the dictates of port operations and usage and as notified to the Owner or the Shipping Agent.

- 5.1.3. The Owner acknowledges that Ports Victoria's approval of an Application does not guarantee that Ports Victoria Facilities will be available to be accessed or used by the Vessel on the date nominated in that Application.

5.2. Acknowledgement by Owner and or Shipping Agent

- 5.2.1. The Owner and/or Shipping Agent on behalf of the Owner acknowledge and agree that all references to use and access to Ports Victoria Facilities throughout these Standard Terms and Conditions is a reference to such part or area directed by Ports Victoria only.
- 5.2.2. The Owner and/or the Shipping Agent on behalf of the Owner agree that Ports Victoria Facilities must not be used for any purpose other than a Permitted Use.
- 5.2.3. The Owners' right to use Ports Victoria Facilities for a Permitted Use is subject to:
- (a) confirmation in writing from Ports Victoria to the Owner and/or Shipping Agent that the Application has been approved and a booking has been made by Ports Victoria (**Booking Confirmation**); and
 - (b) any directions given by Ports Victoria either at the time of the Booking Confirmation or at any time prior to berthing of the Vessel regarding the specific Ports Victoria Facilities to which the Owner will be granted access.
 - (c) the Owner and/or Shipping Agent submitting a valid Application via PortVIEW;
 - (d) payment of the Port Charges;
- 5.2.4. For the avoidance of doubt, the Owner and/or the Shipping Agent will be directed by Ports Victoria to use only part of the area of Ports Victoria Facilities and the Owner and Shipping Agent must strictly comply with such directions and must not access any other part or area except with Ports Victoria's prior written consent.
- 5.2.5. Any obligation imposed on the Owner in this Agreement is construed as imposing a joint and several obligation on the Owner and the Shipping Agent.

5.3. Use subject to this Agreement

- 5.3.1. The Owner and the Shipping Agent acknowledge and agree that their access to and use of Ports Victoria Facilities is subject to and in accordance with the terms and conditions of this Agreement.
- 5.3.2. The Owner and Shipping Agent acknowledge and agree that:
- (a) Ports Victoria has made no representation and gives no warranty concerning the adequacy or suitability of Ports Victoria Facilities for the Vessel or the use intended by the Owner;
 - (b) they have not entered into these Standard Terms and Conditions in reliance on any representation expressly or impliedly given by Ports Victoria;
 - (c) they have made their own enquiries to satisfy themselves as to the truth and accuracy of any written or oral information provided by Ports Victoria and have therefore not relied on such information; and
 - (d) they have made their own enquiries and are fully acquainted with their obligations under this Agreement, including all information available by making reasonable enquiries which are relevant to the risks and other circumstances which could affect the Permitted Use.
- 5.3.3. The Owner and the Shipping Agent acknowledge that their rights under this Agreement rest in contract only and this Agreement does not create or confer upon the Owner or the Shipping Agent any tenancy, estate or other interest in Ports Victoria's Facilities.
- 5.3.4. The Owner has no right of exclusive occupation or use of Ports Victoria Facilities during the Access Period and Ports Victoria may at any time exercise all of its rights as owner or manager to, without limiting the generality of this clause, enter, use, possess and enjoy the whole or any part of Ports Victoria's Facilities.

- 5.3.5. Where access to a designated Regional Anchorage is authorised by Ports Victoria for the duration of the Access Period, use of that particular Regional Anchorage may be exclusive (as directed by Ports Victoria or the Harbour Master), but is not guaranteed and is subject to clause 5.2.3(b), 5.4 and clause 7.
- 5.3.6. The Owner acknowledges that Ports Victoria Facilities available for access by the Owner may change from time to time in Ports Victoria's complete discretion, including as a consequence of a direction given by the Harbour Master.
- 5.3.7. If there is a change to access arrangements or the status of Ports Victoria Facilities, Ports Victoria will give notice of such change to the Owner or the Shipping Agent (as applicable) as soon as reasonably practicable (which for the avoidance of doubt may be any time prior to the use of Ports Victoria Facilities by the Vessel) and is subject always to clause 5.2.3(d), 5.4 and clause 7.

5.4. Access to be exercised in accordance with directions

- 5.4.1. The rights of the Owner to occupy, use or access Ports Victoria Facilities for a Permitted Use are subject to the directions of the Harbour Master, the Port Authorised Officer and VTS, which directions may include Ports Victoria Facilities to which access is permitted, the method of control and the dates and time of control. The Harbour Master's directions will take priority over any direction given by the Port Authorised Officer or VTS.

6. Term of Agreement

6.1. Term

- 6.1.1. This Agreement commences when the Owner or the Shipping Agent submits an Application to Ports Victoria in relation to the Vessel.
- 6.1.2. This Agreement expires at the conclusion of the Access Period.
- 6.1.3. Despite the commencement of this Agreement on the date that the Application is submitted, Ports Victoria is not bound to grant access to a part or area of Ports Victoria Facilities to the Owner unless and until a Booking Confirmation is issued by Ports Victoria, with all Booking Confirmations being subject to the terms of the Agreement.

7. Withdrawal of access

7.1. Withdrawal before commencement of Access Period

- 7.1.1. Ports Victoria, acting reasonably, reserves the right to refuse or to withdraw permission for a Vessel to access or use Ports Victoria Facilities (or any part of Ports Victoria's Facilities) when:
 - (a) Ports Victoria Facilities or any part of Ports Victoria Facilities are unsuitable for use;
 - (b) a direction is given by the Harbour Master.

7.2. Approved immobilisation

In the event that a Vessel is temporarily immobilised within Ports Victoria Facilities with prior approval of Ports Victoria, Ports Victoria shall provide the Owner or the Shipping Agent with reasonable notice of its requirement that the Vessel vacate Ports Victoria Facilities.

7.3. No compensation

- 7.3.1. If Ports Victoria withdraws permission for use of or access to Ports Victoria Facilities, Ports Victoria shall refund to the Owner or the Shipping Agent (as applicable) any monies paid in advance by the Owner or the Shipping Agent in respect of applicable Port Charges for any proposed Access Period that does not proceed, or for the use of Ports Victoria Facilities for which permission for access or use is withdrawn.

- 7.3.2. The Shipping Agent and the Owner acknowledge and agree that Ports Victoria is not obliged to pay, and neither the Shipping Agent nor the Owner is entitled to any other remedy, compensation or damages for any such withdrawal of permission.

8. Port Charges and Interest

8.1 Port Charges and Interest

- 8.1.1. The Owner agrees that it is liable to pay to Ports Victoria the Port Charges in accordance with the terms of this Agreement.
- 8.1.2. Ports Victoria may, in its discretion, recover the Port Charges, if applicable, as fees recoverable under Part 5 of the PMA.
- 8.1.3. The Owner agrees to pay Ports Victoria all other Port Charges concerning the use by the Owner or the Vessel of Ports Victoria Facilities in accordance with the Reference Tariff Schedule.
- 8.1.4. The Port Charges shall be due for payment within thirty (30) days of the date of the relevant invoice issued by Ports Victoria.
- 8.1.5. If Ports Victoria reasonably incurs costs as a result of complying with any Legislative Requirement in relation to a Vessel, including concerning the provision of security or security related services, the Owner shall be liable to reimburse Ports Victoria such costs and those costs shall be recoverable by Ports Victoria as a debt due and payable by the Owner within thirty (30) days of the date of the relevant invoice issued by Ports Victoria.
- 8.1.6. If the Owner does not pay the relevant Port Charges in accordance with this Agreement, the Owner will be liable to Ports Victoria for interest on the unpaid Port Charges at the interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic).

9. Not used

10. Owner Acknowledgment and Indemnity

10.1. Owner Acknowledgement

- 10.1.1. Rights to use Ports Victoria Facilities are in accordance with statute and or personal and in contract only as the context permits.
- 10.1.2. The Owner acknowledges and agrees that the rights conferred upon it by this Agreement to use Ports Victoria Facilities may not be transferred or assigned to any other party.
- 10.1.3. This Clause 10.1 does not impact upon any arrangement between the Owner and the Shipping Agent in relation to the Vessel, Cargo or Passenger.
- 10.1.4. The Owner acknowledges and agrees that it is responsible for the acts and omissions of its agents, including the Shipping Agent, its employees, servants, invitees and contractors

10.2. General indemnity and liability by Owner

- 10.2.1. The Owner must indemnify Ports Victoria against:

- (a) loss of or damage to the property of Ports Victoria;
- (b) claims by any person against Ports Victoria in respect of personal injury or death or loss of or damage to any property;
- (c) loss arising from the carriage of Cargo or Passengers by the Owner;
- (d) loss, subject to clause 10.2.3, Loss (excluding Consequential Loss) incurred by Ports Victoria due to disturbance to or interference with Ports Victoria's use of Ports Victoria Facilities or the carrying on of its business within Ports Victoria's Facilities,

arising out of or as a consequence of the access, occupation or use of Ports Victoria Facilities by the Owner, the Shipping Agent, or their servants, agents, employees or contractors.

- 10.2.2. The Owner's liability to indemnify Ports Victoria shall be reduced proportionately to the extent that a negligent act or negligent omission of Ports Victoria contributed to the loss, damage, death or injury.
- 10.2.3. The Owner indemnifies Ports Victoria for direct and Consequential Loss incurred by Ports Victoria arising from any Pollution Incident, Environmental Hazard or Contamination caused by the Owner, the Shipping Agent, or their servants, agents, employees or contractors, including all crew, and all personnel engaged by it in relation to a Vessel without prejudice to any defences, exclusions from liability and rights of limitation provided by law.
- 10.2.4. The Owner is liable for any and all Loss or damage to Ports Victoria's Facilities, arising from or related to the use of Ports Victoria Facilities by the Owner, the Shipping Agent, or their servants, agents, employees or contractors, including all crew and all personnel engaged by it in relation to a Vessel (whether during the Access Period or otherwise).

10.3. Damage to Ports Victoria Property

- 10.3.1. The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of Ports Victoria, arises from or is related to the use of Ports Victoria Facilities by the Owner, the Shipping Agents, or their servants shall be borne by the Owner or, if such costs are incurred by Ports Victoria, the Owner is liable to reimburse Ports Victoria such costs which shall be recoverable by Ports Victoria as a debt due and payable by the Owner.
- 10.3.2. The Owner must pay to Ports Victoria the reasonable cost of any repairs referred to in Clause 10.3.1 carried out by or on behalf of Ports Victoria not later than 30 days after written demand is made by Ports Victoria for such payment.

11. Compliance with Legislative Requirements and directions

11.1. Legislative Requirements

- 11.1.1. The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel comply with all Legislative Requirements.
- 11.1.2. The Shipping Agent must ensure that its servants, agents, employees and contractors comply with all Legislative Requirements.

11.2. Compliance with directions

- 11.2.1. The Owner must strictly comply with any:
- (a) direction of the Harbour Master in connection with access to or use of Ports Victoria's Facilities;
 - (b) direction of Ports Victoria in connection with access to or use of Ports Victoria Facilities ; and
 - (c) direction by any officer authorised by statute to give directions including pursuant to the MSA.
- 11.2.2. If the Owner does not comply with a direction issued or given under clause 11.2.1, Ports Victoria may, at its absolute discretion:
- (a) without further notice take whatever steps it considers necessary to ensure compliance by the Owner. Any costs incurred in connection with this clause are recoverable by Ports Victoria as a debt due and payable by the Owner;
 - (b) by written notice to the Owner, immediately terminate this Agreement or require the Owner to show cause why this Agreement should not be terminated.
- 11.2.3. the Owner will not be entitled to make (and Ports Victoria will not be liable for) any Claim against Ports Victoria arising out of or in connection with any requirements or directions of the Harbour Master or otherwise in relation to the Owners compliance with any direction under this clause 11.2

11.3. Ports Victoria Guidelines and Port Rules

- 11.3.1. The Owner must comply, and shall ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel, comply with all current Ports Victoria Guidelines and Port Rules applicable to access and use Ports Victoria Facilities.
- 11.3.2. The parties acknowledge that Ports Victoria Guidelines and Port Rules, as amended from time to time, are published on Ports Victoria Website.

12. Environmental Obligations

12.1. Obligation not to pollute

- 12.1.1. While accessing or using Ports Victoria Facilities the Owner must not:
 - 12.1.2. cause a Pollution Incident;
 - 12.1.3. cause an Environmental Hazard; or
 - 12.1.4. disturb, exacerbate or facilitate the migration of any existing Contamination.

12.2. Environmental Incidents

- 12.2.1. Without limiting the Owner's obligations under Clause 14 or under Environmental Laws, the Owner shall immediately and no later than one hour after becoming aware of any Marine Pollution (MARPOL) Incident or other environmental incident give written notice to VTS of the occurrence of such a Pollution Incident.
- 12.2.2. The Owner must, at its expense, clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident in accordance with any direction issued by Ports Victoria and within the timeframe specified in the direction.
- 12.2.3. Ports Victoria may, at its discretion and at the Owner's cost, engage an Environmental Auditor pursuant to Chapter 8 of the *Environment Protection Act 2017 (Vic)* in respect of the Pollution Incident.
- 12.2.4. Within 48 hours of the Shipping Agent or Owner receiving any notices or legal proceedings in respect of the impact of the Owner's activities on the Environment over, under or on Ports Victoria Facilities, including without limitation notices or proceedings issued by the Environment Protection Authority or any other statutory or governmental body, the Shipping Agent or Owner (as applicable) must give written notice to the VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.
- 12.2.5. The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in this clause 12.2.4 and is liable for any costs of compliance with such statutory notices.

12.3. Dangerous goods

The Owner must not, without Ports Victoria's prior written consent, use or allow Ports Victoria Facilities to be used for the storage (whether temporary or permanent) of dangerous goods (as defined in the *Dangerous Goods Act 1985 (Vic)* or the Australian Code for the Transport of Dangerous Goods by Road and Rail) or the International Maritime Dangerous Goods Code or any other goods the storage of goods which is prohibited by the Insurance Council of Australia Ltd in non-hazardous stores provided that the consent of Ports Victoria will not be required where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.

12.4. Rights of Ports Victoria

Without limiting the foregoing provisions of this Clause 12:

- 12.4.1. If Ports Victoria reasonably believes that a Pollution Incident has occurred or that a condition of Contamination or Environmental Hazard has arisen or is likely to arise as a result of the Owner's

activities, Ports Victoria may issue a direction requiring that specified corrective action be undertaken by the Owner to the satisfaction of Ports Victoria and within the timeframe specified by Ports Victoria.

12.4.2. If the Owner fails to:

- (a) comply with the terms of a direction under clause 12.4 to the satisfaction of Ports Victoria; or
- (b) clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of Ports Victoria, Ports Victoria may either:
 - (i) itself undertake the corrective action and recover its costs of undertaking the corrective action as a debt due from the Owner to Ports Victoria; or
 - (ii) deny the Owner the continuance of any right it would otherwise have had under this Agreement, including without limitation the right to remain in Port Waters.

13. Safety and Emergencies

13.1. Occupational Health and Safety Obligations

13.1.1. The Owner acknowledges that occupational health and safety on a Vessel within Ports Victoria Facilities during the Access Period is the responsibility of the Owner.

13.1.2. The Shipping Agent acknowledges that occupational health and safety of the Shipping Agent's employees, subcontractors, agents, consultants, invitees and licensees during the Access Period is the responsibility of the Shipping Agent.

13.1.3. The Shipping Agent must:

- (a) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees are not exposed to conditions or practices that have the likely potential to cause personal injury or property damage;
- (b) fully comply with all OH&S Laws;
- (c) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees comply with all occupational health and safety requirements;
- (d) immediately notify Ports Victoria of any incident or dangerous occurrence within Ports Victoria Facilities via the VTS including those which are notifiable to the Victorian WorkCover Authority, and or Commonwealth OHS legislation pursuant to the provisions of any OH&S Law.

13.1.4. The Owner must:

- (a) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees while on the Vessel or within Ports Victoria's Facilities, are not exposed to conditions or practices that have the potential to cause personal injury or property damage;
- (b) fully comply with all OH&S Laws;
- (c) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and while they are on the Vessel or within Ports Victoria Facilities comply with all occupational health and safety requirements; and
- (d) immediately notify Ports Victoria of any hazard, incident or dangerous occurrence within Ports Victoria Facilities which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law.

13.1.5. Within 48 hours of receipt of the Shipping Agent or Owner receiving any notices or legal proceedings in respect of the impact of the Owner's activities on human health and safety, including without limitation notices or proceedings issued by a statutory or governmental body, the Shipping Agent or Owner (as applicable) must give written notice to the VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

13.1.6. The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in this clause 13.1 and is liable for any costs of compliance with such statutory notices.

14. Emergencies and Notification of Incidents

14.1. Emergencies

The Owner shall, in the event of any emergency, accident or security situation, provide Ports Victoria and any other relevant agencies including Victoria Police, the Australian Federal Police and medical services with reasonable access to the Vessel.

14.2. Notification of Incidents

- 14.2.1. During an Access Period, the Owner must, as soon as practicable after becoming aware of any damage to Ports Victoria Facilities or any injury to any person, property or other circumstances likely to cause any damage or injury, advise or cause the VTS to be advised of such damage, injury or circumstances or potential damage, injury or circumstances (as relevant).
- 14.2.2. No later than 72 hours after the Owner gives notice in accordance with Clause 14.2, the Owner must cause a detailed written report to be lodged with Ports Victoria in respect of the accident, event or other circumstances giving rise to the damage or injury or potential damage or injury (as relevant).

15. Not used

16. Not used

17. Not used

18. Telephone services

- 18.1.1. The Owner must, for safety reasons and at its own cost, provide Australian telephone services to all Vessels using Ports Victoria's Facilities.

19. Insurance

19.1. P&I insurance

- 19.1.1. Except to the extent of those risks covered by H&M Cover, the Owner must ensure, and it hereby warrants, that the Owner and each Vessel for which it submits an Application will, for the duration of the Access Period, be covered by P&I Cover with a member club of the International Group of P&I Clubs, including but not limited to cover against oil pollution, wreck removal, property damage and personal injury claims in the amount and on the terms commonly provided by the International Group of P&I Clubs for that type of Vessel and its terms of entry and membership.
- 19.1.2. In the event that the Vessel is insured by a P&I Club that is not a member of the International Group of P&I Clubs, the Owner must inform Ports Victoria of the details of the Vessel's P&I Cover and the relevant insurer at the time of lodging the Application and Ports Victoria may in its absolute discretion decline the Application and refuse access to Port Waters.
- 19.1.3. If required by Ports Victoria the Owner must submit the Agreement to the P&I Club which has provided P&I Cover in respect of the Vessel and must advise Ports Victoria if the P&I Club does not consent to the Agreement.

19.2. General liability insurance

The Owner must, for the duration of the Access Period, effect and maintain a general liability insurance policy which must:

- 19.2.1. be provided by a reputable insurer with a credit worthiness of 'BBB' or higher and approved by Ports Victoria;
- 19.2.2. cover both the Owner and Ports Victoria for their respective rights and interests and covers their liabilities to third parties;

- 19.2.3. be for an amount in respect of any one occurrence of not less than \$20,000,000 (AUD);
- 19.2.4. be on reasonable terms to cover the requirements of Ports Victoria set out in this Agreement;
- 19.2.5. bear an endorsement extending the indemnity under the policy to include the provisions under clause 10.2.

19.3. Proof of insurance

- 19.3.1. The Owner must produce evidence, to the reasonable satisfaction of Ports Victoria, of the currency of the insurance policies referred to in this Clause 20 within 24 hours of being requested in writing to do so by Ports Victoria at any time prior to the Application being considered and during the Access Period.
- 19.3.2. Ports Victoria may in its absolute discretion, and without liability, decline the Application and refuse access to Ports Victoria Facilities if the Owner fails to comply with this clause or Ports Victoria is not reasonably satisfied with the adequacy of the insurance held by the Owner and the Vessel.

20. Release

Notwithstanding anything contained in this Agreement, the Owner and the Shipping Agent release Ports Victoria from all actions, suits, claims, demands, costs, charges, damages, liabilities and expenses which the Owner or the Shipping Agent or both of them may have now or in the future for any loss, damage to property or injury to persons, of whatever nature arising directly or indirectly as a consequence of:

- 20.1.1. industrial disputes, restraints of labour, strikes, riots, civil commotion, lock outs or stoppages whether involving the employees of Ports Victoria its agents or contractors or not;
- 20.1.2. acts of terrorists, insurgents, war, other hostilities or similar disturbances;
- 20.1.3. actions, orders, directions, instructions or requirements of any lawful authority or any person purporting to act on behalf of such authority;
- 20.1.4. natural, abnormal or unusual occurrences including earthquake, lightning, flood, fire and/or adverse sea and/or weather conditions;
- 20.1.5. interruption or disruption to the supply of electric, gas, water and/or telecommunication services to the relevant Ports Victoria facilities other than those caused by an act, fault or negligence of Ports Victoria; and
- 20.1.6. any other cause that Ports Victoria could not avoid or prevent by the exercise of reasonable care.

21. Confidentiality

The Owner and Shipping Agent must:

- 21.1.1. Only use Confidential Information for the purpose of this Agreement or any other purpose expressly agreed in writing by Ports Victoria to be confidential; and
- 21.1.2. Keep all Confidential Information strictly confidential and not disclose to any third party without the express written consent of Ports Victoria or as required by law.

22. GST

22.1. GST

- 22.1.1. Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause.
- 22.1.2. Any consideration to be paid or provided to for a supply made under or in connection with this Agreement unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

- 22.1.3. Despite any other provision in this Agreement, if a party ('**Supplier**') makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):
- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause is increased by, and the recipient of the supply ('**Recipient**') must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST ('GST Amount'); and
 - (b) subject to clause 22.1.5, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 22.1.4. If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense.
- 22.1.5. The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

23. Notices

23.1. Service

23.1.1. Any notice or other communication concerning this Agreement may only be:

- (a) left at or sent to the Owner:
 - (i) if there is no Shipping Agent, if the communication is addressed to the Owner and transmitted by email to the email address given by the Owner in the Application; or
 - (ii) if there is a Shipping Agent, if the communication is addressed to the Owner (via the Shipping Agent) and transmitted by email to the email address given by the Shipping Agent in the Application;
- (b) left at or sent to the Shipping Agent if the communication is addressed to the Shipping Agent and transmitted by email to the email address given by the Shipping Agent in the Application; and
- (c) left at or sent to Ports Victoria if the communication is:
 - (i) in writing and addressed to Ports Victoria and sent by post to the address or by email to the email address identified in the Schedule;

23.1.2. Ports Victoria will be taken to have complied with its obligations under the terms of this Agreement if, in respect of any notice or report required to be given or provided by Ports Victoria to the Owner, the notice or report is issued or provided to the Shipping Agent.

24. Dispute Resolution

24.1. Dispute Notice

- 24.1.1. If a party claims that a dispute has arisen under or in connection with this Agreement (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party specifying the nature of the Dispute.
- 24.1.2. A Dispute cannot be the subject of litigation until the provisions of clauses 24.2 to 24.4 (Australian entities, or 24.2, 24.3 and 24.5 (non Australian entities), have been complied with, except where a party seeks urgent interlocutory relief from a court, in which case that party does not need to comply with these clauses before seeking such relief.

24.2. Resolution by parties

Within three Business Days of the date of the Dispute Notice (or such other period as agreed between the parties to the Dispute) each of the parties to the Dispute must meet and use their reasonable endeavours to resolve the Dispute.

24.3. Resolution by senior executives

If the Dispute is not resolved under clause 24.2 (Resolution by parties) within 10 Business Days (or such other period agreed between the parties to the Dispute) after the date of the Dispute Notice, the Dispute must be referred to the senior executives of each of the parties to the Dispute, who must meet and use their reasonable endeavours to resolve the Dispute.

24.4. Arbitration – Australian entities

24.4.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 24.2 or 24.3; and
 - (b) the party involved in the dispute or difference that is not Ports Victoria is an entity registered under the Corporations Act 2001 (Cth) or is Australian,
- either party will have the right to notify the other party in writing that it requires the dispute or difference to be referred to arbitration.

24.4.2. Any arbitration pursuant to this clause 24.4 shall be administered by the Resolution Institute in accordance with the Institute of Arbitrators and Mediators Australia (**IAMA**) Arbitration Rules.

24.4.3. Any arbitration pursuant to this clause 24.4 shall:

- (a) apply the substantive law of the state of Victoria and shall apply the rules of procedure as prescribed in the state of Victoria;
- (b) take place in Melbourne, Australia; and
- (c) be conducted in English.

24.5. Arbitration – non-Australian entities

24.5.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 24.2 or 24.3; and
 - (b) one of the parties to the dispute or difference has its place of business outside Australia,
- either party will have the right to notify the other party in writing that it requires the dispute or difference to be referred to arbitration.

24.5.2. Any arbitration pursuant to this clause 24.5 shall:

- (a) be in accordance with the UNCITRAL Model Law on International Commercial Arbitration; and
- (b) be arbitrated by a single arbitrator.

24.5.3. If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in clause 24.5.1 the Arbitrator will be appointed in accordance with the requirements of the *Model Law and the International Arbitration Act 1974 (Cth)*.

24.5.4. The arbitral tribunal shall:

- (a) apply the substantive law of the state of Victoria.
- (b) apply the rules of procedure as prescribed in the state of Victoria.

24.5.5. The arbitration shall

- (a) take place in Melbourne, Australia; and
- (b) The language of the arbitration shall be English.

24.6. Parties' obligations

Pending resolution of any Dispute, the parties must continue to perform their obligations under this Agreement without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).

24.7. Litigation

If the Dispute is not resolved under clauses 24.4 or 24.5 (as the context permits) within 40 Business Days after the date of the Dispute Notice, either party may commence litigation proceedings.

25. Miscellaneous

25.1. Governing law and jurisdiction

The law of the State of Victoria governs this Agreement and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of Victoria.

25.2. Entire Agreement

This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements made by the parties and may only be changed in writing acknowledged by the parties.

25.3. Assignment

The Owner must not assign its rights under this Agreement, grant any sub-licence or otherwise transfer any of its rights under this Agreement without first receiving the prior written consent from Ports Victoria, which consent must not be unreasonably withheld but Ports Victoria may impose conditions if it grants consent to any such dealing as it sees fit.

25.4. Severability of provisions

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability but that will not invalidate the remaining provisions of this Agreement or affect the provision in any other jurisdiction.

25.5. Survival

- 25.5.1. None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.
- 25.5.2. The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clauses 10, 12 and 17 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- 25.5.3. Clauses 8, 10, 12, 17, 24, 25 26.5 and any or any other provision which, by its nature, are intended to survive termination or expiry of this Agreement, survive the expiry of the Access Period:

25.6. Binding of successors

Each party enters into this Agreement so as to bind its successors in title, administrators and assigns.

Schedule – Particulars

Item	Description	Details	
Item 1.	Ports Victoria Address for notices	Postal:	East 1E, 13-35 Mackey Street, North Geelong VIC 3215 VIC
		Email:	legal@ports.vic.gov.au
		Attention:	
