

# Standard Terms and Conditions for Owners Berthing at Dedicated Facilities

## 1. Application of these Standard Terms and Conditions

### 1.1 Application of Standard Terms and Conditions

These Standard Terms and Conditions form part of the Agreement between the Port of Melbourne Corporation ABN 22 195 188 658 (PoMC) on the one part; and the Shipping Agent and Owner, jointly and severally, on the other part.

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 Dedicated Facility and the Channel.

### 1.2 Defined terms & Interpretation

The following terms used in this Agreement are defined in the dictionary in Schedule 2 and shall be construed in accordance with the provisions in Schedule 2.

Access Period	Harbour Master	Port Charges
Agreement	Inward Manifest	Port Facilities
Application	Landside Restricted Zone	Port Land
cargo, or Cargo	Lay-up	port of Melbourne land
Cargo Interest	Legislative Requirements	port of Melbourne waters
Certificate of Registry	Lessee	Port Rules
Certificate of Tonnage	MTOFSA	Port Waters
Channel, or channel	OH&S Laws	PSA
channel fee	Outward Manifest	Reference Tariff Schedule
channel operator	Owner	restricted access areas;
Contamination	Permitted Use	Restricted Areas
Dedicated Facility	P&I Club	Shipping Agent
Demise Charter	Pollution Incident	Shipping Management Centre
Empty	PoMC Security Contractor	Vessel
Environment	PoMC Security Manager	wharfage fee
Environmental hazard Guidelines	Port	

## 2. Joint and several liability

Save for the clauses identified in this Clause 2, any obligation imposed on the Owner in this Agreement must be construed as imposing joint and several liability upon the Owner and the Shipping Agent.

The Shipping Agent is not jointly or severally liable for a breach by the Owner of the following clauses of this Agreement: Clauses 3, 4, 8.5, 8.7, 10, 11.1, 11.2, 12, 13.1(a), 13.2(b), 14, 15.2, 16, 18, 19 and 20.

### **3. Owner**

#### **3.1 Owner of the Vessel**

The Owner 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.

#### **3.2 Bound to perform this Agreement**

The Owner must perform all the obligations of the Owner in this Agreement.

#### **3.3 Owner's obligations survive**

The obligations of the Owner pursuant to this Agreement survive the termination of any contract or other arrangement between the Owner and the Shipping Agent.

#### **3.4 Notification of termination of shipping agency**

As soon as practicable after the termination of any contract or other arrangement between the Owner and the Shipping Agent, the Owner must notify PoMC of that termination and the name of any replacement shipping agent appointed or to be appointed.

#### **3.5 No other agent for the purposes of Channel Usage Charge collection**

The Owner acknowledges that it has no other agent for the Vessel for the purposes of section 81 of the PSA and the collection of channel fee, until the Owner has notified PoMC of the termination of its contract or arrangement with the Shipping Agent under Clause 3.4.

### **4. Shipping Agent**

#### **4.1 Authority**

The Shipping Agent warrants that it is the shipping agent on behalf of the Owner and is fully authorised to act on behalf of the Owner in its capacity as port agent.

#### **4.2 Notification of termination of shipping agency**

As soon as practicable after the termination of any contract or other arrangement between the Owner and the Shipping Agent, the Shipping Agent must notify PoMC of that termination.

#### **4.3 Shipping Agent**

The Shipping Agent must:

- (a) advise the Owner of all Port Charges and rules of entry;

- (b) collect from the Owner and pay all relevant disbursements, fees and charges, including the channel fee and the wharfage fee (concerning the Cargo for which it is the shipping agent), to PoMC;
- (c) inform the Owner of any directions from the Harbour Master issued under Clause 11.2; and
- (d) within 24 hours of the commencement of the Access Period provide a copy to PoMC:
  - (i) if requested to do so by PoMC, of proof, to PoMC's satisfaction, of current P&I Club and H&M Cover for each Vessel; and
  - (ii) the current Certificate of Registry and Certificate of Tonnage, unless the Certificates are unamended following the previous visit of the Vessel to port of Melbourne waters.

#### **4.4 Statutory notices and legal proceedings**

Within 48 hours of the Shipping Agent or Owner receiving any notice in respect of the impact of the Owner's activities on human health or the Environment in relation to the Port Facilities, the Dedicated Facility or Port Waters, the Shipping Agent or Owner must:

- (a) give to PoMC's Shipping Management Centre a copy of the notice;
- (b) take all reasonable steps to ensure that the Owner complies with all Legislative Requirements; and
- (c) ensure that the Shipping Agent complies with all Legislative Requirements applicable to the Shipping Agent.

#### **4.5 Understanding PoMC's security requirements**

The Shipping Agent must:

- (a) use its best endeavours to ensure that all its employees and other personnel understand and comply with the security requirements of PoMC, including but not limited to the Port Security Plan;
- (b) use its best endeavours to ensure that all its employees and other personnel understand and comply with their obligations under MTOFSA; and
- (c) advise the Owner of its obligations under MTOFSA.

#### **4.6 Legislative Requirements**

The Shipping Agent must, in accordance with the terms of its agency with the Owner, co-operate with PoMC and other users of the Port Facilities to ensure compliance with all Legislative Requirements.

#### **4.7 Assistance to PoMC**

The Shipping Agent must cooperate wherever possible with PoMC and other users of Port Facilities and the Dedicated Facility, at least to the extent that such cooperation is

necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

## 5. Use of the Dedicated Facility

### 5.1 Permitted Uses

- (a) The Owner is permitted to use the Dedicated Facility and the channel for a Permitted Use for the duration of the Access Period.
- (b) The Owner must not use the Dedicated Facility or the channel for any purpose during the Access Period other than a Permitted Use.

### 5.2 Use subject to this Agreement

The Owner and the Shipping Agent acknowledge and agree that upon submitting an Application to PoMC, their access to and use of the Dedicated Facility and the Channel for a Permitted Use during the Access Period is subject to and must be in accordance with the terms and conditions of this Agreement.

### 5.3 No warranty as to suitability

The Owner agrees that PoMC has made no representation and gives no warranty concerning the adequacy or suitability of the Dedicated Facility or the channel for the Vessel or the use intended by the Owner.

### 5.4 No estate or interest

The Owner and the Shipping Agent agree that their rights to access or use the Dedicated Facility and the channel for a Permitted Use for the duration of the Access Period 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 the Dedicated Facility or the channel.

### 5.5 Hire not exclusive

Access and/or use of the Dedicated Facility or the Channel for a Permitted Use is not exclusive, save that in the case of access to berths, where for the duration of the Access Period the access to a designated berth is authorised by PoMC, use of that particular berth may be exclusive.

### 5.6 No right of exclusive occupation

The Owner has no right of exclusive occupation or use of the Dedicated Facility or the channel during the Access Period and PoMC may at any time exercise all of its rights as owner or manager, including without limiting the generality of this clause, its rights to enter, use, possess and enjoy the whole or any part of the Dedicated Facility and the channel.

## **5.7 Access to be exercised in accordance with Shipping Management Centre**

The rights of the Owner to occupy, use or access the Dedicated Facility and the channel for the Permitted Uses are subject to the directions of the Harbour Master and PoMC's Shipping Management Centre, which directions may include the Dedicated Facility to which access is permitted, the method of control and the dates and time of control.

## **5.8 Dedicated Facility may change**

The Owner acknowledges that the Dedicated Facility available for access by the Owner or the Shipping Agent may change from time to time in PoMC's complete discretion. If there is a change to access arrangements or the status of a facility listed in Schedule 3, PoMC will give notice of such change to the Owner or the Shipping Agent.

## **6. Term**

- (a) This Agreement commences when the Owner or the Shipping Agent submits an Application to PoMC in relation to the Vessel.
- (b) This Agreement expires at the conclusion of the Access Period.

## **7. Withdrawal of access or hire**

### **7.1 Withdrawal before commencement of Access Period**

PoMC acting reasonably reserves the right to refuse or to withdraw permission for a Vessel to access or use the Dedicated Facility (or any part of the Dedicated Facility) or the Channel (or any part of the Channel) when:

- (a) the Dedicated Facility or any part of the Dedicated Facility is unsuitable for use;
- (b) the Channel or any part of the Channel is unsuitable for use;
- (c) a direction is given by the Harbour Master; or
- (d) the Vessel is unable to be loaded or unloaded at any time prior to the commencement of an Access Period.

### **7.2 Withdrawal for the purposes of Lay-up**

The Owner acknowledges that PoMC may give priority to any Vessel carrying Cargo over a Vessel that is Laying Up concerning access or use of a Dedicated Facility during an Access Period and reserves the right to refuse or withdraw permission for Lay Up at any time.

### **7.3 Approved immobilisation**

In the event that a Vessel is temporarily immobilised at a berth with prior approval of PoMC, PoMC must provide the Owner or the Shipping Agent with reasonable notice of its requirement that the Vessel vacate a berth.

#### **7.4 No compensation**

If PoMC withdraws permission for use of or access to the Dedicated Facility or the channel, PoMC shall refund to the Owner or the Shipping Agent any monies paid in advance by the Owner or the Shipping Agent in respect of relevant Port Charges for any proposed Access Period that does not proceed, or for the use of the Dedicated Facility or the channel for which permission for access or use is withdrawn.

The Shipping Agent and the Owner acknowledge and agree that PoMC 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**

#### **8.1 Acknowledgment of liability**

The Owner agrees that it is liable to pay to PoMC the Port Charges levied by PoMC under the PSA, and to pay the Port Charges in accordance with the terms of this Agreement.

#### **8.2 Channel fee**

The Owner agrees to pay PoMC the published channel fee calculated in accordance with the Reference Tariff Schedule, as amended from time to time, concerning the access to or use of a Vessel of the channel.

#### **8.3 Wharfage fee**

The Owner agrees to pay PoMC the published wharfage fee which:

- (a) concerns Cargo unloaded from or loaded onto a Vessel at the Port; and
- (b) concerns Cargo transferred from one Vessel to another Vessel whilst within Port Waters.

PoMC may, in its discretion, recover the wharfage fee as a charge recoverable under section 74 of the PSA.

#### **8.4 Charge on Empties**

The Owner agrees to pay PoMC the published Port Charge levied by PoMC concerning each Empty unloaded from or loaded onto a Vessel at the Port.

#### **8.5 Other Port Charges**

The Owner agrees to pay PoMC all other Port Charges levied by PoMC concerning the use by the Owner or the Vessel of the Dedicated Facility or the Channel in accordance with the published Reference Tariff Schedule.

#### **8.6 Payment of Port Charges**

The Port Charges shall be due for payment within thirty (30) days of the date of the relevant invoice issued by PoMC.

## **8.7 Security costs**

If PoMC reasonably incurs costs as a result of complying with any mandatory Legislative Requirement in relation to a Vessel, including concerning the provision of security or security related services, the Owner shall be liable to reimburse PoMC such costs and those costs shall be recoverable by PoMC as a debt due and payable by the Owner within thirty (30) days of the date of the relevant invoice issued by PoMC.

## **8.8 Interest**

If the Owner does not pay the relevant Port Charge in accordance with this Agreement, the Owner or the Shipping Agent will be liable to PoMC for interest on the unpaid Port Charge at a rate of 4% in excess of the interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic).

# **9. Cargo Manifests and documentation**

## **9.1 Inward Manifest**

The Owner or the Shipping Agent shall cause to be lodged with PoMC an Inward Manifest within 2 days of the arrival of a Vessel in Port Waters.

## **9.2 Outward Manifest**

The Owner or the Shipping Agent shall cause to be lodged with PoMC an Outward Manifest within 5 days of the departure of a Vessel from Port Waters.

## **9.3 Electronic lodgement of Manifests**

Inward Manifests and Outward Manifests shall be electronically lodged with PoMC by email at the address identified at item 2 in Schedule 1.

## **9.4 Additional information**

The Owner and the Shipping Agent must lodge with PoMC any additional information reasonably requested by PoMC concerning any Cargo referred to on an Inward Manifest or an Outward Manifest within 48 hours of a written request to do so.

## **9.5 No Cargo discharged or loaded**

In the event that a Vessel does not discharge or load any Cargo whilst in Port Waters, the Owner or the Shipping Agent shall, within 48 hours of the departure of the Vessel from Port Waters, provide written notice to PoMC that no Cargo was discharged or loaded, as the case may be.

# **10. Acknowledgments by the Owner**

## **10.1 Rights to use the Dedicated Facility is personal**

The Owner acknowledges that the rights conferred upon it by this Agreement to use the Dedicated Facility and the channel may not be transferred or assigned to any other party.

## **10.2 Acknowledgment of responsibility**

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 concerning the hire and use of the Dedicated Facility or the use of the channel.

## **10.3 General Indemnity by Owner**

The Owner must indemnify PoMC against:

- (a) loss of or damage to the property of PoMC;
- (b) claims by any person against PoMC in respect of personal injury or death or loss of or damage to any property;
- (c) loss, damage or costs arising from the carriage of Cargo by the Owner; and
- (d) loss, damage or costs (excluding consequential loss such as loss of profit, cost of replacement production and business interruption) incurred by PoMC due to disturbance to or interference with PoMC's use of the Port or the carrying on of its business at the Port,

arising out of or as a consequence of the access, occupation or use of the Dedicated Facility or the use of the channel by the Owner, the Shipping Agent, or their servants, agents, employees or contractors.

The Owner's liability to indemnify PoMC shall be reduced proportionately to the extent that an act or omission of PoMC contributed to the loss, damage, death or injury.

## **10.4 Specific Environmental Indemnity by Owner**

The Owner must indemnify PoMC for direct, indirect and consequential costs to PoMC arising from any Pollution Incident 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 applicable law and conventions.

## **10.5 Responsibility for damage to the Dedicated Facility**

The Owner is liable for any and all loss or damage to the Dedicated Facility or the channel arising from or related to the hire or use of the Dedicated Facility or the use of the channel 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, and occurring during the Access Period.

## **10.6 Cost of repairing Damage**

The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of PoMC, arises from or is related to the hire or use of the Dedicated Facility or the use of the Channel by the Owner, the Shipping Agents, or their servants shall be borne by the Owner or, if such costs are incurred by PoMC, the

Owner is liable to reimburse PoMC such costs which shall be recoverable by PoMC as a debt due and payable by the Owner.

### **10.7 Payment for damage to the Dedicated Facility**

The Owner must pay to PoMC the reasonable cost of any such repairs carried out by or on behalf of PoMC to damage to the Dedicated Facility or the Channel not later than 30 days after written demand is made by PoMC for such payment.

## **11. Compliance with Legislative Requirements and directions**

### **11.1 Legislative Requirements**

- (a) 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.
- (b) The Shipping Agent must ensure that its servants, agents, employees and contractors comply with all Legislative Requirements.

### **11.2 Compliance with directions**

The Owner must strictly comply with any:

- (a) direction of the Harbour Master in connection with access to or use of Port Facilities or the Dedicated Facility;
- (b) direction of PoMC's Security Manager or PoMC's Security Contractor;
- (c) direction of PoMC in connection with access to or use of Port Facilities or the Dedicated Facility; and
- (d) direction by any officer authorised by statute to give directions including pursuant to the *Marine Act 1988* (Vic).

## **12. Environmental Obligations**

### **12.1 Obligation not to pollute**

Whilst accessing or using the Port Facilities, the Dedicated Facility or Port Waters, the Owner must not cause pollution to occur within the meaning of sections 39(1), 41(1) and 45(1) of the *Environment Protection Act 1970* (Vic) or cause an Environmental Hazard. The Owner must not disturb, exacerbate or facilitate the migration of existing Contamination.

### **12.2 Environmental Incident Reporting**

Without derogating from the Owner's obligations under Clause 15.2, the Owner must immediately and no later than one hour after becoming aware of any Pollution Incident give written notice to PoMC's Shipping Management Centre of the occurrence of such a Pollution Incident.

### **12.3 Obligation to clean-up etc**

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 PoMC and within the timeframe specified in the direction. PoMC may at its discretion, and at the Owner's cost, engage an Environmental Auditor pursuant to section 53U of the *Environment Protection Act 1970* (Vic) to oversee any clean up by the Owner.

### **12.4 Statutory notices and legal proceedings**

Within 48 hours of receipt of any notices or legal proceedings in respect of the impact of its activities on human health or the Environment over, under or on Port Facilities, the Dedicated Facility or Port Waters, including without limitation notices or proceedings issued by the Environment Protection Authority or any other statutory or governmental body, the Owner must give written notice to the Shipping Management Centre of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

### **12.5 Obligation to comply with statutory notice**

The Owner must comply with any and all statutory notices issued against it in relation to a Pollution Incident or any other impact, real or potential, of its activities on human health or the Environment and is liable for any costs of compliance with such statutory notices.

### **12.6 Obligations regarding storage of dangerous goods**

The Owner must not, without PoMC's prior written consent use or allow the Port Facilities, the Dedicated Facility or Port Waters 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 any other goods the storage of which is prohibited by the Insurance Council of Australia Ltd in non-hazardous stores provided that the consent of the Corporation will not be required under this clause where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.

### **12.7 PoMC guidelines**

- (a) 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 PoMC guidelines and Port Rules, applicable to access and use of Dedicated Facility or Port Facilities, including:
  - (i) Bulk Liquid Cargo Guidelines;
  - (ii) Bunker Transfer Guidelines (incorporating ship/road vehicle liquid transfers);
  - (iii) Hot Work Procedural Guidelines;
  - (iv) Packaged Dangerous Cargoes Guidelines;

- (v) Port Rules;
  - (vi) Procedures for the handling of odorous or toxic cargoes at No. 1 Maribyrnong;
  - (vii) Tank Washing Guide; and
  - (viii) other guidelines as listed in PoMC website.
- (b) PoMC shall ensure that the guidelines listed in clause 12.7(a), as amended from time to time, are published on the PoMC website.

## 12.8 Rights of PoMC

Without limiting the foregoing provisions of this clause 12:

- (a) If PoMC 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, PoMC may issue a direction requiring that specified corrective action be undertaken by the Owner to the satisfaction of PoMC and within the timeframe specified by PoMC.
- (b) If the Owner fails to comply with the terms of a direction under sub-clause (a) or fails to do so to the satisfaction of PoMC, or fails to clean-up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of PoMC, PoMC 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 PoMC; 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

### 13.1 Occupational Health and Safety responsibility

- (a) The Owner acknowledges that occupational health and safety on a Vessel during the Access Period is the responsibility of the Owner.
- (b) The Shipping Agent acknowledges that occupational health and safety of the Shipping Agent's employees during the Access Period is the responsibility of the Shipping Agent.

### 13.2 Occupational Health and Safety obligations

- (a) The Shipping Agent must:
  - (i) 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;

- (ii) fully comply with all OH&S Laws;
  - (iii) use best endeavours to ensure that its employees and invitees comply with all occupational health and safety requirements, including the occupational health and safety management plan and induction training (if any), of the Lessee;
  - (iv) immediately notify the PoMC of any incident or dangerous occurrence at Port Facilities and the Dedicated Facility which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law, including but not limited to the Occupational Health and Safety Act 2004.
- (b) The Owner must:
- (i) use its best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees, while on the Vessel, are not exposed to conditions or practices that have the potential to cause personal injury or property damage;
  - (ii) fully comply with all OH&S Laws;
  - (iii) use its best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees while they are on the Vessel comply with all occupational health and safety requirements, including the occupational health and safety management plan and induction training (if any), of the Lessee;
  - (iv) immediately notify the PoMC of any incident or dangerous occurrence at Port Facilities and the Dedicated Facility which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law.

## 14. Emergencies

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

## 15. Notification of damage and/or injury

### 15.1 Immediate notification to PoMC

During an Access Period as soon as practicable after becoming aware of any damage to the Port Facilities or the Dedicated Facility or any injury to any person or circumstances likely to cause any damage or injury, the Owner must advise or cause the PoMC Shipping Management Centre to be advised of such damage, injury or circumstances or potential damage, injury or circumstances (as the case may be).

## **15.2 Detailed incident report**

No later than 72 hours after the Owner gives notice in accordance with Clause 15.1, the Owner must cause a detailed written report to be lodged with PoMC in respect of the accident, event or other circumstances giving rise to the damage or injury or potential damage or injury (as the case may be).

## **16. Port Security**

### **16.1 Compliance with MTOFSA**

The Owner must ensure that for the duration of each Access Period its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel:

- (a) strictly comply with the requirements of the MTOFSA; and
- (b) comply with all directions of a lessee of a Dedicated Facility concerning security.

### **16.2 Acknowledgment of a Security Regulated Port**

The Owner acknowledges that the Port is a Security Regulated Port within the meaning of the MTOFSA and that security measures required by the MTOFSA will be audited by various agencies including but not limited to PoMC and the Commonwealth Department of Transport and Regional Services and their appointees.

### **16.3 Financial penalties**

The Owner acknowledges that financial penalties apply for breaches of the MTOFSA.

### **16.4 Compliance with Restricted Areas**

- (a) The Owner acknowledges that it is an offence:
  - (i) under the MTOFSA, for an unauthorised person to enter a Landside Restricted Zone, or for an unauthorised vehicle to enter or remain in a Landside Restricted Zone; and
  - (ii) under the PSA, for an unauthorised person to enter a restricted access area, or for an unauthorised vessel to enter or remain in a restricted access area.
- (b) The Owner shall ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel:
  - (i) take all necessary steps to ensure that an unauthorised person, vehicle or vessel does not enter or remain on a Restricted Area; and
  - (ii) do not cause or permit an unauthorised person, vehicle or vessel to enter or remain on a Restricted Area.

### **16.5 Understanding PoMC's security requirements**

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 understand

and comply with the security requirements of PoMC as published on PoMC's website from time to time.

### **16.6 Assistance to PoMC**

The Owner must ensure that its servants, agents, employees and contractors cooperate fully with PoMC and other users of the Dedicated Facility and Port Facilities, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

### **16.7 Access to Vessels**

The Owner agrees that, upon request from PoMC at any time during the Access Period, it must provide to authorised employees of PoMC and other persons authorised by PoMC under the PSA or the *Marine Act 1988 (Vic)*, who at all times shall carry appropriate photo ID, access to the Vessel subject to compliance by PoMC with the reasonable requirements of the master of the Vessels.

## **17. Service providers to Vessels**

Services of the type listed on PoMC's website from time to time shall only be provided by those service providers licensed by PoMC to provide those services at the Port. The Owner must not engage a third party to provide such services unless that third party is duly licensed by PoMC.

## **18. Supply of water**

### **18.1 Water for personal consumption**

Supply of fresh water to Vessels shall be for the purpose of personal consumption (e.g. drinking, washing, and cooking) and the Owner must ensure that the supplied water is not used for industrial or commercial purposes such as washing down decks or for ballast purposes.

### **18.2 Hoses**

The Owner must ensure that PoMC's fresh water hoses and equipment are properly attached to the existing fresh water supply fixtures located at the wharf apron.

### **18.3 Care of equipment**

The Owner must ensure that any person engaged to collect PoMC's fresh water hoses and equipment must take good care of them and return them promptly after use in the same condition as supplied. The Owner is responsible for any damage to fresh water supply equipment and will bear the cost of any repair and/or replacement of PoMC's fresh water hoses and equipment.

### **18.4 Water charges**

The Owner must pay the relevant Lessee for the use of water at Swanson Dock East, Swanson Dock West, 5 Yarraville and Gellibrand Pier and pay PoMC for the use of water at other facilities.

## 19. Telephone services

The Owner must ensure for safety reasons, at its own cost, that Australian telephone services are provided to a Vessel whilst the Vessel is berthed at a wharf in the Port.

## 20. Insurance

### 20.1 P&I insurance

Except to the extent of those risks covered by Hull & Machinery policies, the Owner must ensure, and it hereby warrants, that each Vessel for which it submits an Application will, for the duration of the Access Period, be covered by P&I insurance with a member club of the International Group of P&I Clubs, including cover against oil pollution 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.

In the event that the Vessel is insured by a P&I Club not a member of the International Group of P&I Clubs, the Owner must inform PoMC of the details of the Vessel's P&I insurance policy and the relevant insurer at the time of lodging the Application.

### 20.2 Consent of P&I Insurer

If required by PoMC the Owner shall submit the Agreement to the P&I Club which has provided insurance of the Vessel and shall advise PoMC if the P&I Club does not consent to the Agreement.

### 20.3 Proof of insurance

The Owner shall provide evidence, to the reasonable satisfaction of PoMC, of the currency of the insurance policies referred to in this Clause 20 when requested in writing to do so by PoMC during the Access Period.

## 21. Release

Notwithstanding anything contained in this Agreement, the Owner and the Shipping Agent release PoMC 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:

- (a) industrial disputes, restraints of labour, strikes, riots, civil commotion, lock outs or stoppages whether involving the employees of PoMC 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 to the relevant PoMC facilities other than those caused by an act, fault or negligence of PoMC; and
- (f) any other cause that the PoMC could not avoid or prevent by the exercise of reasonable care.

## 22. GST

### 22.1 Interpretation

Words or expressions used in this Clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### 22.2 Consideration is GST exclusive

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.

### 22.3 Gross up of consideration

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 ('**GST exclusive consideration**') 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 22.5, 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.

### 22.4 Reimbursements (net down)

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.

### 22.5 Tax invoices

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

Subject to Clause 24, any notice or other communication concerning this Agreement may only be:

- (a) left at or sent to the Owner or the Shipping Agent if the communication is addressed to the Owner and transmitted by email to the email address given by the Owner or the Shipping Agent;
- (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; and
- (c) left at or sent to PoMC if the communication is:
  - (i) in writing and addressed to PoMC and sent by email to the email address given in item 1 of Schedule 1;
  - (ii) an Inward or Outward Manifest and sent by email to the email address given in item 2 of Schedule 1; or
  - (iii) to the PoMC Finance Operations Department pursuant to Clause 9 if the communication is sent by email to the email address given in item 3 of Schedule 1.

## 24. Dispute Resolution

### 24.1 Notice of Dispute

If a dispute or difference (a '**dispute**') between PoMC and the Owner or the Shipping Agent or both of them arises out of or in connection with the Agreement, the subject matter thereof or use of the Port Facilities or the Dedicated Facility, including a dispute:

- (a) in tort;
- (b) under statute;
- (c) for restitution based on unjust enrichment; or
- (d) for rectification or frustration,

then if a party desires to pursue the dispute, that party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute ('**Dispute Notice**').

### 24.2 Continue to perform the Agreement

Notwithstanding the existence of a dispute, PoMC, the Owner and the Shipping Agent shall continue to perform their respective obligations under the Agreement, and the Owner shall comply with Clause 8.

### 24.3 Further steps before proceeding

Within 7 days after service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. Each party must make reasonable efforts in an attempt to resolve the dispute.

### 24.4 Arbitration – Australian entities

- (a) If:
  - (i) the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 24.3; and
  - (ii) the entity involved in the dispute or difference that is not PoMC 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.
- (b) Any arbitration pursuant to this Clause 24.4 shall be administered by the Institute of Arbitrators and Mediators Australia ('IAMA') in accordance with the IAMA Arbitration Rules.
- (c) Any arbitration pursuant to this Clause 24.4 shall apply the substantive law of the state of Victoria and shall apply the rules of procedure as prescribed in the state of Victoria.
- (d) Any arbitration pursuant to this Clause 24.4 shall take place in Melbourne, Australia and shall be conducted in English.

### 24.5 Arbitration – non-Australian entities

- (a) If:
  - (i) the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 24.3; and
  - (ii) 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.
- (b) Any arbitration pursuant to this Clause 24.5 shall be in accordance with the UNCITRAL Model Law on International Commercial Arbitration.
- (c) The dispute or difference will be arbitrated by a single arbitrator.
- (d) If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in Clause 24.5(a) the Arbitrator will be appointed in accordance with the requirements of the Model Law and the *International Arbitration Act 1974* (Cth).

- (e) The arbitral tribunal shall apply the substantive law of the state of Victoria. The arbitral tribunal shall apply the rules of procedure as prescribed in the state of Victoria.
- (f) The arbitration shall take place in Melbourne, Australia.
- (g) The language of the arbitration shall be English.

## 25. Miscellaneous

### 25.1 Performance of PoMC's obligations

PoMC 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 PoMC to the Owner, the notice or report is issued or provided in writing to the Shipping Agent.

### 25.2 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.

### 25.3 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 signed by the parties.

### 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

- (a) None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.
- (b) The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clause 10 and 12 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- (c) The following clauses of this Agreement survive the expiry of the Access Period: Clauses 8, 21, 24 and 25.

### 25.6 Binding of successors

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

## Schedule 1 - Particulars

Item	Description	Detail
1	Port of Melbourne Corporation	Address: PO Box 261 Melbourne VIC 3001
2	Lodgement of Manifests	manifest@portofmelbourne.com
3	PoMC Finance Operations Department	Address: PO Box 261 Melbourne VIC 3001 Email: berthforms@portofmelbourne.com
4	PoMC's Security Manager	Name: Steven Sullivan Address: PO Box 261 Ph: 9683 1415 or 0401 776 353 Email: <a href="mailto:Steven.Sullivan@portofmelbourne.com">Steven.Sullivan@portofmelbourne.com</a>

## Schedule 2 - Dictionary

In this document, unless the contrary intention appears:

- 1 The following terms are defined in section 3 of the *Port Services Act 1995* (Vic) and must be construed in accordance with the PSA as amended from time to time:

cargo	port land	restricted access areas
channel	port of Melbourne	wharfage fee
channel fee	port of Melbourne waters	
channel operator	port of Melbourne land	

2. The following words and expressions shall be construed in accordance with the meanings given below:

<b>Access Period</b>	means the period which starts from the earliest time at which the Vessel enters the Port Waters and ends when the Vessel departs the Port Waters.
<b>Agreement</b>	means the agreement constituted by the Application and these Standard Terms and Conditions.
<b>Application</b>	means the submission to PoMC of a properly completed form in the manner prescribed by PoMC and published on its website concerning Dedicated Facilities and the Channel.
<b>Cargo/Cargoes</b>	means all cargoes including Empties.
<b>Cargo Interest</b>	means the legal entity or person entitled to possession of Cargo while it is at a terminal prior to loading on board or after discharge from a Vessel.
<b>Certificate of Registry</b>	means the certificate issued pursuant to the national law of the Vessel's port of registry.
<b>Certificate of Tonnage</b>	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.
<b>Channel, channel</b>	means the channel of the port of Melbourne.
<b>Contamination</b>	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. <b>Contaminant</b> shall be construed accordingly.

<b>Dedicated Facility</b>	means a facility (or facilities) listed in Schedule 3 that are designated by PoMC as the Dedicated Facility for the purposes of the Application
<b>Demise Charter</b>	is 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
<b>Environment</b>	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
<b>Environmental Hazard</b>	means a state of 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
<b>Empty</b>	means a Cargo container which does not contain any Cargo.
<b>Harbour Master</b>	means the PoMC harbour master or assistant harbour master engaged for Port Waters pursuant to section 26A or section 26B of the <i>Marine Act 1988</i> (Vic)
<b>Guidelines</b>	means any or all of the Guidelines, Port Rules, Procedures, Guide and other guidelines referred to in clause 12.7.
<b>Inward Manifest</b>	means an inward manifest in an UN/EDIFACT-IFCSUM format, or in the case of bulk carriers for which manifests are lodged via PoMC E-forms, or as otherwise required by PoMC from time to time containing accurate and complete particulars of the Cargo mass and Cargo volume, of all Cargo intended to be discharged at the Port of Melbourne, and including all other information prescribed by PoMC from time to time. Information on E-forms is available at PoMC website ( <a href="http://eforms.portofmelbourne.com/default.asp">http://eforms.portofmelbourne.com/default.asp</a> )
<b>Landside Restricted Zone</b>	means an area of land or a structure within the boundaries of the Port declared to be a Landside Restricted Zone pursuant to the regulations made under the MTOFSA
<b>Lay-up, Lay Up</b>	means a ship or vessel being 'laid up' or temporarily not in service.
<b>Legislative Requirements</b>	means: <ul style="list-style-type: none"> <li>(a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the commonwealth and the state of Victoria;</li> <li>(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the State of Victoria;</li> <li>(c) the obtaining or terms of any permit or licence concerning use of the Port Facilities or the Dedicated Facility;</li> <li>(d) directions of the Harbour Master;</li> </ul>

	(e) requirements of the Port Rules;
	(f) directions of any statutory bodies or authorities with relevant jurisdiction; and
	(g) the Guidelines.
<b>Lessee</b>	means a party to a lease, wharf lease or preferential berthing licence concerning any Port Land.
<b>MTOFSA</b>	means the <i>Maritime Transport and Offshore Facilities Security Act 2003</i> (Cth), as amended from time to time.
<b>OH &amp; S Laws</b>	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: <ul style="list-style-type: none"> <li>(a) <i>Occupational Health and Safety Act 2004</i> (Vic);</li> <li>(b) <i>Occupational Health and Safety (Plant) Regulations 1995</i> (Vic);</li> <li>(c) <i>Dangerous Goods Act 2000</i> (Vic); and</li> <li>(d) <i>Dangerous Goods Regulations 2000</i> (Vic);</li> </ul>
<b>Outward Manifest</b>	means an outward manifest in an UN/EDIFACT-IFCSUM format, or in the case of bulk carriers for which manifests are lodged via PoMC Eforms, or as otherwise required by PoMC from time to time containing accurate and complete particulars of Cargo mass and Cargo volume of all Cargo loaded onto the Vessel at the Port, and including all other information prescribed by PoMC from time to time. Information on E-forms is available at the PoMC website at <a href="http://eforms.portofmelbourne.com/default.asp">http://eforms.portofmelbourne.com/default.asp</a> .
<b>Owner</b>	means the party identified as the Owner in the Application who is the owner of a Vessel within the meaning of section 4 of the PSA.
<b>Permitted Use</b>	means: <ul style="list-style-type: none"> <li>(a) the embarking and disembarking of passengers;</li> <li>(b) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo;</li> <li>(c) providoring and bunkering;</li> <li>(d) ship repair and maintenance; and</li> <li>(e) crew change.</li> </ul>
<b>Pollution Incident</b>	means any or all of the items described at Clause 12.1 and also includes any complaints received from a regulator, organisation or any member of the public about the Owner and activities conducted by the Owner regarding the Environment.
<b>PoMC</b>	means the Port of Melbourne Corporation established by section 10 of the PSA and includes its successors in title and assignors.
<b>PoMC Security Contractor</b>	means the contractor engaged by PoMC from time to time to implement the Port Security Plan and includes its servants, agents and employees

<b>PoMC Security Manager</b>	means the manager named in item 4 of Schedule 1, or as notified by PoMC from time to time.
<b>Port</b>	means the port of Melbourne, as defined in section 3 of the PSA.
<b>Port Charges</b>	means the wharfage fees, channel fees and other published charges determined or levied by PoMC for use of the Dedicated Facility or the Channel and published in the Reference Tariff Schedule, including charges concerning the loading and/or unloading of Empties.
<b>Port Facilities</b>	means the Channel, Port Land and any and all other facilities owned, managed or controlled by PoMC, but does not include the Dedicated Facility.
<b>Port Land</b>	means any land declared to be the port of Melbourne land under the PSA.
<b>Port Waters</b>	means any waters declared to be the waters of the port of Melbourne under the PSA.
<b>Port Rules</b>	means the port rules of PoMC as amended from time to time.
<b>Port Security Plan</b>	means the port security plan prepared by PoMC in accordance with the MTOFSA and as amended from time to time.
<b>PSA</b>	means the <i>Port Services Act 1995</i> (Vic) as amended from time to time.
<b>P&amp;I Clubs</b>	means those Mutual Insurance Associations which provide cover to insure liabilities of its members, in the case of ship Owners, including liabilities concerning or arising from the following risks: <ul style="list-style-type: none"> <li>(a) death and personal injury to seamen, passengers and third parties;</li> <li>(b) in respect of stowaways or persons rescued at sea;</li> <li>(c) collisions;</li> <li>(d) groundings;</li> <li>(e) damage to fixed and floating objects;</li> <li>(f) pollution;</li> <li>(g) wreck removal;</li> <li>(h) towage operations; and</li> <li>(i) Cargo damage.</li> </ul>
<b>Reference Tariff Schedule</b>	means the PoMC Reference Tariff Schedule, as amended from time to time and published at the PoMC website, which sets out details of pricing for port charges including wharfage, tonnage, berth hire, security, area hire, tanker inspection and water supply to ships.
<b>Restricted Area</b>	means an area declared to be a Landside Restricted Zone, or a restricted access area under the PSA.
<b>Shipping Agent</b>	means the shipping agent, whose name is set out in the Application, authorised by the Owner to manage the Vessel on behalf of the

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Owner.

**Shipping  
Management  
Centre**

means the PoMC Shipping Management Centre and personnel at the Centre responsible for the safety of navigation and shipping operations.

**Time Charter**

is 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, Time Charter).

and which calls at or enters port of Melbourne waters

## Schedule 3 - Dedicated Facilities

<b>ABBV.</b>	<b>WHARF</b>
APPB	B Appleton Dock
APPC	C Appleton Dock
APPD	D Appleton Dock
APPE	E Appleton Dock
GELI	Gellibrand Pier
IESP	Inner East Station Pier
SD1E	Swanson Dock 1 East
SD2E	Swanson Dock 2 East
SD3E	Swanson Dock 3 East
SD4E	Swanson Dock 4 East
SD1W	Swanson Dock 1 West
SD2W	Swanson Dock 2 West
SD3W	Swanson Dock 3 West
SD4W	Swanson Dock 4 West
SW26	26 South Wharf
WD1E	1 Webb Dock
WD2E	2 Webb Dock
WD3E	3 Webb Dock
WD4E	4 Webb Dock
WD5E	5 Webb Dock
WD2W	Webb Dock West
YVL5	5 Yarraville