

GLEBE ISLAND AND WHITE BAY BERTHING TERMS

Port Authority of New South Wales (**Port Authority**) seeks to fulfil the organisation's objectives under section 9 of the *Ports and Maritime Administration Act 1995* (NSW) which include to be a successful business, to promote and facilitate a competitive commercial environment in port operations and to improve productivity and efficiency in its ports by effective management of its berthing facilities. These Terms are to be read together with any terms applicable to the booking of a Port Authority Berthing Facility, but to the extent of any inconsistency, these Terms will prevail.

1. Acceptance of these Terms

1.1 Acceptance of these Terms

- (a) These Terms form part of the contract that is formed between the Hirer and Port Authority that arises out of the submission of a booking by the Hirer for the hire of a Port Authority Berthing Facility.
- (b) Notwithstanding the above, a contract will automatically form and bind the Hirer with respect to the visit of a vessel to a Port Authority Berthing Facility upon the use by the Hirer of any services necessary to access a Port Authority Berthing Facility and that contract shall comprise the Hirer's booking, these Terms and the Port Authority Schedule of Port Charges.
- (c) Unless otherwise agreed in writing by the Hirer and Port Authority at the time of booking a Port Authority Berthing Facility, these Terms cannot be subsequently varied unless the variation is effected in accordance with clause 21.1 of these Terms.

1.2 Definitions and interpretation

- (a) Capitalised terms in these Terms have the meaning given in clause 22.
- (b) The rules for interpretation of this agreement are set out in clause 22.

1.3 Joint and several liability

- (a) Any obligation imposed on the Hirer in these Terms must be construed as imposing joint and several liability on the entities comprised in the Hirer.
- (b) A reference to the Hirer is, unless expressly stated otherwise, a reference to each of the entities comprised in the Hirer separately.

1.4 Term

These Terms commence when a vessel of the Hirer submits a booking for the hire of a Port Authority Berthing Facility and end at the conclusion of the Hire Period.

2. Hirer's use of Port Authority's berthing facility

2.1 Hire of Port Authority Berthing Facility

Port Authority grants the use of a Port Authority Berthing Facility and the Hirer agrees to the use of a Port Authority Berthing Facility for the Hire Period subject to the following conditions:

- (a) Hirer must at all times comply with, and must ensure the Hirer's Staff at all times comply with, these Terms and all other applicable terms and conditions of Port Authority, including the terms applicable to the booking of a Port Authority Berthing Facility;

- (b) Hirer must pay all applicable charges contained in the Port Authority Schedule of Port Charges and these Terms;
- (c) Hirer must at all times comply with all applicable laws and regulations;
- (d) Hirer must at all times comply with all Harbour Master's Directions;
- (e) Hirer must at all times comply with all applicable Port Authority policies concerning the use of a Port Authority Berthing Facility, which are notified to the Hirer;
- (f) Hirer must at all times comply with all reasonable directions and instructions of Port Authority and any officer authorised by statute to give directions including pursuant to the *Marine Safety Act 1998* (NSW) and permit reasonable access to the vessel for all relevant purposes;
- (g) Hirer must co-operate with Port Authority and all other users of the Port to ensure compliance with all applicable laws and regulations;
- (h) Hirer may only use the allocated Port Authority Berthing Facility for the duration of the Hire Period confirmed by Port Authority;
- (i) the allocated Port Authority Berthing Facility may only be used by the Hirer for the Permitted Use;
- (j) Hirer must provide all personnel, property and equipment required for the berthing of vessels and activities approved by Port Authority and ancillary to the berthing of vessels;
- (k) Hirer must minimise the Environmental impacts of vessels on local residents in the vicinity of the Port Authority Berthing Facility; and
- (l) Hirer has no tenancy or other estate or interest in the allocated Port Authority Berthing Facility.

2.2 Breach of conditions

Without limiting any other rights of Port Authority in these Terms, should the Hirer breach one or more of the conditions specified in 2.1, in Port Authority's absolute discretion, Port Authority may terminate or refuse to accept any future booking made by the Hirer for the relevant vessel.

2.3 Non-exclusive use

- (a) Hirer's right to occupy or use the allocated Port Authority Berthing Facility is a non-exclusive right to be enjoyed in common with other persons authorised by Port Authority.
- (b) Port Authority may allow access to the allocated Port Authority Berthing Facility at all times by any other person for any purpose but will exercise reasonable endeavours to ensure that these other activities do not significantly interfere with the Hirer's activities permitted under these Terms.
- (c) Hirer must not, at any time, create any unnecessary interference to any other users of a Port Authority Berthing Facility and must prevent any nuisance and/or unreasonable noise and disturbance in using a Port Authority Berthing Facility.
- (d) Without limiting this clause 2.3, Port Authority may at any time exercise its rights to enter, use, possess and enjoy the whole or any part of a Port Authority Berthing Facility.

2.4 Hirer's Obligations

The Hirer must ensure that:

- (a) the Port Authority Berthing Facility is left in the same condition and state as at the commencement of the Hire Period;
- (b) all property and equipment utilised by the Hirer's Staff is maintained and operated in accordance with best industry practice, manufacturers' instructions and all applicable standards;
- (c) as directed by Port Authority, all property and equipment is either removed at the end of the Hire Period or is stored solely within the areas designated by Port Authority for use by the Hirer. If the Hirer does not comply with this clause 2.4(c) within a reasonable period of time, Port Authority may deal with the property and equipment in any manner it deems fit (including by way of sale or disposal);
- (d) those members of the Hirer's Staff who are required by legislation to hold a valid Maritime Security Identification Card (MSIC) hold a valid MSIC; and
- (e) the Hirer uses its best endeavours to ensure all Hirer's Staff are reputable, are sufficiently experienced and act in compliance with these Terms in undertaking their duties at a Port Authority Berthing Facility.

2.5 **Hirer's Staff**

The Hirer shall remain at all times responsible for the acts and omissions of the Hirer's Staff.

2.6 **No alterations to Port Authority Berthing Facility**

The Hirer must not make any alterations, improvements or additions to a Port Authority Berthing Facility without the prior written consent of Port Authority.

2.7 **Hirer's equipment and property**

- (a) The Hirer must not install any plant or equipment and/or erect advertisements, signs or notices at a Port Authority Berthing Facility without the prior written consent of Port Authority.
- (b) Any equipment or property the Hirer brings to a Port Authority Berthing Facility shall be entirely at the Hirer's risk and Port Authority shall have no liability in relation to any Loss of such equipment or property.
- (c) Any plant or equipment installed or used in connection with the Permitted Use:
 - (i) must be maintained in a proper and efficient condition; and
 - (ii) must be operated in a proper and efficient manner.

2.8 **Cranes**

- (a) The Hirer must (at least 48 hours) prior to bringing any cranes onto the Port Authority Berthing Facility obtain Port Authority's written approval, and such approval may be given or withheld at Port Authority's absolute discretion. The Hirer must pay a Crane Approval Application Processing Fee for each application if requested by Port Authority. The application form can be accessed using the following link: <https://www.portauthoritynsw.com.au/projects-and-planning/planning-and-approvals/mobile-crane-application>
- (b) The Hirer must ensure that any conditions of such approval are strictly complied with by the operator of any crane, including providing Port Authority with a copy of the Hirer's lift study.

2.9 Prohibition on Overloading

The Hirer must not exceed the maximum weight and load limits for Port Authority Berthing Facilities as prescribed by Port Authority and notified to the Hirer from time to time.

2.10 Damage and repairs

- (a) The Hirer is responsible for any damage (excluding fair wear and tear) to a Port Authority Berthing Facility (including damage to the Environment) to the extent caused or contributed to by the Hirer's use.
- (b) In such circumstances, the repair and remediation to the relevant Port Authority Berthing Facility shall be undertaken by Port Authority at the expense of the Hirer or if directed by the Port Authority the Hirer must undertake that repair to the satisfaction of Port Authority and at the expense of the Hirer. If Port Authority decides to undertake the repair, the Hirer must immediately pay to Port Authority any costs incurred by Port Authority in undertaking such repair and remediation upon receipt of an invoice from Port Authority for such costs.

2.11 Work, Health & Safety

- (a) The Hirer must ensure that it and the Hirer's Staff operate and maintain a safe environment at a Port Authority Berthing Facility at all times.
- (b) The Hirer must at all times ensure it complies with all applicable work health and safety laws and any work, health and safety policies and procedures notified by Port Authority to the Hirer in respect to of Port Authority Berthing Facility.
- (c) The Hirer must provide, upon request and in a form satisfactory to the Port Authority, the Hirer's or any of its subcontractors' work, health and safety management plan to apply to the use and occupation of the Port Authority Berthing Facility.
- (d) Within forty-eight (48) hours after the Hirer receives any notices or legal proceedings in respect of the impact of the activities of the Hirer on human health and safety, including notices or proceedings issued by a statutory or governmental authority, the Hirer must provide Port Authority with a copy of such notice or proceedings.
- (e) The Hirer must comply with any and all statutory notices referred to in paragraph (d) and is liable for any costs of compliance with such statutory notices.
- (f) The Hirer must notify Port Authority immediately of any serious injury or near miss incident that occurs at the Port Authority Berthing Facility using the contact details in clause 5.2.

2.12 Costs of compliance with Legislative Requirements

If Port Authority reasonably incurs costs as a result of complying with any Legislative Requirements in relation to a vessel or the Hirer's use of the Port Authority Berthing Facility, then the Hirer is liable to reimburse Port Authority such costs and those costs are recoverable as a debt due and payable by the Hirer within twenty-eight (28) days after the date of the relevant invoice.

3. Environmental Management

3.1 Environment Management

- (a) Harbour Master approval is required for any work carried out on board vessels that could compromise the safety of the Port or its Environment. The Hirer must comply with all Harbour Master's Directions in relation to work on board vessels.

- (b) The Hirer must ensure that all activities are carried out in a competent manner and in a way that minimises risks and impacts on the Environment and the community. The Hirer must exercise a duty of care to the Environment at all times.
- (c) The Hirer must not and must ensure the Hirer's Staff do not:
 - (i) cause a Pollution Incident; or
 - (ii) cause an Environmental Hazardat, or in the vicinity of, a Port Authority Berthing Facility.
- (d) The Hirer must take all steps reasonably necessary to prevent the outbreak of fire, pollution and hazards or any other environmental damage likely to cause Loss on or from the allocated Port Authority Berthing Facility.
- (e) Without limiting the Hirer's obligations under this clause 3, the Hirer must immediately after it becomes aware of such incident report to Port Authority any Pollution Incident, Environmental Hazard, fire, or any other environmental damage, pollution or hazards.
- (f) If there is a fire on board the vessel, the master of the vessel must sound a continuous ringing of the vessel's electrical bell or continuous sounding of the vessel's horn to indicate a fire on board.
- (g) The Hirer must ensure it meets all statutory requirements imposed on vessels, including:
 - (i) having in place a biosecurity incident response procedure;
 - (ii) compliance with the Ballast Water Management Requirements (if applicable).and
 - (iii) compliance with relevant Planning Approvals applicable to the Port Authority Berthing Facility.
- (h) The Hirer must ensure that it and the Hirer's Staff comply with all applicable environmental policies and procedures notified by Port Authority to the Hirer in respect to a Port Authority Berthing Facility.
- (i) The Hirer must, at its cost, clean up and otherwise address or rectify a Pollution Incident or Environmental Hazard in accordance with any direction issued by Port Authority and within the timeframe specified in the direction.
- (j) Port Authority may, at its discretion and at the Hirer's cost, engage an environmental auditor in respect of a Pollution Incident or Environmental Hazard.
- (k) Without limiting the Hirer's obligations under this clause 3, the Hirer shall pay on demand any costs and expenses incurred by Port Authority in cleaning up and otherwise address or rectify a Pollution Incident or Environmental Hazard.

3.2 Environmental Protection Licence

- (a) Environmental Protection Licences ('EPLs') are held by Port Authority for operations at:
 - (i) White Bay Berth 4
 - (ii) Glebe Island Berth 1 and 2
 - (iii) Glebe Island Berth 7.

- (b) All activities undertaken at these berths applicable to the relevant EPL must be in accordance with the provisions of the relevant EPL. Copies of the EPLs are available from the NSW Environment Protection Authority website: www.epa.nsw.gov.au.
- (c) The Hirer must ensure it complies with the EPL relevant to its allocated Port Authority Berthing Facility (if applicable).

3.3 Air Quality

- (a) From 1 January 2020 vessels at a Port Authority Berthing Facility are required to meet the emission restrictions specified in MARPOL (International Convention for the Prevention of Pollution from Ships) Annex VI (Regulations for the Prevention of Air Pollution from Ships), which limits sulphur content of ship fuel to 0.5% or by implementation of other means, such as exhaust gas cleaning systems, to meet same outcome.
- (b) Ship engine, generator, exhaust and ventilation systems must be maintained and operated efficiently to minimise air emissions, black smoke and odour while at berth at the allocated Port Authority Berthing Facility.
- (c) The Permitted Use conducted at a Port Authority Berthing Facility must be carried out in a manner which prevents or minimises the emission of dust from the Port Authority Berthing Facility.
- (d) Specific dust mitigation measures applicable to the handling of gypsum include the following:
 - (i) a closed clamshell grab must be utilised to transfer material from the vessel to the hopper;
 - (ii) grab loading must be controlled to limit the volume of material able to be picked up by the grab;
 - (iii) material is to be discharged directly into waiting trucks via the hopper. No material is to be stored on the wharf;
 - (iv) the amount of gypsum material placed into the hopper at any one time will be limited to reduce risk of any spillage and limit emission of fugitive dust by keeping the product low in the hopper. Hoppers will only be loaded to a level required to fill the waiting truck; and
 - (v) the bottom section of the hopper must be enclosed with plastic curtains to ensure no dust emissions escape when loading into trucks.

3.4 Noise

- (a) The Hirer must comply with the Vessel Noise Operating Protocol.
- (b) The Hirer must minimise noise impacts on local residents in the vicinity of the Port Authority Berthing Facility, including using the least noisy ship loading/unloading methods that meet operational needs and considering the orientation of the vessel (and the location of any internal fan and/or ventilation) to minimise direct noise emissions or vibrations on local residents.
- (c) Vessels must run on the minimum generator/engine power required while at the berth and the Hirer must minimise the use of on-board power generation.
- (d) Non-essential engines and generators, and machinery and vehicles not in use, must be turned off.

- (e) Maintenance activities which may be audible to the local residents in the vicinity of the Port Authority Berthing Facility must be undertaken only during daylight hours.

3.5 Water

- (a) No discharges to water are permitted while at a Port Authority Berthing Facility whether or not these discharges are considered to be a Pollution Incident, including contaminated bilge water, grey water, open loop scrubber wash water and treated sewage discharges or any other discharges from vessel activities.
- (b) In the event of a spill in the Port which may constitute a Pollution Incident, the Hirer must report immediately to Port Authority using the contact details in clause 5.2.
- (c) In-water cleaning is only allowed on anti-fouling coatings suitable for in-water cleaning (obtainable from coating manufacturer) and in compliance with *Anti-fouling and In-water Cleaning Guidelines* (Department of Agriculture and Water Resources, 2015) <http://www.agriculture.gov.au/biosecurity/avm/vessels/biofouling/anti-fouling-and-inwater-cleaning-guidelines>.
- (d) Loading and unloading of bulk liquids must be undertaken within a bunded area complying with the requirements of *Storing and Handling Liquids: Environmental Protection* (NSW EPA). Any stormwater drains in the catchment area of the bund are to be covered whilst loading/unloading of bulk liquids is taking place to prevent the escape of material into the drainage system.
- (e) Spills into State waters must be responded to in accordance with the *NSW State Waters Marine Oil and Chemical Spill Contingency Plan* (Roads and Maritime Services, 2016).
- (f) All ships at sea must adhere to the amendments to MARPOL Annex V (IMO, 1988) which came into force on 1 March 2018 – which prohibits certain discharges into the sea. MARPOL is implemented in Australia through the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth).

3.6 Visual amenity

- (a) The Hirer must ensure that a vessel staying overnight at a Port Authority Berthing Facility has the appropriate lighting required to be displayed at night.
- (b) The Hirer must ensure that the vessel's lights are operated to the extent possible to minimise lighting impacts to nearby residential dwellings, including by turning off non-essential lighting and external lighting when not in use, and directing external lighting away from residential areas (subject to safety and security requirements).
- (c) Subject to clause 3.6(a), the Hirer must minimise the use of external lighting on vessels.

3.7 Dangerous goods

- (a) The Hirer must not, without Port Authority's prior written consent, use or allow the Port Authority Berthing Facility to be used for the storage and handling (whether temporary or permanent) of Dangerous Goods.
- (b) The Hirer is to advise Port Authority of all Dangerous Goods carried into or intended to be lodged onto the vessel, including transhipments and/or goods transiting the ports via electronic lodgement in SHIPS.

4. No representations & warranties

- (a) To the maximum extent permitted by law, Port Authority makes no representation nor provides any warranties to the Hirer as to the suitability or adequacy of the allocated Port Authority Berthing Facility for the Hirer's use or requirements.
- (b) The Hirer acknowledges that it has independently assessed the suitability of the allocated Port Authority Berthing Facility for the Hirer's purposes and understands that tides and weather may affect the suitability of the allocated Port Authority Berthing Facility, and that Port Authority has no responsibility or liability to the Hirer for the allocated Port Authority Berthing Facility being or becoming unsuitable.

5. Provision of information by Hirer to Port Authority

5.1 Obligation to keep Port Authority informed

- (a) The Hirer shall promptly provide to Port Authority the following information:
 - (i) any material alterations to the time of arrival and/or time of departure of the vessel from the allocated Port Authority Berthing Facility through ShIPS;
 - (ii) any unique considerations relevant to the vessel within the knowledge of the Hirer;
 - (iii) any other information which may affect the safety and security of a Port Authority Berthing Facility;
 - (iv) all documentation or information reasonably necessary for Port Authority to accurately calculate any charges applicable to the use of a Port Authority Berthing Facility by the Hirer; and
 - (v) all other information relevant to the pilotage and berthing of a vessel as reasonably requested by Port Authority.
- (b) The Hirer must, during the Hire Period or such other period as Port Authority permits the Hirer to use the allocated Port Authority Berthing Facility, notify Port Authority without delay on becoming aware of any:
 - (i) damage, injury, death or loss occurring in the allocated Port Authority Berthing Facility and any defect or want of repair in the allocated Port Authority Berthing Facility;
 - (ii) circumstances likely to cause danger, risk or hazard to any person, property or the Environment in the allocated Port Authority Berthing Facility; and
 - (iii) event or occurrence which will or is likely to result in a Claim being made by or against the Hirer, Port Authority or any other person in connection with the allocated Port Authority Berthing Facility.

5.2 Port Authority Emergency Contact Details

In the event of an emergency, fire, spill, Incident, Pollution Incident, Environmental Hazard, work health and safety incident, injury or near miss or any other matter contemplated by clause 5.1, the Hirer must report to:

Harbour Master – Sydney
Port Authority of New South Wales
Level 4, 20 Windmill Street
Walsh Bay NSW 2000
T: +61 2 9296 4999

6. Discretion of Port Authority in its allocation of berthing facilities

- (a) Port Authority retains, at all times, full discretion in the allocation of:
 - (i) berth arrival and departure times; and
 - (ii) specific berthing facilities and non-terminal berthing facilities.
- (b) A visit can be split between berthing facilities in the absolute discretion of Port Authority.
- (c) Port Authority may cancel or terminate a vessel booking at any time for any reason, in its absolute discretion, and Port Authority bears no liability to the Hirer or any other person whatsoever as a result of the cancellation or otherwise of its vessel booking.
- (d) If Port Authority withdraws permission for use or occupation of, or access to, a Port Authority Berthing Facility, other than for a breach by the Hirer of these Terms, Port Authority will refund to the Hirer any monies paid in advance by the Hirer in respect of applicable Port Charges for any proposed Hire Period that does not proceed, or for the use of the Port Authority Berthing Facility for which permission for access or use is withdrawn. Port Authority is not liable to pay any other remedy, compensation or damages for any withdrawal of permission referred to in paragraph (a).

7. Cleaning

7.1 Provision of cleaning services

The Hirer shall be responsible at its cost for the provision of cleaning services within a Port Authority Berthing Facility whenever a vessel is berthed at a Port Authority Berthing Facility.

7.2 Hirer's responsibilities

Notwithstanding the above, the Hirer:

- (a) must exercise reasonable endeavours to ensure that the Hirer's Staff place all rubbish and waste in appropriate receptacles;
- (b) must comply with the applicable EPL (as per clause 3.2) in relation to waste management;
- (c) must keep the areas allocated for use exclusively by the Hirer in a clean and tidy condition; and
- (d) must promptly notify the appropriate member of Port Authority Staff of all spillages.

8. Security

8.1 Provision of security services

- (a) Port Authority shall be responsible for the provision of security services within a Port Authority Berthing Facility whenever a vessel is berthed at a Port Authority Berthing Facility.
- (b) The Hirer shall be responsible at all times for security of the vessel and against entry of unauthorised persons and goods between the vessel and the allocated Port Authority Berthing Facility.

8.2 **Hirer's responsibilities**

Notwithstanding the above, the Hirer:

- (a) must comply with all security related directions and instructions of Port Authority or its appointed security services provider; and
- (b) shall be liable to pay the security services charge as notified to the Hirer from time to time.

9. **Use of Information Technology Infrastructure**

- (a) The Hirer may utilise IT Infrastructure at Port Authority Berthing Facilities (if available) on the following conditions:
 - (i) the Hirer acknowledges Port Authority is under no obligation to provide IT Infrastructure at Port Authority Berthing Facilities;
 - (ii) use of available IT Infrastructure is at the Hirers' risk and cost;
 - (iii) support for available IT Infrastructure is available during business hours only;
 - (iv) the Hirer is responsible for the security and integrity of any data or applications utilising the IT Infrastructure; and
 - (v) the Hirer must have a back-up and disaster recovery plan, which incorporates connectivity, processes and systems.
- (b) Port Authority is not liable (including in negligence) for any Loss that the Hirer may suffer in connection with the IT Infrastructure, including in circumstances where Port Authority does not provide or maintain the IT Infrastructure within or at a Port Authority Berthing Facility. To the full extent allowed by law, Port Authority excludes all warranties, whether express or implied by law.
- (c) The Hirer indemnifies Port Authority against any Claim or Loss arising out of or in connection with the use of the IT Infrastructure by the Hirer, Hirer's Staff or any person utilising the IT Infrastructure (apart from Port Authority or Port Authority Staff) during the Hire Period.

10. **Other Services**

- (a) Port Authority may provide other services, including the provision of water and/or a hose connection, on request by the Hirer and the Hirer shall be liable to pay the applicable charges specified in the Port Authority Schedule of Port Charges.
- (b) If the Hirer takes on fresh water whilst alongside a Port Authority Berthing Facility, the Hirer shall pay on demand the applicable fresh water charge.

11. **Insurance**

11.1 **Insurance requirements**

The Hirer must ensure that the vessel and Hirer's Staff using the allocated Port Authority Berthing Facility are adequately insured at all times, by an insurer, and on terms, acceptable to Port Authority, including:

- (a) Protection and Indemnity Insurance to a sum not less than \$100,000,000 with a P&I Club;
- (b) Hull and Machinery insurance to the reasonable market value of the vessel;

- (c) Public Liability insurance for a minimum sum of \$20,000,000 for any single event which notes Port Authority as an interested party; and
- (d) any other insurance (for such sum or level of cover as specified by Port Authority) as Port Authority may reasonably require.

11.2 Evidence of insurance

The Hirer is required to produce evidence of the currency of the insurance policies required under clause 11.1 upon:

- (a) request by Port Authority; and
- (b) each renewal.

12. Incidents, complaints and inquiries

12.1 Reporting requirements

The Hirer must report all Incidents to Port Authority as soon as practicable.

12.2 Community Contact

- (a) The Hirer will appoint and advise Port Authority of its community contact in relation to the Hirer's operations at the Port prior to commencing operations. This contact must be contactable at all times during the Hire Period.
- (b) Port Authority may refer any queries from members of the public and community regarding the Hirer's operations to the Hirer's community contact. If complaints are received about the Hirer's operations or use of the Port Authority Berthing Facility, Port Authority Staff may contact the Hirer's contact to investigate the complaint.
- (c) The Hirer must notify Port Authority as soon as practicable after receiving any direct complaint and the nature of such a complaint.

12.3 Statutory notices

- (a) Within forty-eight (48) hours of the Hirer receiving any notice or legal proceedings in respect of the impact of the activities of the Hirer on the Environment over, under, on, in or in the vicinity of the Port or Port Authority Berthing Facility, including notices issued by the NSW Environmental Protection Authority or any other statutory or governmental authority, the Hirer must provide Port Authority with a copy of that notice or legal proceedings.
- (b) The Hirer must comply with any and all statutory notices referred to in clause 12.3(a) and is liable for any costs of compliance with such statutory notices.

12.4 Corrective Actions

The Hirer must investigate complaints and notices in a timely manner and implement reasonable and feasible corrective actions including any practicable measures to prevent a recurrence of the conditions that led to the complaint being made and/or as requested by Port Authority. Corrective actions must be implemented while the vessel is at berth (where possible) and/or for the next hire of Port Authority's Berthing Facility.

13. Termination

13.1 Breach by Hirer of Terms

Should there be a material breach of these Terms by the Hirer, Port Authority may at any time and in its absolute discretion upon written notice to the Hirer, terminate the Hirer's right to use any Port Authority Berthing Facility. Such termination does not release the Hirer from liability to Port Authority for any previous breach, whether under clause 16 or at law.

13.2 **No liability**

The Hirer shall have no Claim against Port Authority for, or in connection with, any Loss suffered by the Hirer as a result of Port Authority terminating the Hirer's right to use any Port Authority Berthing Facility pursuant to these Terms.

13.3 **Cancellation of a booking by the Hirer**

If the Hirer cancels a booking of a Port Authority Berthing Facility, the Hirer must pay on demand the applicable cancellation charge specified in the Port Authority Schedule of Charges.

14. **Force Majeure**

14.1 **Event of Force Majeure**

If Port Authority is prevented or delayed in making the allocated Port Authority Berthing Facility available to the Hirer due to an Event of Force Majeure, Port Authority is excused from providing the Hirer with use of the allocated Port Authority Berthing Facility to the extent of the impact of the Event of Force Majeure on Port Authority.

14.2 **Termination**

Port Authority may in its absolute discretion and at any time terminate the use by the Hirer of the allocated Port Authority Berthing Facility if Port Authority considers an Event of Force Majeure will prevent Port Authority from being able to provide that Port Authority Berthing Facility, or an alternative Port Authority Berthing Facility, for use by the Hirer within the Hire Period.

14.3 **No liability**

Port Authority shall have no liability to the Hirer or to any other person for any Loss suffered, or Claim made, in connection with an Event of Force Majeure.

15. **Release**

- (a) The hire and use of a Port Authority Berthing Facility is entirely at the Hirer's own risk in all respects. The Hirer releases Port Authority from all Claims that the Hirer may have now or in the future for any Loss to property or injury to person of whatever nature and howsoever arising in connection with the hire and use of a Port Authority Berthing Facility or any plant, equipment or infrastructure provided by Port Authority at a Port Authority Berthing Facility.
- (b) The release in this clause 15 extends to any industrial dispute, power failure or failure in or inadequacy of any service (including any security service referred to in clause 8) and any damage, interruption or disturbance arising from any activity being carried on, in or adjacent to the Port Authority Berthing Facility and includes a release in respect of economic loss and consequential damages.

16. **Indemnity**

- (a) The Hirer indemnifies Port Authority from and against any and all Claims and Losses that may be brought by any person against, or incurred by Port Authority, whether directly or indirectly and howsoever arising, in connection with:

- (i) the access, occupation or use of a Port Authority Berthing Facility by the Hirer or the Hirer's Staff;
 - (ii) the carriage of cargo by the Hirer or the Hirer's Staff;
 - (iii) any breach of or default under these Terms and/or any other part of the contract referred to in clause 1(b);
 - (iv) any negligence or wilful misconduct or other wrongful act or omission of the Hirer or the Hirer's Staff; or
 - (v) any Pollution Incident or Environmental Hazard caused by the Hirer or the Hirer's Staff to the extent permitted by law.
- (b) Without limitation, the indemnity given by the Hirer in this clause 16 applies even if a Claim results from something the Hirer is authorised or obliged to do under these Terms and irrespective of whether a waiver or other indulgence has been given to the Hirer in respect of an obligation under these Terms.
- (c) Subject to clause 17, the indemnity provided by this clause does not apply to the extent that any Claim or Loss is the direct result of the negligence or wrongful act or omission of Port Authority.

17. Limitation on Liability

Any liability of Port Authority in any way related to these Terms will be limited to the amount of \$1,000.

18. Charges

18.1 Port Authority Berthing Facility charges

The Hirer must pay Port Authority for the use of a Port Authority Berthing Facility the applicable charges as specified in the then current version of Port Authority Schedule of Port Charges, which is available from the Port Authority website. The Hirer is liable to pay the applicable charges without any deduction or right of set-off.

18.2 Invoices

The Hirer is liable to pay an issued Port Authority invoice in accordance with the terms and procedures established in Port Authority's terms of trade, which are detailed in the then current Port Authority Schedule of Port Charges.

18.3 Interest

Port Authority may charge the Hirer interest on any amount payable by the Hirer under these Terms that is not paid by the due date. Such interest will accrue at the rate equivalent to the Bank Bill Rate plus 4 per cent per annum calculated from (and including) the due date until that amount is paid in full. Interest will compound monthly on the last day of each month.

18.4 Right to withhold services

The Hirer acknowledges Port Authority's right to withhold or withdraw the provision of services or facilities under section 72 of the *Ports and Maritime Administration Act 1995* (NSW).

19. Biosecurity

19.1 Biosecurity Legislation

- (a) **Hirer to comply with Biosecurity Laws**
- (i) The Hirer acknowledges both it and Port Authority have obligations under the Biosecurity Legislation and the Hirer will comply with its obligations under and all requirements of the Biosecurity Legislation.
 - (ii) The Hirer must, at all times and at its cost, comply with all regulatory standards relating to biosecurity risks associated with use or occupation of the Port Authority Berthing Facility, the Port, the Land and/or Water Areas including those required under the Biosecurity Legislation.
- (b) **Biosecurity Incident Response Procedure and Emergency Orders**
- (i) Without limiting the operation of clause 19.1(a), the Hirer must, at its cost, comply with any Biosecurity Incident Response Procedure prepared by Port Authority in relation to the Port Authority Berthing Facility or the Port and any Emergency Order or other notice or requirement under the Biosecurity Legislation.
- (c) **Hirer's Staff to Comply**
- (i) The Hirer must do all things necessary to ensure that the Hirer's Staff comply with clauses 19.1(a) and 19.1(b).

20. Notices

- (a) All notices and other communications to Port Authority in relation to these Terms must be in writing, written in English, marked to the attention of the "Chief Operating Officer & Harbour Master – Sydney" and sent by mail to the postal address, delivered by hand to the delivery address, or sent by email to the email address as follows:
- Postal address:**
PO Box 25
Millers Point NSW 2000
- Delivery address:**
Level 4
20 Windmill Street
Walsh Bay NSW 2000
- Email address:**
vts@portauthoritynsw.com.au
- or such other address (or marked to the attention of such other person) as Port Authority may specify in writing to the Hirer from time to time.
- (b) Port Authority may give a notice or other communication in relation to these Terms to the Hirer by such method and to such address as Port Authority, acting reasonably, may determine.

21. Miscellaneous

21.1 Variation

- (a) Port Authority may vary these Terms as it sees fit from time to time by notification in writing to the Hirer by letter, notification on ShIPS or publication of the revised terms on the Port Authority website: www.portauthoritynsw.com.au Unless otherwise expressed, any such variation to these Terms shall have immediate effect.
- (b) A variation of any provision of these Terms requested by the Hirer will be of no effect unless such variation is agreed in writing by an authorised representative of Port Authority.

21.2 **Statutory authority**

The position of Port Authority as a statutory authority under various laws overrides the provisions of these Terms and, in particular:

- (a) these Terms do not reduce or affect the statutory powers of Port Authority or any officer or employee of Port Authority; and
- (b) these Terms, or any approval or consent under these Terms, cannot be taken as a consent by Port Authority as a statutory authority or fetter its discretion and obligations as a regulatory authority.

21.3 **Subcontracting**

Port Authority may subcontract any of its obligations, in whole or in part, under these Terms.

21.4 **Assignment**

The Hirer must not transfer or assign the rights conferred upon it by these Terms to any other party without the prior written consent of Port Authority.

21.5 **Waiver**

The failure by a party to exercise or the delay by a party in exercising a right or remedy pursuant to these Terms or at law, does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of the same right or remedy in other instances, or of other rights or remedies.

21.6 **Severability**

If at any time any provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of these Terms; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these Terms.

21.7 **Entire Agreement**

These Terms, the Hirer's booking and the Port Authority Schedule of Port Charges together constitute the entire agreement between the parties relating in any way to the subject matter of these Terms.

21.8 **Governing Law**

These Terms are governed by and shall be construed and interpreted in accordance with the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals from those courts.

21.9 **Disputes**

Without prejudice to the rights of the parties, the parties will attempt in good faith to resolve any dispute or Claim arising out of or in relation to these Terms through negotiations between the respective representatives of the parties having authority to settle the matter.

21.10 **Indemnities to Survive**

Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Hire Period, these Terms and the contract referred to in clause 1(b).

22. Definitions and Interpretation

22.1 Definitions

'Ballast Water Management Requirements' means the Australian Ballast Water Management Requirements published by the Department of Agriculture in 2017 and available at <http://www.agriculture.gov.au/biosecurity/avm/vessels/ballast/australian-ballast-water-management-requirements> as may be updated from time to time.

'Bank Bill Rate' means the average mid rate for 90 day Bills as displayed on the 'BBSY' page of the Reuters Monitor System on the due date for payment. However, if the average mid rate is not displayed by 10.30am on that day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate set by the Landlord in good faith at approximately 10.30am on that day, having regard, to the extent possible, to the mid rate otherwise bid and offered for Bills of that tenor at or around that time (including any displayed on the 'BBSW' page of the Reuters Monitor System).

'Biosecurity Legislation' means the Biosecurity Act 2015 (NSW) and Biosecurity Act 2015 (Cth) and any regulations, policies or procedures underpinning each of the Biosecurity Act 2015 (NSW) and Biosecurity Act 2015 (Cth).

'Claim' means all claims (including at law or in equity), requests, accusations, allegations, assertions, complaints, petitions, demands, suits, actions, proceedings and causes of action of every kind.

'Dangerous Goods' has the meaning given in *the Australian Standard 3846-2005 "The handling and transport of dangerous cargoes in port areas"*

'Environment' includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as land, water (whether fresh water or sea water) and the atmosphere; and
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

'Environmental Hazard' 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.

'Event of Force Majeure' means any occurrence of an event or circumstance beyond the reasonable control of Port Authority, and includes any industrial dispute, act of terrorism, power failure or failure in the adequacy of any service or utility, actions or requirements of a lawful authority, acts of nature and any other cause that Port Authority could not reasonably avoid or prevent.

'Harbour Master' means a person appointed under Part 7 of the *Marine Safety Act 1998* (NSW) and, in relation to any Harbour Master Directions made pursuant to this part, includes a person appointed to exercise the functions of a harbour master.

'Harbour Master Directions' means the Harbour Master Directions published on Port Authority's website and available at <https://www.portauthoritynsw.com.au/sydney-harbour/pilotage->

[navigation/pilotage-harbour-masters-directions/](#) (as may be updated or amended from time to time) and any directions issued by the Harbour Master.

'Hire Period' means the hire period for the allocated Port Authority Berthing Facility as confirmed by Port Authority and means the period commencing from the earliest time at which the vessel enters the Port Authority Berthing Facility and expires when the ship departs the Port Authority Berthing Facility.

'Hirer' refers to the person (natural or corporate) that has made a booking pursuant to these Terms or on whose behalf a booking is made (including the ship's owners, operators manning or crewing agents, ship managers and licensees or tenants of Glebe Island or White Bay on whose behalf the vessel is loading or discharging cargo at the Port Authority Berthing Facility) pursuant to these Terms. If there are more than one, it refers to each of them severally and any two or more of them jointly.

'Hirer's Staff' means all people engaged or utilised by the Hirer or the activities of a ship while at berth, in connection with the use of a Port Authority Berthing Facility, including

- (i) its employees, agents, suppliers, subcontractors and invitees and anyone claiming by, through or under any of them, but excludes Port Authority Staff; and
- (ii) any stevedores, linesperson, bunker barge operator, towage operators, surveyors, crane operators servicing the ship utilising a Port Authority Berthing Facility.

'Incident' means an occurrence or set of circumstances that cause, or threatens to cause, material harm to the Environment, community or any member of the public being actual or potential harm to the health or safety of human beings or to threatened species, endangered ecological communities or ecosystems that is not trivial.

'IT Infrastructure' means the equipment and facilities (including, without limitation, conduits, cables, switches and electricity) that form the physical network used to support information technology services.

'Legislative Requirements' means:

- (d) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;
- (e) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the State of New South Wales;
- (f) any permit or licence concerning use of the Port or Port Authority Berthing Facility;
- (g) directions of the Harbour Master;
- (h) directions of the Port Authority; and
- (i) directions of any statutory bodies or authorities with relevant jurisdiction.

'Loss' means any damage, loss (whether direct, indirect or any loss that otherwise does not naturally arise from an event or breach), liability, compensation, cost, charge, expense or other obligation of any kind or nature, howsoever arising and whether present or future, fixed or unascertained, actual or contingent.

'Permitted Use' means the berthing of vessels and activities approved by Port Authority and ancillary to the berthing of vessels.

'Planning Approval' means the planning approval applicable to the Port Authority Berthing Facility.

'Pollution Incident' means the occurrence of 'pollution' within the meaning the *Protection of the Environment Operations Act 1997* (NSW).

'Port' means the port of Sydney Harbour as defined by the *Ports and Maritime Administration Regulation 2012* (NSW).

'Port Authority' means Newcastle Port Corporation trading as Port Authority of New South Wales (ABN 50 825 884 846).

'Port Authority Berthing Facility' means each of the:

- (a) area of navigable water and sub adjacent Maritime Land in the Port adjacent to the face of a berth at Glebe Island or White Bay and as described in the Berths and Channels published by Port Authority and available at <https://www.portauthoritynsw.com.au/sydney-harbour/port-services-facilities/berths-facilities/>; and
- (b) wharves, fenders, piers, hardstands, jetties, berthing facility, scour aprons, seawalls, terminals and other facilities owned or controlled by Port Authority for the purposes of berthing of vessels.

'Port Authority Schedule of Port Charges' refers to the document issued by Port Authority as updated by Port Authority from time to time and displayed on the Port Authority corporate website outlining the charges and fees applicable to the provision of services by Port Authority, including the use of Port Authority berthing facilities.

'Port Authority Staff' means all people engaged or utilised by Port Authority in connection with a Port Authority Berthing Facility, including its employees, agents, subcontractors and invitees and anyone claiming by, through or under any of them.

'SHIPS' means Port Authority's Sydney Harbour Integrated Ports System.

'Terms' means these terms and conditions governing berthing of vessels at Port Authority Berthing Facilities.

'Vessel Noise Operating Protocol' means the protocol developed by the Port Authority (and as may be updated or amended from time to time) covering the behaviour of vessels at a Port Authority Berthing Facility and available at www.portauthoritynsw.com.au/vesselnoiseprotocol.

22.2 Interpretation

In these Terms, unless the context otherwise requires:

- (a) headings used in these Terms are for convenience only and shall be ignored when construing these Terms;
- (b) reference to a statutory provision shall be construed as including a reference to any modification, re-enactment or extension of such statute or statutory provision for the time being in force;
- (c) a reference to an agreement or document (including, without limitation, a reference to these Terms) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- (d) a reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);

- (e) the singular includes the plural and vice versa; any gender includes all genders; reference to “person” shall include bodies corporate and unincorporated, partnerships and individuals; and reference to “party” or “parties” is to a party or the parties to these Terms;
- (f) the words “including” and “includes” are not words of limitation; and
- (g) a reference to dollars or \$ is to the Australian currency (AUD).