

# Standard Terms and Conditions for Hirers' Access to Port of Melbourne Common User Terminals (effective 25 September 2019)

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## 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 Port of Melbourne Operations Pty Ltd as Trustee for Port of Melbourne Unit Trust ABN 83 751 315 034 (**Port of Melbourne**) on the one part; and the Hirer, or the Agent and Hirer, jointly and severally, on the other part.

The Agreement is established when the Agent acting as agent for the Hirer, or the Hirer, submits an Application to access and use the Common User Terminals.

### 1.2 Defined Terms and Interpretation

Capitalised terms used in this agreement are defined in Schedule 2 and shall be construed in accordance with the provisions in Schedule 2.

## 2. Joint and Several Obligations of the Hirer and the Agent

- (a) Save for the clauses identified in Clause 2(b), any obligation imposed on the Hirer contained in this Agreement must be construed as imposing joint and several liability upon the Hirer and the Agent.
- (b) The Agent is not jointly or severally liable for a breach by the Hirer of the following clauses of this Agreement: Clauses 3, 4, 8.4, 10, 11, 15 and 18.

## 3. Hirer

### 3.1 Bound to perform this Agreement

The Hirer is bound to perform all the obligations of the Hirer in this Agreement.

### 3.2 Hirer's obligations survive

Where the Hirer has engaged the Agent to act as its agent for all relevant purposes in relation to the Hirer's access to the Common User Terminals, the obligations of the Hirer pursuant to this Agreement survive the termination of any contract or other arrangement between the Hirer and the Agent.

### 3.3 Notification of termination of Agency

As soon as practicable after the termination of any contract or other arrangement between the Hirer and the Agent, the Hirer shall notify Port of Melbourne of that termination and the name of any replacement Agent appointed or to be appointed.

### 3.4 Assistance to Port of Melbourne

The Hirer shall cooperate wherever possible with Port of Melbourne and other users of Port Facilities and the Common User Terminal, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements,

including the MTOFSA.

## **4. Agent**

### **4.1 Authority**

Where an Agent is engaged to act on behalf of a Hirer, the Agent warrants that it is the Agent on behalf of the Hirer and is fully authorised to act on behalf of the Hirer.

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

As soon as practicable after the termination of any contract or other arrangement between the Hirer and the Agent, the Agent must notify Port of Melbourne of that termination.

### **4.3 Agent**

The Agent must:

- (a) advise the Hirer of all Port Charges and rules of entry;
- (b) collect from the Hirer and pay all relevant disbursements, fees and charges; and
- (c) comply with all Legislative Requirements applicable to the Agent.

### **4.4 Understanding Port of Melbourne's security requirements**

The Agent must:

- (a) use its best endeavours to ensure that all its employees and other personnel understand and comply with the security requirements of Port of Melbourne, 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 Hirer of its obligations under MTOFSA.

### **4.5 Assistance to Port of Melbourne**

The Agent must cooperate wherever possible with Port of Melbourne and other users of the Common User Terminals, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

## **5. Use of the Common User Terminal**

### **5.1 Permitted Uses**

- (a) The Hirer is permitted to use the Common User Terminal for a Permitted Use for the duration of the Access Period.
- (b) The Hirer shall not use the Common User Terminal for any purpose during the Access Period other than the Permitted Use.

### **5.2 Use subject to this Agreement**

The Hirer acknowledges that upon submitting an Application to Port of Melbourne, its access to and use of the Common User Terminal for the Permitted Use for the duration of the Access Period is subject to and in accordance with the terms and conditions of this Agreement.

### **5.3 No warranty as to suitability**

The Hirer acknowledges that Port of Melbourne has made no representation and gives no warranty concerning the adequacy or suitability of the Common User Terminal for the use intended by the Hirer.

### **5.4 No estate or interest**

The Hirer acknowledges that its rights to access or use the Common User Terminal for the Permitted Use for the duration of the Access Period rest in contract only and this Agreement does not create or confer upon the Hirer any tenancy, estate or other interest in the Common User Terminal.

### **5.5 No right of exclusive occupation**

The Hirer has no right of exclusive occupation or use of the Common User Terminal at any time during that Access Period and Port of Melbourne may at any time exercise all of its rights to, without limiting the generality of this Clause 5.5, enter, use, possess and enjoy the whole or any part of the Common User Terminal.

### **5.6 Access to be exercised in accordance with Melbourne VTS**

The rights of the Hirer to occupy, use or access the Common User Terminal for the Permitted Uses are subject to the directions of the Harbour Master and Melbourne VTS, which directions may include the Common User Terminal to which access is permitted, the method of control and the dates and time of control.

### **5.7 Common User Terminal may change**

The Hirer acknowledges that the Common User Terminal available for access by the Hirer may change from time to time in Port of Melbourne's complete discretion. If there is a change to access arrangements or the status of the Common User Terminal, Port of Melbourne will give notice of such change to the Hirer.

## **6. Term of Agreement**

- (a) This Agreement commences when the Hirer or its Agent submits an Application to Port of Melbourne.
- (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**

Port of Melbourne acting reasonably reserves the right to refuse or to withdraw permission for access or the use of the Common User Terminal (or any part of the Common User Terminal) when:

- (a) the Common User Terminal or any part of the Common User Terminal are unsuitable for use;
- (b) a direction is given by the Harbour Master; or
- (c) the vessel for which access is required is unable to be loaded or unloaded at any time prior to the commencement of the Access Period.

### **7.2 No compensation**

If Port of Melbourne withdraws permission for use of or access to the Common User Terminal, Port of Melbourne shall refund to the Hirer any monies paid in advance by

the Hirer in respect of the applicable Port Charges for any proposed Access Period that does not proceed, or for the use of the Common User Terminal for which permission for access or use is withdrawn.

The Hirer acknowledges and agrees that Port of Melbourne is not obliged to pay, and the Hirer is not entitled to, any other remedy, compensation or damages for any such withdrawal of permission.

## **8. Port Charges**

### **8.1 Acknowledgment of liability**

The Hirer agrees that it is liable to pay to Port of Melbourne the Port Charges in accordance with the terms of this Agreement.

### **8.2 Area Hire Charge**

The Hirer must, where applicable, pay Port of Melbourne the area hire charge specified in the Reference Tariff Schedule.

### **8.3 Wharf Access Charge**

The Hirer must, where applicable, pay Port of Melbourne the wharf access charge specified in the Reference Tariff Schedule.

### **8.4 Other Port Charges**

The Hirer must pay Port of Melbourne all other Port Charges concerning the occupation, use or access by the Hirer of the Common User Terminal in accordance with the Reference Tariff Schedule.

### **8.5 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 Port of Melbourne

### **8.6 Security costs**

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

### **8.7 Interest**

If the Hirer does not pay the relevant Port Charge in accordance with this Agreement, the Hirer is liable to Port of Melbourne 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. Acknowledgments by the Hirer**

### **9.1 Rights to use the Common User Terminals are personal**

The Hirer acknowledges and agrees that the rights conferred upon it by this Agreement to use the Common User Terminal may not be transferred or assigned to any other party.

## **9.2 Acknowledgment of responsibility**

The Hirer acknowledges and agrees that it is responsible for the acts and omissions of its agents, employees, servants, invitees and contractors concerning the hire and use of the Common User Terminal.

## **9.3 General indemnity by Hirer**

The Hirer must indemnify Port of Melbourne against:

- (a) loss of or damage to the property of Port of Melbourne;
- (b) claims by any person against Port of Melbourne 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 Hirer; and
- (d) loss, damage or costs (excluding consequential loss such as loss of profit, cost of replacement production and business interruption) incurred by Port of Melbourne due to disturbance to or interference with Port of Melbourne's use of the Port or the carrying on of its business at the Port,

arising out of or as a consequence of the occupation, access or use of the Common User Terminal by the Hirer or the Hirer's servants, agents, employees or contractors.

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

## **9.4 Specific environmental indemnity by Hirer**

The Hirer must indemnify Port of Melbourne for direct and indirect losses incurred by Port of Melbourne arising from any Pollution Incident, Environmental Hazard or Contamination caused by the Hirer or the Hirer's servants, agents, employees or contractors without prejudice to any defences, exclusions from liability and rights of limitation provided by applicable law and conventions.

## **9.5 Responsibility for damage to the Common User Terminal**

The Hirer is liable for any and all loss or damage to Common User Terminals, arising from or related to the hire or use of Common User Terminals by the Hirer or the Hirer's servants, agents, employees or contractors and occurring during the Access Period.

## **9.6 Cost of repairing Damage**

The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of Port of Melbourne, arises from or is related to the hire or use of the Common User Terminal by the Hirer or the Hirer's servants, agents, employees or contractors shall be borne by the Hirer or, if such costs are incurred by Port of Melbourne, the Hirer is liable to reimburse Port of Melbourne such costs which shall be recoverable by Port of Melbourne as a debt due and payable by the Hirer.

## **9.7 Payment for damage to the Common User Terminal**

The Hirer must pay to Port of Melbourne the reasonable cost of any repairs referred to in Clause 9.6 carried out by or on behalf of Port of Melbourne not later than 30 days after written demand is made by Port of Melbourne for such payment.

## 10. Comply with Legislative Requirements and directions

### 10.1 Legislative Requirements

The Hirer must ensure that that its servants, agents, employees and contractors, including all crew and all personnel engaged by, comply with all Legislative Requirements.

### 10.2 Compliance with directions

The Hirer must strictly comply with any:

- (a) direction of the Harbour Master in connection with access to or use of Port Facilities or the Common User Terminal;
- (b) direction of Port of Melbourne's Security Manager or Port of Melbourne's Security Contractor; and
- (c) direction of Port of Melbourne in connection with access to or use of Port Facilities or the Common User Terminal.

## 11. Environmental Obligations

### 11.1 Obligation not to pollute

Whilst accessing or using Port Facilities, the Hirer must not

- (a) cause a Pollution Incident;
- (b) cause an Environmental Hazard; or
- (c) disturb, exacerbate or facilitate the migration of any existing Contamination.

### 11.2 Environmental Incident Reporting

Without limiting the Hirer's obligations under Clause 14 the Hirer shall immediately and no later than one hour after becoming aware of any Pollution Incident give written notice to Port of Melbourne and Melbourne VTS of the occurrence of such a Pollution Incident.

### 11.3 Obligation to clean up

- (a) The Hirer 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 Port of Melbourne and within the timeframe specified in the direction.
- (b) Port of Melbourne may at its discretion, and at the Hirer's cost, engage an Environmental Auditor pursuant to section 53U of the *Environment Protection Act 1970* (Vic) in respect of the Pollution Incident.

### 11.4 Statutory notices and legal proceedings

Within 48 hours of receipt of the Agent or Hirer receiving any notice or legal proceedings in respect of the impact of its activities on the Environment over, under or on Port Facilities, the Common User Terminal or Port of Melbourne Waters, including without limitation notices or proceedings issued by the Environment Protection Authority or any other statutory or governmental body, the Agent or Hirer (as applicable) shall give written notice to Port of Melbourne and Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

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

The Agent and Hirer must comply with any and all statutory notices referred to in Clause 11.4 and is liable for any costs of compliance with such statutory notices.

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

- (a) The Hirer must not, without Port of Melbourne's prior written consent, use or allow the Port Facilities or the Common User Terminal 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 Port of Melbourne will not be required under this clause where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.
- (b) The Hirer 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 and the access and use of the Common User Terminal or Port Facilities, comply with all OH&S Laws and current VPCM requirements in relation to dangerous goods, as published on VPCM's website.

### **11.7 Port of Melbourne Guidelines and VPCM Guidelines**

- (a) The Hirer must, and shall ensure that its servants, agents, employees and contractors, and all personnel engaged by it in relation to hire of a Common User Terminal, comply with all current Port of Melbourne Guidelines applicable to access and use of Common User Terminals or Port Facilities.
- (b) Port of Melbourne shall ensure that the Port of Melbourne Guidelines as amended from time to time, are published on Port of Melbourne's website.
- (c) The Hirer must comply, and shall ensure that its servants, agents, employees and contractors, and all personnel engaged by it in relation to hire of a Common User Terminal, comply with all current VPCM Guidelines.

### **11.8 Rights of Port of Melbourne**

Without limiting the foregoing provisions of this clause 11:

- (a) If Port of Melbourne 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 Hirer's activities, Port of Melbourne may issue a direction requiring that specified corrective action be undertaken by the Hirer to the satisfaction of Port of Melbourne and within the timeframe specified by Port of Melbourne.
- (b) If the Hirer fails to:
  - (i) comply with the terms of a direction under sub-clause 11.8(a) to the satisfaction of Port of Melbourne; or
  - (ii) clean-up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of Port of Melbourne,Port of Melbourne may either:
  - (iii) itself undertake the corrective action and recover its costs of undertaking

the corrective action as a debt due from the Hirer to Port of Melbourne;  
or

- (iv) deny the Hirer the continuance of any right it would otherwise have had under this Agreement.

## 12. Safety

### 12.1 Occupational Health and Safety responsibility

The Hirer acknowledges that occupational health and safety at a Common User Terminal during the Access Period is the responsibility of the Hirer.

### 12.2 Occupational Health and Safety obligations

The Hirer 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 and invitees comply with all occupational health and safety requirements; and
- (d) immediately notify Port of Melbourne of any incident or dangerous occurrence at Port Facilities and the Common User Terminal which is notifiable to WorkSafe Victoria and the Australian Maritime Safety Authority pursuant to the provisions of any OH&S Law.

### 12.3 Statutory notices and legal proceedings

Within 48 hours of the Agent or Hirer receiving any notices or legal proceedings in respect of the impact of its activities on human health and safety, including without limitation notices or proceedings issued by a statutory or governmental body, the Agent or Hirer (as applicable) shall give written notice to Port of Melbourne and Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

### 12.4 Obligation to comply with statutory notice

The Hirer must comply with any and all statutory notices referred to in Clause 12.3 and is liable for any costs of compliance with such statutory notices.

## 13. Emergencies

The Hirer shall, in the event of any emergency, accident or security situation, provide Port of Melbourne and any other relevant agencies including Victoria Police, the Australian Federal Police and medical services with reasonable access to the Common User Terminal.

## 14. Notification of damage and/or injury

### 14.1 Immediate notification to Port of Melbourne

During an Access Period, the Hirer must, as soon as practicable after becoming aware of any damage to Port Facilities or Common User Terminals or any injury to any person or circumstances likely to cause any damage or injury, advise or cause Port of



Melbourne and Melbourne VTS to be advised of such damage, injury or circumstances or potential damage, injury or circumstances (as relevant).

#### **14.2 Detailed incident report**

No later than 72 hours after the Hirer gives notice in accordance with Clause 14.1 the Hirer must cause a detailed written report to be lodged with Port of Melbourne and Melbourne VTS in respect of the accident, event or other circumstances giving rise to the damage or injury or potential damage or injury (as relevant).

### **15. Port Security**

#### **15.1 Regulatory Compliance**

The Hirer must ensure that, for the duration of the Access Period, the Hirer and its servants, agents, employees and contractors, including all crew and all personnel engaged by it:

- (a) strictly comply with the requirements of the MTOFSA;
- (b) comply with all directions of Port of Melbourne's Security Contractor and Port of Melbourne's Security Manager;
- (c) comply with all security obligations under the *Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Act 2013* (Cwlth); and
- (d) comply with all biosecurity obligations under the *Biosecurity Act 2015* (Cwlth) and supporting regulations, complete prior to the Access Period the "Seaports Biosecurity Awareness eLearning Package" made available by the Department of Agriculture and Water Resources (**Department**), and comply with the Department's biosecurity incident response procedure.

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

The Hirer 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 Port of Melbourne and the Department of Home Affairs, Aviation and Maritime Security Division.

#### **15.3 Financial penalties**

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

#### **15.4 Compliance with Restricted Areas**

- (a) The Hirer acknowledge 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;
  - (ii) under the MTOFSA, not to display a Maritime Security Identification Card (MSIC) when entering a designated Landside or Waterside Restricted Zones; and
  - (iii) under the PMA, for an unauthorised person to enter a Restricted Access Area, or for an unauthorised vessel to enter or remain in an Restricted Access Area.

- (b) The Hirer shall ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it:
  - (i) take all necessary steps to ensure that an unauthorised person, vehicle or vessel does not enter or remain in a Restricted Area; and
  - (ii) do not cause or permit an unauthorised person, or vehicle or vessel to enter or remain on a Restricted Area.

## **15.5 Understanding Port of Melbourne's security requirements**

The Hirer shall ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it understand and comply with the security requirements of Port of Melbourne.

## **15.6 Assistance to Port of Melbourne**

The Hirer shall ensure that its servants, agents, employees and contractors cooperate fully with Port of Melbourne and other users of Port Facilities and the Common User Terminal to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

# **16. Common User Terminal**

## **16.1 Certificate of Condition**

Before the commencement of the Access Period, Port of Melbourne may undertake an inspection of a Common User Terminal and record the state of repair and condition of the Common User Terminal, including any discernible pre-existing Contamination, in a Certificate of Condition.

## **16.2 Inspection**

The Hirer (or its agents) shall, upon request, be afforded a reasonable opportunity to inspect the Common User Terminal at the commencement of the Access Period.

## **16.3 Evidence of condition**

The Certificate of Condition in respect of a Common User Terminal shall be evidence of the condition of that Common User Terminal at the commencement of the Access Period.

## **16.4 Condition**

The Hirer shall ensure that the Common User Terminal is left in the same condition and state of cleanliness as it was in at the commencement of the Access Period.

## **16.5 Plant and Equipment**

The Hirer shall ensure that any plant and equipment used by the Hirer at the Common User Terminal during the Access Period and which is the property of Port of Melbourne, is left in the same condition and state of cleanliness as it was in at the commencement of the Access Period.

## **16.6 Failure to maintain**

If the Hirer fails to leave the Common User Terminal in the condition required by Clause 16.4 and 16.5, Port of Melbourne may:

- (a) direct the Hirer to return the Common User Terminal to the condition required by Clauses 16.4 and 16.5; and

- (b) carry out or cause to be carried out any litter removal, restoration, remediation, cleaning and repairs and other similar work as Port of Melbourne, in its sole discretion, thinks fit.

The reasonable cost of any work carried out by Port of Melbourne under Clause 16.6(b) shall be a debt due and payable from the Hirer to Port of Melbourne and shall be paid by the Hirer within thirty (30) days of written demand by Port of Melbourne.

#### **16.7 No alterations**

The Hirer shall not make any alterations or additions to the Common User Terminal.

#### **16.8 No installation**

The Hirer shall not install fixed plant or equipment including, without limitation, any fuel storage tanks on, over or under the Common User Terminal.

### **17. Provision of Ancillary Services**

The Hirer must not engage a third party to provide Ancillary Services unless that third party has been given permission by Port of Melbourne to access Port of Melbourne Land to provide the relevant Ancillary Service. A list of third party Ancillary Service providers that have been granted access permission can be found on Port of Melbourne's website.

### **18. Insurance**

#### **18.1 General liability insurance**

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

- (a) be provided by a reputable insurer with a credit worthiness of 'BBB' or higher and approved by Port of Melbourne;
- (b) cover the Hirer and Port of Melbourne for their respective rights and interests and covers their liabilities to third parties;
- (c) be for an amount in respect of any one occurrence of not less than \$20,000,000 (AUD);
- (d) be in terms approved in writing by Port of Melbourne, which approval shall not be unreasonably withheld; and
- (e) bear an endorsement extending the indemnity under the policy to include the provisions under Clause 9.3

#### **18.2 Proof of insurance**

The Hirer shall produce evidence, to the reasonable satisfaction of Port of Melbourne, of the currency of the insurance policies referred to in this Clause 18 when requested in writing to do so by Port of Melbourne during the Access Period.

### **19. Release**

Notwithstanding anything contained in this Agreement, the Hirer releases Port of Melbourne from all actions, suits, claims, demands, costs, charges, damages, liabilities and expenses which the Hirer 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 Port of Melbourne 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 Port of Melbourne facilities other than those caused by an act, fault or negligence of Port of Melbourne ; and
- (f) any other cause that Port of Melbourne could not avoid or prevent by the exercise of reasonable care.

## **20. GST**

### **20.1 Interpretation**

Words or expressions used in this Clause 20 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### **20.2 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.

### **20.3 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 20.5 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.

### **20.4 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.

## **20.5 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.

## **21. Notices**

### **21.1 Service**

Subject to Clause 22, any notice or other communication concerning this Agreement may only be:

- (a) left at or sent to the Hirer or the Agent if the communication is addressed to the Hirer or the Agent and transmitted by email to the email address given by the Hirer or the Agent in the Application; and
- (b) left at or sent to Port of Melbourne if the communication is in writing and addressed to Port of Melbourne and sent by post to the address or by email to the email address given in item 1 of Schedule 1.

### **21.2 Performance of Port of Melbourne's obligations**

Port of Melbourne 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 Port of Melbourne to the Hirer, the notice or report is issued or provided to the Agent.

## **22. Dispute Resolution**

### **22.1 Notice of Dispute**

If a dispute or difference (a 'dispute') between Port of Melbourne and the Hirer, or the Agent, arises out of or in connection with the Agreement, the subject matter thereof or use of the Port Facilities or the Common User Terminals, 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').

### **22.2 Continue to perform the Agreement**

Notwithstanding the existence of a dispute, Port of Melbourne and the Hirer or Agent (as applicable) shall continue to perform the Agreement, and the Hirer shall comply with Clause 8.

### **22.3 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 shall make reasonable efforts to resolve the

dispute.

## **22.4 Arbitration**

- (a) If the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 22.3 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 22.4 shall be administered by the Resolution Institute in accordance with the IAMA Arbitration Rules.
- (c) Any arbitration pursuant to this Clause 22.4 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 22.4 shall take place in Melbourne, Australia and shall be conducted in English.

## **23. Confidentiality**

### **23.1 Confidential Information**

The Hirer and the Agent must:

- (a) only use Confidential Information for the purposes of this Agreement or any other purposes expressly agreed in writing by Port of Melbourne; and
- (b) keep all Confidential Information strictly confidential and not disclose it to any third party except with the prior written approval of Port of Melbourne or as required by law.

## **24. Miscellaneous**

### **24.1 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.

### **24.2 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 signed by the parties.

### **24.3 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.

### **24.4 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 9 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, 19, 22 and 23.

#### **24.5 Binding of successors**

Each party 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's address	Level 19, 839 Collins Street DOCKLANDS VIC 3008
2	Port of Melbourne's Security Manager	Postal address: Level 19, 839 Collins Street DOCKLANDS VIC 3008 GPO Box 2149 MELBOURNE VIC 3001 Ph: 03 9612 3646 Email: security@portofmelbourne.com



## Schedule 2 – Dictionary

In this document, unless the contrary intention appears, the following words and expressions shall be construed in accordance with the meanings given below:

<b>Access Period</b>	means the period that: <ul style="list-style-type: none"><li>(a) commences when provisions, Cargo, passengers, personnel, equipment (as the case may be) relevant to the visit of the vessel first arrive at a Common User Terminal and</li><li>(b) expires when all such provisions, Cargo, passengers, personnel, equipment (as the case may be) and any rubbish are removed to the satisfaction of Port of Melbourne and the Common User Terminal has been cleaned to the satisfaction of Port of Melbourne.</li></ul>
<b>Agent</b>	means the shipping agent or other agent, whose name is set out in the Application, authorised by the Hirer to act on behalf of the Hirer.
<b>Agreement</b>	means the agreement constituted by the Application and these Standard Terms and Conditions.
<b>Ancillary Services</b>	means: <ul style="list-style-type: none"><li>(a) stevedoring services; and</li><li>(b) mooring services.</li></ul>
<b>Application</b>	means the submission to Port of Melbourne of a properly completed form in the manner prescribed by Port of Melbourne and published on its website concerning Common User Terminals.
<b>Bulk Liquid Facilities</b>	means Holden Dock, No 1 Maribyrnong and 6 Yarraville.
<b>Cargo</b>	means 'cargo' as defined by section 3 of the PMA, and includes Empties.
<b>Certificate of Condition</b>	means a certificate issued by Port of Melbourne which records the state or repair and condition of the Common User Terminals, including any discernible pre-existing contamination.
<b>Common User Terminals</b>	means the Port of Melbourne terminals that are not leased but are managed by Port of Melbourne and are adjacent to Common User Wharves.
<b>Common User Wharves</b>	means a wharf (or wharves) listed in Schedule 3.

<b>Confidential Information</b>	<p>means any technical, scientific, commercial, financial or other information of, about or in any way related to, Port of Melbourne, including any information designated by Port of Melbourne as confidential, which is disclosed, made available, communicated or delivered to the Hirer or the Agent, but excludes information:</p> <ul style="list-style-type: none"> <li>(a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;</li> <li>(b) which the Hirer or the Agent can demonstrate was in its possession prior to the date of this Agreement;</li> <li>(c) which the Hirer or the Agent can demonstrate was independently developed by the Owner or Shipping Agent; or</li> <li>(d) which is lawfully obtained by the Hirer or the Agent from another person entitled to disclose such information.</li> </ul>
<b>Contamination</b>	<p>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.</p>
<b>Empties</b>	<p>means a Cargo container which does not contain any Cargo.</p>
<b>Environment</b>	<p>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.</p>
<b>Environmental Hazard</b>	<p>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.</p>
<b>Harbour Master</b>	<p>means a 'harbour master' as defined by section 3 of the <i>Marine Safety Act 2010</i> (Vic).</p>
<b>Hirer</b>	<p>means the party identified as the Hirer in the Application</p>
<b>Landside Restricted Zone</b>	<p>means an area of land or a structure within the boundaries of the Port which is established as a 'land-side restricted zone'</p>

(being a type of 'port security zone' as defined by section 10 of the MTOFSA) under the MTOFSA and MTOFSR.

**Legislative Requirements**

Means all of the following:

- (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 terms of any permit or licence concerning use of the Port Facilities or the Common User Terminals;
- (d) directions of the Harbour Master;
- (e) directions or guidelines of any statutory bodies or authorities with relevant jurisdiction; and
- (f) the Port of Melbourne Guidelines and VPCM Guidelines.

**Melbourne Vessel Traffic Services or Melbourne VTS**

means the VTS Authority with responsibility for the Port of Melbourne Waters as authorised under *Marine Order 64 (Vessel Traffic Services) 2013* made under the *Navigation Act 2012* (Cth).

**MTOFSA**

means the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth), as amended from time to time.

**MTOFSR**

means the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Cth), as amended from time to time

**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 (Plant) Regulations 1995* (Vic);
- (c) *Dangerous Goods Act 1985* (Vic);
- (d) *Dangerous Goods (Storage and Handling) Regulations 2012* (Vic); and
- (e) *Marine Safety Act 2010* (Vic).

**Permitted Use**

means:

- (a) the embarking and disembarking of passengers; and
- (b) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo.

**PMA**

means the *Port Management Act 1995* (Vic) as amended from

time to time.

<b>Pollution Incident</b>	means pollution to occur within the meaning of sections 39(1), 41(1) and 45(1) of the <i>Environment Protection Act 1970</i> (Vic).
<b>Port</b>	means the 'port of Melbourne' as defined by section 3 of the PMA.
<b>Port Charges</b>	means any fees or charges published on the Reference Tariff Schedule in respect of the activities under this Agreement.
<b>Port Facilities</b>	means the channel, Port of Melbourne Land and any and all other facilities owned, managed or controlled by Port of Melbourne, but does not include the Common User Terminals.
<b>Port of Melbourne</b>	means Port of Melbourne Operations Pty Ltd as Trustee for Port of Melbourne Unit Trust ABN 83 751 315 034.
<b>Port of Melbourne Guidelines</b>	means: <ul style="list-style-type: none"><li>(a) Port of Melbourne's port rules, including "Port Rule No. 1 - Handling of Dry Bulk Cargoes at Shipping Terminals in the Port of Melbourne";</li><li>(b) Tank Washing and Gas Freeing at Tanker Berths Guide;</li><li>(c) Tanker Facilities Operations Manual;</li><li>(d) Port of Melbourne's Port Load Chart;</li><li>(e) Tankers Docked at Non-Tanker Berths – minimum requirements;</li><li>(f) Ship/Shore Safety and Operational Agreement; and</li><li>(g) other rules and guidelines published on Port of Melbourne's website as amended from time to time.</li></ul>
<b>Port of Melbourne Land</b>	means 'port of Melbourne land' as defined by section 3 of the PMA.
<b>Port of Melbourne Waters</b>	means 'port of Melbourne waters' as defined by section 3 of the PMA.
<b>Port of Melbourne's Security Contractor</b>	means the contractor engaged by Port of Melbourne from time to time to implement the Port Security Plan and includes its servants, agents and employees.
<b>Port of Melbourne's Security Manager</b>	means the manager whose details are set out in item 2 of Schedule 1, or as notified by Port of Melbourne from time to time.
<b>Port Security Plan</b>	means the port security plan prepared by Port of Melbourne in accordance with the MTOFSA and as

amended from time to time.

<b>Reference Tariff Schedule</b>	means the Port of Melbourne Reference Tariff Schedule, as amended from time to time and published on Port of Melbourne's website, which sets out the details of pricing for port charges including wharfage, tonnage, berth hire, security, area hire, tanker inspection and water supply to ships.
<b>Restricted Access Area</b>	means 'restricted access area' as defined by section 3 of the PMA.
<b>Restricted Area</b>	means: <ul style="list-style-type: none"><li>(a) an area declared to be a Landside Restricted Zone; or</li><li>(b) an area declared to be a Waterside Restricted Zone; or</li><li>(c) a Restricted Access Area.</li></ul>
<b>Tanker Facilities Operations Manual</b>	means the manual setting out procedures for operations at Bulk Liquid Facilities, which is available from Port of Melbourne upon request by the Hirer or Agent.
<b>VPCM</b>	means Victorian Ports Corporation (Melbourne).
<b>VPCM Guidelines</b>	means: <ul style="list-style-type: none"><li>(a) VPCM's port rules;</li><li>(b) VPCM's guidelines and requirements for hazardous port activities; and</li><li>(c) other rules and guidelines,</li></ul> published on VPCM's website as amended from time to time.
<b>Waterside Restricted Zone</b>	means an area of water within the Port which is established as a 'water-side restricted zone' (being a type of 'port security zone' as defined by section 10 of the MTOFSA) under the MTOFSA and MTOFSR.

# Schedule 3 – Common User Wharves

<b>ABBV.</b>	<b>WHARF</b>
APPF	F Appleton Dock
HOLD	Holden Dock
MRY1	Maribyrnong No 1
SW29	29 South Wharf
SW33	33 South Wharf
YVL6	6 Yarraville