

Navigational and Port Services (NaP Services)

Applicable sets of terms which, together with this Agreement, form part of the Contract

With reference to the Portview Terms and Conditions and clause 2 of this Agreement, the Contract is made up of the separate sets of terms depending on the Vessel's transit through the applicable Port Waters and the destination and is used here as an illustrative table and guide and not as an Agreement Term.

Contract made up of the following Terms and Conditions:	Transit Through Port Waters of:			
	Melbourne	Geelong	Hastings	
	Destination			
	Port of Melbourne	Station Pier / Anchorage	All	All
Application	✓	✓	✓	✓
Portview Terms and Conditions	✓	✓	✓	✓
NaP Services Terms	✓	✓	✓	✓
PoMO Terms - Channel Access	✓	✓	✓*	
(as applicable):				
PoMO Terms - Berthing at Common User Wharves	✓			
PoMO Terms - Hirers access to Common User Terminals	✓			
PoMO Terms - Berthing at Melbourne Dedicated Facilities	✓			
(as applicable)				
Access and Hire of Ports Victoria Facilities (Geelong and Hastings) Terms			✓	✓
Hire of Ports Victoria's Facilities (Melbourne)		✓		

* shared

For the purpose of the above illustrative table:

Application is defined at clause 2.1 of the Standard Terms and Conditions

Port View Terms and Conditions is defined at clause 2.1 of the Standard Terms and Conditions.

NaP Services Terms means the Standard Terms and Conditions set out in this Agreement.

PoMO Terms – Channel Access means the Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Channel Access found [here](#).

PoMO Terms – Berthing at Common User Wharves means the Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Berth Hire at Common User Wharves found [here](#)

PoMO Terms – Hirers access to common user terminals means Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Hirer's Access to Common User Terminals found [here](#)

PoMO Terms - Berthing at Melbourne Dedicated Facilities means Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Owners Berthing at Dedicated Facilities found [here](#).

Access and Hire of Ports Victoria Facilities (Geelong and Hastings) Terms means Ports Victoria's Standard Terms and Conditions for Access and Hire of Ports Victoria Facilities (Geelong and Hastings) found [here](#).

Hire of Ports Victoria Facilities (Melbourne) Terms means Ports Victoria's Standard Terms and Conditions for the hire of Ports Victoria's Facilities (Melbourne) found [here](#).

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 and the Applicant
- 1.1.2. The Agreement is established when the Applicant submits an Application which requests access and use the Ports Victoria Facilities.

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 any Port Waters to which the Application refers and expires when the Vessel departs the last of the relevant Port Waters to which the Application refers.

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

Applicant means the user of PortVIEW submitting the Application to access Port Waters, being limited to the Owner or Shipping Agent for the Vessel to which the Application relates or affects.

Application means the submission of an application to access Port Water submitted by the Applicant via PortVIEW.

Booking Confirmation means confirmation in writing from Ports Victoria to the Applicant that the Application has been approved and a booking has been made by Ports Victoria.

Cargo means 'cargo' as defined by section 3 of the PMA and includes Empty Containers.

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.

Claim means any claim, notice, demand, action, cause of action, suit, proceeding, litigation, investigation or judgment (including by way of contribution or indemnity), however arising, whether present, immediate or future, fixed or unascertained, actual or contingent, or at law or in equity or arising under statute (including

breach of contract or tort (including negligence)), and whether made by a party to this Agreement or otherwise.

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, or which the Applicant should have reasonably expected to be confidential, and in each case which is disclosed, made available, communicated or delivered to Applicant, 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 Applicant can demonstrate was in its possession prior to the date of this Agreement and which was not subject to any confidentiality obligation at the time it came into Applicant's possession;
- (c) which the Applicant can demonstrate was independently developed by the Applicant; or
- (d) which is lawfully obtained by the Applicant from another person entitled to disclose such information.

Consequential Loss means any indirect or consequential loss, including loss of profits, loss of opportunity, loss of productivity, business interruption and any other indirect loss or damage.

Contract means the agreement constituted by the Application, these Standard Terms and Conditions and any other terms and conditions which apply pursuant to the PortVIEW Terms and Conditions.

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.

Empty Containers means cargo containers which do not contain any cargo.

Financial Security means a parental guarantee, a pre-payment of money to Ports Victoria, a letter of undertaking or other financial arrangement as requested of the Applicant by Ports Victoria

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 has the meaning given to it in section 3 of the *Marine Safety Act 2010* (Vic).

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 Waters;
- (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)

NaP Services and **Navigational and Port Services** means the services set out in the RTS provided by or on behalf of Ports Victoria which incur Port Charges as set out in the RTS paragraph 2.4, and expressly excludes any channel, wharfage or anchorage access services.

Owner means the party or parties identified as the Applicant in the Application who is

- (a) the 'owner of a vessel' within the meaning of that term in section 4 of the PMA; and includes
- (b) any charterer (including but not limited to by way of Demise Charter or Time Charter) or operator of a vessel that enters Port Waters.

A reference to the Owner is a reference to each of the entities comprising the Owner jointly and severally.

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.

Personnel means any agent, representative, officer, employee, invitee, crew, servant, consultant, contractor or subcontractor

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

PortVIEW means the online management system for ship berth bookings at the Port of Melbourne which is located at <https://www.portview.com.au/PortView/start/index.php>. (or any replacement website identified by Ports Victoria).

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 the fee identified as the Navigational and Port Services fee published in the Reference Tariff Schedule in respect of the NaP Services and which is calculated in accordance with the Reference Tariff Schedule.

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

Ports Victoria or **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); and
- (c) any other guidelines

as listed on Ports Victoria's website, as amended from time to time,

Ports Victoria Website means Ports Victoria's Website which can be located at <https://www.vicports.vic.gov.au/Pages/default.aspx>. (or any replacement website identified by Ports Victoria).

Port Waters means any of the:

- (a) VTS Area, and or
- (b) "port of Melbourne waters", the "port of Geelong waters" or the "port of Hastings waters" as each of those terms are defined in section 3 of the PMA.

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

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.

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 the subject of an Application.

Vessel Traffic Services or VTS means the VTS Authority with responsibility for the VTS

VTS Area means the geographical area in which the VTS Authority is authorised by the Australian Maritime Safety Authority to provide a vessel traffic service pursuant to Marine Order 64, and the *Navigation Act 2012* (Cth).

2.2. Interpretation

In this Agreement:

- (a) headings and subheadings are for convenience only and do not affect interpretation;
- (b) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) a reference to a party, clause or Schedule is a reference to a party, clause or Schedule, of or to this Agreement
- (d) a reference to any document, deed, agreement or instrument means a reference to such document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of a permitted novation and, in the case of a trustee, includes a substituted or additional trustee;
- (f) a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and
 - (ii) consolidations, amendments, re-enactments and replacements;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) 'include', 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (j) the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) a reference to '\$', AUD or dollar is to Australian currency;
- (l) a reference to time is a reference to time in Melbourne, Victoria, Australia;
- (m) unless Ports Victoria is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, Ports Victoria can exercise any power, right or remedy in its absolute and unfettered discretion and Ports Victoria has no obligation to do so;
- (n) without limiting clause 2.2(m), unless Ports Victoria is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by Ports Victoria, means that Ports Victoria can exercise that power, right or remedy in its absolute and unfettered discretion and Ports Victoria has no obligation to do so;
- (o) where there is a reference to an authority, institute or association referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Agreement deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity; and
- (p) each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision.

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

- (a) Any obligation imposed on the Applicant contained in this Agreement must be construed:
 - (i) as imposing joint and several liability upon the Owner and the Shipping Agent (if the Applicant is the Shipping Agent);
 - (ii) is acknowledged as a reference to the Owner where the context is an Environmental Hazard, Pollution Incident or other obligation caused by act or omission of the Vessel.
 - (iii) is taken as referring to the Vessel to which the Application relates.
- (b) Where the context permits, any reference to and obligation on the Applicant includes its Personnel, and the Applicant is liable for the acts and omissions of its Personnel as if such acts or omissions were its own.

3. Applicant

3.1. Applicant Obligations

- 3.1.1. Where the Applicant is the Owner,
 - (a) It agrees that where it has engaged a Shipping Agent, as set out in its Application, the Shipping Agent has been engaged 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.
 - (b) It acknowledges and agrees that it is responsible for the acts and omissions of its Personnel, including the Shipping Agent and the Shipping Agent's Personnel.
- 3.1.2. Where the Applicant is the Shipping Agent, the Applicants represents and warrants that
 - (a) 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.
 - (b) It will advise the Owner of all Port Charges and rules of entry;
 - (c) where the Owner has not already done so, collect from the Owner and pay to Ports Victoria all relevant fees which are due and payable arising from or in connection with this Agreement including disbursements, fees, and other charges;
 - (d) inform the Owner of any directions from the Harbour Master.
- 3.1.3. The Applicant must perform all the obligations of the Owner arising from or in connection with this Agreement.
- 3.1.4. The obligations of the Applicant pursuant to this Agreement survive the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent.
- 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 Applicant must notify Ports Victoria of that termination and the name of any replacement Shipping Agent appointed or to be appointed. The Owner may request to novate the Application to a replacement Shipping Agent. In such circumstances, the Applicant 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. Despite clause 3.1.5, the Applicant is not released from the terms of this Agreement on any novation.
- 3.1.7. The Applicant must:
 - (a) 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 the 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.
- (b) provide to Ports Victoria any Financial Security or documents reasonably required or requested by Ports Victoria.
- (c) ensure that it and its Personnel understand and comply with any security requirements of Ports Victoria.
- (d) ensure that it and its Personnel comply with the Applicants obligations under these Standard Terms and Conditions including the MTOFSA obligations;
- (e) co-operate with Ports Victoria and all other users of Port Facilities and the Ports Victoria's Facilities to ensure compliance with all Legislative Requirements, including the MTOFSA.

4. Provision of NaP Services

4.1. Provision of NaP Services

- 4.1.1. The Applicant agrees that Ports Victoria provides the NaP Services.
- 4.1.2. The Applicant agrees that for a Vessel which enters into and transits any part of the Port Waters:
 - (a) Ports Victoria is making available and providing the NaP Services to and for the benefit of the Applicant and the Vessel;
 - (b) the Applicant is taking the benefit of the NaP Services in relation to that Vessel including during the Access Period; and
 - (c) the Applicant agrees to Ports Victoria charging (and the Applicant agrees to pay to Ports Victoria) the whole of the Port Charges for the provision of any NaP Services to the Applicant and/or the Vessel in the Port Waters pursuant to this Agreement and the Reference Tariff Schedule.

4.2. Provision of NaP Services subject to this Agreement

- 4.2.1. The Applicant acknowledges and agree that Ports Victoria is making available and providing of the NaP Services subject to and in accordance with this Agreement.
- 4.2.2. The Applicant acknowledges and agree that:
 - (a) Ports Victoria has made no representation and gives no warranty concerning the adequacy or suitability of the NaP Services for the Vessel or the use intended by the Applicant;
 - (b) has not entered into the Agreement in reliance on any representation expressly or impliedly given by Ports Victoria;
 - (c) has made its own enquiries to satisfy itself 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) has made its own enquiries and is fully acquainted with its obligations under this Agreement, including all information available by making reasonable enquiries which are relevant to the risks and other circumstances in connection with this Agreement.

5. Term of Agreement

5.1. Term

- 5.1.1. This Agreement commences when the Applicant submits an Application to Ports Victoria in relation to the Vessel.
- 5.1.2. This Agreement expires at the earliest of:
 - (a) the conclusion of the Access Period.
 - (b) termination as set out in this Agreement.

- 5.1.3. Despite the commencement of this Agreement on the date that the Application is submitted, Ports Victoria is not bound to provide the NaP Services to the Applicant unless and until a Booking Confirmation is issued by Ports Victoria regarding that Application
- 5.1.4. In the event that a Booking Confirmation is not issued or is cancelled by Ports Victoria, then the end date is date that Ports Victoria confirms that the Booking Confirmation will not be issued, or that the Booking Confirmation is cancelled.

6. Port Charges and Interest

6.1. Port Charges and Interest

- 6.1.1. The Applicant must pay to Ports Victoria the Port Charges in accordance with the terms of this Agreement and the Reference Tariff Schedule.
- 6.1.2. The Port Charges shall be due for payment by the Applicant to Ports Victoria within thirty (30) days after the date of the relevant invoice issued by Ports Victoria to the Applicant.
- 6.1.3. If Ports Victoria reasonably incurs costs as a result of complying with any Legislative Requirement in relation to a Vessel the Applicant 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 Applicant within thirty (30) days after the date of the relevant invoice issued by Ports Victoria.
- 6.1.4. If the Applicant does not pay the relevant Port Charges in accordance with this Agreement, the Applicant 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).
- 6.1.5. Where Financial Security is requested by Ports Victoria as a condition of a Booking Confirmation, the Applicant agrees that the Financial Security may be used to set-off any Port Charges due and payable.

7. Telephone services

The Applicant must, for safety reasons and at its own cost, provide to Ports Victoria an Australian compatible telephone services to all Vessels receiving the NaP Services.

8. Release

Notwithstanding anything contained in this Agreement, the Applicant release Ports Victoria from all Claims and Losses which the Applicant may have now or in the future for any Loss, damage to property or the death of or injury to persons, of whatever nature arising directly or indirectly as a consequence of:

- (a) 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;
- (b) acts of terrorists, insurgents, war, other hostilities or similar disturbances;
- (c) actions, orders, directions, instructions or requirements of any lawful authority or any person purporting to act on behalf of such authority;
- (d) natural, abnormal or unusual occurrences including earthquake, lightning, flood, fire and/or adverse sea and/or weather conditions;
- (e) interruption or disruption to the supply of electric, gas, water and/or telecommunication services in connection with the provision of the NaP Services other than those caused by an act, fault or negligence of Ports Victoria; and
- (f) any other cause that the Ports Victoria could not avoid or prevent by the exercise of reasonable care.

9. Confidentiality

The Applicant must:

- 9.1.1. only use Confidential Information for the purpose of this Agreement or any other purpose expressly agreed in writing by Ports Victoria; and
- 9.1.2. 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.

10. GST

10.1. GST

- 10.1.1. 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.
- 10.1.2. 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.
- 10.1.3. 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 10.1.5, 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.
- 10.1.4. If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a Loss 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.
- 10.1.5. 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.

11. Notices

11.1. Service

- 11.1.1. Any notice or other communication concerning this Agreement may only be:
 - (a) left at or sent to the Applicant:
 - (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 Applicant 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 Applicant in the Application;
 - (b) left at or sent to the Applicant if the communication is addressed to the Applicant and transmitted by email to the email address given by the Applicant in the Application; and
 - (c) left at or sent to Ports Victoria if the communication is 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.

- 11.1.2. 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 Applicant.

12. Dispute Resolution

12.1. Dispute Notice

- 12.1.1. For the purpose of this clause, non-payment of an un-disputed debt is not a dispute for the purpose of this clause and this clause does not apply.
- 12.1.2. If a party claims that a dispute has arisen between the parties 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.
- 12.1.3. A Dispute cannot be the subject of litigation until the provisions of clauses 12.2 to 12.4 (where all parties to the Dispute (other than Ports Victoria) are registered under the *Corporations Act 2001* (Cth) or are Australian entities), or 12.2, 0 and 12.5 (where at least one party to the Dispute is not an Australian entity), 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.

12.2. Resolution by parties

Within three Business Days after the date of the Dispute Notice is received by the other party (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.

12.3. Resolution by senior executives

- 12.3.1. If the Dispute is not resolved under clause 12.2 within 10 Business Days (or such other period agreed between the parties to the Dispute) after the date the Dispute Notice is received by the other party (or such other period agreed between the parties to the Dispute), 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.
- 12.3.2. If senior executives cannot resolve the dispute within 20 Business Days from the date of the Dispute Notice, or if the Dispute is not escalated to senior executives within 20 Business Days from the date of the Dispute Notice, the following clauses apply.

12.4. Arbitration – Australian entities

- 12.4.1. If:
- (a) the Dispute is not resolved as a result of one of the steps arising from the operation of clause 12.2 or 0; and
 - (b) each party involved in the Dispute that is not Ports Victoria is an entity registered under the Corporations Act 2001 (Cth) or is an Australian entity,
- and a party wishes to progress that Dispute, that party must right to notify the other party in writing that it requires the Dispute to be referred to arbitration.
- 12.4.2. Any arbitration pursuant to this clause 12.4 shall be administered by the Resolution Institute in accordance with the Institute of Resolution Institute Arbitration Rules 2023.
- 12.4.3. Any arbitration pursuant to this clause 12.4 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.

12.5. Arbitration – non-Australian entities

12.5.1. If:

- (a) the Dispute is not resolved as a result of one of the steps arising from the operation of clause 12.2 or 0; and
- (b) one of the parties to the Dispute is incorporated or established outside Australia, and a party wishes to progress that Dispute, that party must notify the other party in writing that it requires the Dispute to be referred to arbitration.

12.5.2. Any arbitration pursuant to this clause 12.5 shall:

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

12.5.3. If the parties cannot agree on an arbitrator within fourteen (14) days after of the written notification referred to in clause 12.5.1 the arbitrator will be appointed in accordance with the requirements of the *Model Law and the International Arbitration Act 1974 (Cth)*.

12.5.4. The arbitrator shall:

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

12.5.5. The arbitration shall take place in Melbourne, Australia and the language of the arbitration shall be English.

12.6. 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).

13. Miscellaneous

13.1. 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.

13.2. Entire Agreement

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

13.3. Assignment

The Applicant 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, including but not limited to cancelling the Booking Confirmation or requiring Financial Security.

13.4. Rights

The rights of the Applicant under this Agreement in accordance with statute and/or personal and in contract only as the context permits

13.5. Severability of provisions

- 13.5.1. 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.
- 13.5.2. The separate documents that make up the Contract are severable and:
- (a) any provision of this Agreement or the separate documents making up the Contract 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 the Contract or affect the provision in any other jurisdiction; and
 - (b) If one separate document that makes up the Contract ends or is terminated, then the remaining documents remain in force as the Contract.

13.6. Survival

- 13.6.1. None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.
- 13.6.2. The indemnities contained in this Agreement, including the indemnities provided in Clause 4 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period, and expiry or termination of this Agreement.
- 13.6.3. Clauses 12, 13, 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 and expiry or termination of this Agreement.

13.7. 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	East 1B, 13-35 Mackey Street, North Geelong VIC 3215 VIC
	Email:	Legal@ports.vic.gov.au and to MelbourneVTS@ports.vic.gov.au
	Attention:	Legal Counsel and to Vessel Traffic Services