

Standard Terms and Conditions for Hirers' Access to Port of Melbourne Common User Terminals

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 the 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

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

Access Period	Landside Restricted Zone	Port of Melbourne's Security Contractor
Agent	Legislative Requirements	Port of Melbourne's Security Contractor
Agreement	Licensed Service Provider	Port of Melbourne's Security Contractor
Ancillary Services	Melbourne Vessel Traffic Services or Melbourne VTS	Port of Melbourne Land
Application	MTOFSA	Port of Melbourne Waters
Cargo	MTOFSR	Port Rules
Certificate of Condition	OH&S Laws	Port Security Plan
Common User Terminals	Permitted Use	Reference Tariff Schedule
Common User Wharves	PMA	Restricted Access Area
Contamination	Pollution Incident	Restricted Area
Empties	PoMC	Waterside Restricted Zone
Environment	Port of Melbourne	
Environmental Hazard	Port of Melbourne	
Harbour Master	Guidelines	
Hirer		

2. Port of Melbourne as agent of PoMC

- (a) Where this Agreement expressly provides for a right in favour of PoMC, Port of Melbourne is contracting with the Agent and Hirer as agent for PoMC.
- (b) Without limiting Clause 2(a), Port of Melbourne enters into Clauses 5.4, 6.6, 11.1, 11.2(a), 12.1, 12.2, 12.3(a), 12.4, 12.5, 12.6, 12.8, 13, 14, 15, 16 and 19 of this Agreement both:
 - (i) in its own capacity; and
 - (ii) as agent for PoMC.

3. Joint and Several Obligations of the Hirer and the Agent

- (a) Save for the clauses identified in Clause 3(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 4, 5, 9.4, 11, 12, 16 and 19.

4. Hirer

4.1 Bound to perform this Agreement

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

4.2 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.

4.3 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.

4.4 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.

5. Agent

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

6. Use of the Common User Terminal

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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 6.5, enter, use, possess and enjoy the whole or any part of the Common User Terminal.

6.6 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.

6.7 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.

7. 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.

8. Withdrawal of Access or Hire

8.1 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.

8.2 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.

9. Port Charges

9.1 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.

9.2 Area Hire Charge

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

9.3 Wharf Access Charge

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

9.4 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.

9.5 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

9.6 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.

9.7 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).

10. Acknowledgments by the Hirer

10.1 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.

10.2 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.

10.3 General indemnity by Hirer

- (a) The Hirer must indemnify Port of Melbourne against:
- (i) loss of or damage to the property of Port of Melbourne;
 - (ii) claims by any person against Port of Melbourne in respect of personal injury or death or loss of or damage to any property;
 - (iii) loss, damage or costs arising from the carriage of Cargo by the Hirer; and
 - (iv) 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 of Melbourne or the carrying on of its business at the Port of Melbourne,

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.

(b) The Hirer must indemnify PoMC against:

- (i) loss of or damage to the property of PoMC;
- (ii) claims by any person against PoMC in respect of personal injury or death or loss of or damage to any property;
- (iii) loss, damage or costs incurred by PoMC arising from the carriage of Cargo by the Hirer,

arising out of or as a consequence of the access, occupation or use of the Common User Terminals by the Hirer, the Agent, or their servants, agents, employees or contractors.

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

10.4 Specific environmental indemnity by Hirer

- (a) 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.
- (b) The Hirer must indemnify PoMC for direct and indirect losses incurred by PoMC arising from any Pollution Incident, Environmental Hazard or Contamination caused by the Hirer, the Agent, or their servants, agents, employees or contractors, including all crew and all personnel engaged by it in relation to a Vessel without prejudice to any defences, exclusions from liability and rights of limitation provided by law.

10.5 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.

10.6 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.

10.7 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 10.6 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.

11. Comply with Legislative Requirements and directions

11.1 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.

11.2 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.

12. Environmental Obligations

12.1 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.

12.2 Environmental Incident Reporting

Without limiting the Hirer's obligations under Clause 15 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.

12.3 Obligation to clean-up etc

- (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.

12.4 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.

12.5 Obligation to comply with statutory notice

The Agent and Hirer must comply with any and all statutory notices referred to in Clause 12.4 and is liable for any costs of compliance with such statutory notices.

12.6 Obligations regarding storage of dangerous goods

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 the Corporation will not be required under this clause where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.

12.7 Port of Melbourne Guidelines and Port Rules

- (a) The Hirer must, and shall ensure that its servants, agents, employees and contractors all personnel engaged by it in relation to hire of a Common User Terminal, comply with Port of Melbourne Guidelines.
- (b) Port of Melbourne shall ensure that the Port of Melbourne Guidelines and Port Rules as amended from time to time, are published on the Port of Melbourne website.

12.8 Rights of Port of Melbourne

Without limiting the foregoing provisions of this clause 12

- (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 12.8(a); 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:
 - (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.

13. Safety

13.1 Occupational Health and Safety responsibility

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

13.2 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 the Port of Melbourne of any incident or dangerous occurrence at Port Facilities and the Common User Terminal which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law, including but not limited to the *Occupational Health and Safety Act 2004*.

13.3 Statutory notices and legal proceedings

Within 48 hours of the Agent or Hirer receiving any notice of 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.

13.4 Obligation to comply with statutory notice

The Hirer must comply with any and all statutory notices referred to in Clause 13.3 and is liable for any costs of compliance with such statutory notices.

14. 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.

15. Notification of damage and/or injury

15.1 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).

15.2 Detailed incident report

No later than 72 hours after the Hirer gives notice in accordance with Clause 15.1 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).

16. Port Security

16.1 Compliance with MTOFSA

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; and
- (b) comply with all directions of Port of Melbourne's Security Contractor and Port of Melbourne's Security Manager.

16.2 Acknowledgment of a Security Regulated Port

The Hirer acknowledges that the Port of Melbourne 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 Commonwealth Department of Infrastructure and Regional Development and their appointees.

16.3 Financial penalties

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

16.4 Compliance with Restricted Areas

- (a) The Hirer acknowledge that it is an offence:
 - (i) under the MTOFSA for an un authorised person to enter a Landside Restricted Zone or for an unauthorised vehicle to enter or remain in a Landside Restricted Zone; and
 - (ii) under the 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.

16.5 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.

16.6 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.

17. Common User Terminal

17.1 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.

17.2 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.

17.3 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.

17.4 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.

17.5 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.

17.6 Failure to maintain

If the Hirer fails to leave the Common User Terminal in the condition required by Clause 17.4 and 17.5, Port of Melbourne may:

- (a) inform the Hirer and direct that the Common User Terminal be returned to the condition required by Clauses 17.4 and 17.5; 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 17.6(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.

17.7 No alterations

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

17.8 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.

18. Licensed Service Providers

The Hirer must not engage a third party to provide Ancillary Services unless that third party is a Licensed Service Provider.

19. Insurance

19.1 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 10.3

19.2 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 19 when requested in writing to do so by Port of Melbourne during the Access Period.

20. 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 the Port of Melbourne could not avoid or prevent by the exercise of reasonable care.

21. GST

21.1 Interpretation

Words or expressions used in this Clause 21 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

21.2 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.

21.3 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 21.5 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.

21.4 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.

21.5 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.

22. Notices

Subject to Clause 23, any notice or other communication concerning this Agreement may only be:

- (a) left at or sent to the Hirer of the Agent if the communication is addressed to the Hirer 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.

23. Dispute Resolution

23.1 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').

23.2 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 9.

23.3 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.

23.4 Arbitration

- (a) If the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 23.3 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 23.4 shall be administered by the Resolution Institute in accordance with the IAMA Arbitration Rules.
- (c) Any arbitration pursuant to this Clause 23.4 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 23.4 shall take place in Melbourne, Australia and shall be conducted in English.

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 10 and 12 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- (c) The following clauses of this Agreement survive the expiry of the Access Period: Clauses 9, 20, 23 and 24.

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 4, 530 Collins Street MELBOURNE VIC 3000 PO Box 261 MELBOURNE VIC 3001
2	Port of Melbourne's Security Manager	Name: Greg Cotsworth Address: Level 4, 530 Collins Street MELBOURNE VIC 3000 PO Box 261 MELBOURNE VIC 3001 Ph: 9683 1416 or 0408 588 176 Email: greg.cotsworth@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:

Access Period	means the period that: 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 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.
Agent	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.
Agreement	means the agreement constituted by the Application and these Standard Terms and Conditions.
Ancillary Services	means: (a) stevedoring services; and (b) mooring services.
Application	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.
Cargo	means 'cargo' as defined by section 3 of the PMA, and includes Empties.
Certificate of Condition	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.
Common User Terminals	means the Port of Melbourne terminals that are not leased but are managed by Port of Melbourne and are adjacent to Common User Wharves.
Common User Wharves	means a wharf (or wharves) listed in Schedule 3.
Contamination	means the presence in the Environment at a level above background levels of any substance which is potentially

harmful to human health and comfort, detrimental to the well-being of flora or fauna and/or detrimental to the beneficial uses of the Environment, irrespective of whether the quantity of the substance does or does not exceed statutory or industry criteria applicable to commercial or industrial land use.

Empties	means a Cargo container which does not contain any Cargo.
Environment	means the physical factors of the surroundings of human and non-human life forms, including without limitation the land, soil, plants, habitat, waters, atmosphere, climate, sound, odours, tastes, biodiversity and the social and aesthetic values of landscape.
Environmental Hazard	means a potential danger to human health or the Environment, whether imminent or otherwise, resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious, irritant or otherwise dangerous or damaging characteristics.
Harbour Master	means a 'harbour master' as defined by section 3 of the <i>Marine Safety Act 2010</i> (Vic).
Hirer	means the party identified as the Hirer in the Application
Landside Restricted Zone	means an area of land or a structure within the boundaries of the Port of Melbourne which is established as a 'land-side restricted zone' (being a type of 'port security zone' as defined by section 10 of the MTOFSA) under the MTOFSA and MTOFSR.
Legislative Requirements	means: <ul style="list-style-type: none">(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) the Port Rules;(f) directions of any statutory bodies or authorities with relevant jurisdiction; and(g) the Port of Melbourne Guidelines or guidelines referred

to in Clause 127.

Licensed Service Provider	means those service provides licensed by Port of Melbourne to provide Ancillary Services, as listed on Port of Melbourne's website (as amended from time to time).
Melbourne Vessel Traffic Services or Melbourne VTS	means the VTS Authority with responsibility for the Port of Melbourne VTS Area as authorised under <i>Marine Order 64 (Vessel Traffic Services) 2013</i> made under the <i>Navigation Act 2012</i> (Cth).
MTOFSA	means the <i>Maritime Transport and Offshore Facilities Security Act 2003</i> (Cth), as amended from time to time.
MTOFSR	means the <i>Maritime Transport and Offshore Facilities Security Regulations 2003</i> (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: <ul style="list-style-type: none">(a) <i>Occupational Health and Safety Act 2004</i> (Vic);(b) <i>Occupational Health and Safety (Plant) Regulations 1995</i> (Vic);(c) <i>Dangerous Goods Act 2000</i> (Vic); and(d) <i>Dangerous Goods Regulations 2000</i> (Vic).
Permitted Use	means: the embarking and disembarking of passengers; and the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo.
PMA	means the <i>Port Management Act 1995</i> (Vic) as amended from time to time.
Pollution Incident	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).
PoMC	has the same meaning as: prior to the commencement of Division 1 of Part 9 of the <i>Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016</i> (Vic), 'Port of Melbourne Corporation' in section 3 of the <i>Transport Integration Act 2010</i> (Vic); or after the commencement of Division 1 of Part 9 of the <i>Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016</i> , 'Victorian Ports Corporation (Melbourne)' in section 3 of the <i>Transport Integration Act 2010</i> (Vic).

Port of Melbourne	means Port of Melbourne Operations Pty Ltd (as Trustee for Port of Melbourne Unit Trust) (ABN 83 751 315 034).
Port of Melbourne Guidelines	means: Bulk Liquid Cargo Management Guidelines; Hot Work Procedural Guidelines; Packed Dangerous Goods Management Guideline; Tanker Facilities Operations Manual; Port Load Chart; Class 1 dangerous goods-Management Plan; Ship/shore Safety and Operational Agreement; and Other guidelines as listed on Port of Melbourne's website.
Port of Melbourne's Security Contractor	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.
Port of Melbourne's Security Manager	means the manager named in item 2 of Schedule 1, or as notified by Port of Melbourne from time to time.
Port Charges	means any fees or published on the Reference Tariff Schedule in respect of the activities under this Agreement.
Port Facilities	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.
Port of Melbourne	means the 'port of Melbourne' as defined by section 3 of the PMA.
Port of Melbourne Land	means 'port of Melbourne land' as defined by section 3 of the PMA.
Port of Melbourne VTS Area	means the Port of Melbourne Waters.
Port of Melbourne Waters	means 'port of Melbourne waters' as defined by section 3 of the PMA.
Port Rules	means the port rules of the Port of Melbourne as amended from time to time.
Port Security Plan	means the port security plan prepared by Port of Melbourne and/or the port security plan prepared by PoMC in accordance with the MTOFSA and as amended from time to time.

Reference Tariff Schedule	means the Port of Melbourne Reference Tariff Schedule, as amended from time to time and published at the Port of Melbourne 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.
Restricted Access Area	means 'restricted access area' as defined by section 3 of the PMA.
Restricted Area	means either: an area declared to be a Landside Restricted Zone; or an area declared to be a Waterside Restricted Zone; or a Restricted Access Area.
Waterside Restricted Zone	means an area of water within the Port of Melbourne 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

ABBV.	WHARF
APPF	F Appleton Dock
YVL6	6 Yarraville