

## STANDARD TERMS AND CONDITIONS OF PORT ACCESS

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### 1. Definitions

In these Terms and Conditions:

**Access Period** means the period commencing from the earliest time at which the Vessel enters the Channel and expires when the Vessel departs the Channel.

**Agreement** is defined in clause 2.1(a).

**Application** means either a:

- (a) Vessel Movement Advice received by TasPorts at any time before 31 October 2020;
- (b) Movement Request; or
- (c) a Slip Application Form (applicable only for requests for use of a Slipway).

**Authority** includes the Australian Border Force, the Australian Maritime Safety Authority, Maritime and Safety Tasmania and any other government authority having legal jurisdiction over the Port Area and any of the operations occurring within the Port Area or proximate to the Port Area.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the local government area of Tasmania in which the relevant Port Area is situated.

**Cargo** means any item (including the container, package or other material in which the item is contained, packed, stored or handled) that is carried or intended to be carried on the Vessel.

**Channel** means the customary shipping lanes and deep-water approaches to a Port Area, and the harbour basins, fairways, anchorages, turning areas and alongside any berth or mooring in any Port Area.

**Contamination** means the presence in, on or under land, air or water of a substance (whether a solid, liquid or gas) or matter (whether emitting odour, heat, sound, vibration or radiation) at a concentration or level above the concentration or level at which the substance or matter is normally present in, on or under land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, or results in a non-compliance with, or breach of, any environmental Law and requirements and **Contaminate** has a corresponding meaning.

**Consequential Loss** means any consequential or indirect loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of hire, loss of production, any damage or loss relating to business interruption, loss of revenue or any special or incidental loss or damage. Consequential Loss applies even if damage or loss may reasonably be supposed to have been in contemplation of TasPorts, the Principal or the Shipping Agent as a probable result of any breach at the time they entered into this Agreement.

**Force Majeure** means an event, circumstance or contingency beyond the reasonable control of TasPorts including but not limited to strike, ban, lockout, riot, civil commotion, difference with or between workmen or other industrial action; accidents to or breakdown of machinery, infrastructure, plant or equipment; interruption or disruption to the supply of electric, gas, water and telecommunication services; blockage, stoppage, accident or hazard in navigable waters; earthquake, lightning, flood, adverse sea and weather conditions, fire, natural disaster, drought, storm, flood, act of God, embargo, blockade; terrorism or piracy or the prevention of them; epidemic or pandemic; policies or restrictions of governments, action or inaction in connection with any licence, permit or approval; actions, directions, orders or inaction of any lawful authority; war; and all consequences of any of such.

**Hazardous Substance** means any substance (including a solid, liquid or gas) that is hazardous, dangerous, flammable, explosive, noxious, damaging, toxic, corrosive, irritating, offensive, radioactive, oxidising, poisonous or infectious, whether or not defined as such by the IMDG Code or any other published source or guide.

**IMDG Code** means the International Maritime Dangerous Goods Code of the International Maritime Organisation.

**ISPS** means International Ship and Port Facility Security Code.

**ISM** means International Safety Management Code.

**Law or Laws** means all laws (including subordinate or delegated legislation or statutory instruments of any kind) applicable to this Agreement or the subject matter of this Agreement.

**Manifest** is a document containing data regarding Cargo, passengers or crew on the Vessel that must be submitted by or on behalf of the Principal in accordance with clause 8.

**Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth) and all other comparable legislation enacted in non-Australian jurisdictions, which applies to the Vessel, and/or to the owner, charterer or manager of the Vessel.

**Movement Request** means:

- (a) a request by a Principal or its Shipping Agent, submitted electronically via PortMate, for the Principal to use specified parts of the Port Area and receive the benefit of specified Services, in accordance with these Terms and Conditions. A Movement Request remains valid for only 30 days after it is submitted electronically; or
- (b) in circumstances where it is not possible to use Port Mate, a request by a Principal to use specified parts of the Port Area and receive the benefit of specified Services, in accordance with these Terms and Conditions, communicated to TasPorts in a manner acceptable to TasPorts.

**Pollution** means the release or escape of any substance which is or might become hazardous, dangerous, radioactive, oxidising, poisonous, infectious, flammable, explosive, noxious, toxic, corrosive, irritating, offensive, or damaging to health or to property whether or not defined as such by the IMDG Code or any other published source.

**Port Area** means:

- (a) a port location at Bell Bay, Burnie, Devonport, Hobart, Flinders Island (Whitemark or Lady Barron), Inspection Head, King Island (Currie or Grassy), Stanley or Strahan, in every instance including but not limited to the Channel and Port Land; or
- (b) a port location at Adventure Bay, Coles Bay, Naracoopa, Port Arthur, Port Davey or Spring Bay, in every instance including but not limited to the Channel.

**Port Charges** means the fees payable by the Principal for the Services provided by TasPorts, calculated either in accordance with the applicable items in the Schedule of Port Charges or as otherwise agreed in writing with TasPorts.

**Port Land** means such part of the land area including all wharf and loading infrastructure located at any Port Area made available by TasPorts for commercial shipping purposes together with the Channel.

**PortMate** is the TasPorts port management information system, accessible by the Principal and the Shipping Agent via the TasPorts website.

**Principal** includes the registered owner, beneficial owner, manager, operator, charterer and hirer of the Vessel.

**Principal's Associates** means the:

- (a) Principal's officers, employees, contractors, agents (including but not limited to a Shipping Agent) or any persons claiming through or under them; and
- (b) any agents or contractors (other than TasPorts) engaged by the Shipping Agent to carry out work or provide services in the Port in connection with the Principal, the Vessel or its Cargo or crew.

**P&I Club** means a mutual insurance association that is a member of the International Group of P&I Clubs but also includes the Korea P&I Club and the China Shipowners Mutual Assurance Association.

**Required Certificates** means in relation to the Vessel, a current certificate of entry with a P&I club, a current certificate of hull and machinery insurance, and if so requested by TasPorts any other certificate including but not limited to a current classification society's certificate, ISPS certificate and ISM certificates.

**Schedule of Port Charges** means the schedule of TasPorts charges published from time to time on the TasPorts website (<https://www.tasports.com.au/port-charges/>)

**Services** means any services that are provided by or arranged by TasPorts in connection with the Vessel, including (but not limited to) Towage and pilotage.

**Shipping Agent** means the party identified in the Application or, if no party is specified in the Application, the party that caused the Application to be provided to TasPorts (including, where applicable, a Principal).

**Slip Application Form** means the form so named and published on the TasPorts website or as otherwise provided by TasPorts.

**Slipway** means any slipyard facility operated by TasPorts, including any common areas therein.

**Slipway Terms and Conditions** means the terms and conditions so named and published on the TasPorts website or as otherwise provided by TasPorts.

**TasPorts** means Tasmanian Ports Corporation Pty Limited (ACN 114 161 938).

**TasPorts Information** means information, including Port rules, policies, protocols and procedures, published on the TasPorts website from time to time.

**Towage** means any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by the Vessel, and the expressions 'to tow', 'being towed' and 'towing' shall be defined likewise.

**UK Standard Towage Conditions** means the United Kingdom Standard Conditions for Towage and Other Services (Revised 1986), amended by TasPorts 2019 and published on the TasPorts website (<https://www.tasports.com.au/marine-services/>).

**Vessel** means the vessel named in the Application.

## 2. Incorporation of Terms and Conditions

2.1 By completing and submitting the Application the Principal and the Shipping Agent each:

- (a) acknowledge that they have received, read, understood and agree that these Terms and Conditions are expressly incorporated into the agreement evidenced by the completed Application (**Agreement**);
- (b) understand and agree that they are each a party to this Agreement notwithstanding:
  - (i) that the Shipping Agent is referred to as an agent throughout these Terms and Conditions; and

(ii) clause 3.1.

2.2 Access to or use of any part of the Channel or Port Land is prohibited unless and until TasPorts approves the relevant Application.

### **3. Appointment of Shipping Agent by Principal**

3.1 The Principal and the Shipping Agent each represent and warrant that the Principal has engaged the Shipping Agent to act as its agent on the Principal's behalf with the Principal's full authority for all purposes of and in connection with the Principal and the Vessel, its Cargo, passengers (if any) and crew.

3.2 The Principal and the Shipping Agent each represent and warrant that TasPorts will be immediately notified in writing of:

- (a) any termination of such engagement;
- (b) the name of any replacement Shipping Agent the Principal appoints following such termination; and
- (c) any change in the ownership or control of the Vessel during the Access Period.

3.3 The warranties in this clause are continuing warranties.

### **4. Shipping Agent's responsibilities**

4.1 The Shipping Agent must:

- (a) inform itself and the Principal of:
  - (i) these Terms and Conditions (notwithstanding clauses 2.1 and 3.1); and
  - (ii) the TasPorts Information.
- (b) notify the Principal of the applicable Port Charges and collect from the Principal and pay all relevant disbursements, fees and charges including the Port Charges to TasPorts within the time required and otherwise in accordance with these Terms and Conditions;
- (c) ensure the Principal is informed promptly of any directions received from TasPorts at any time;
- (d) provide a copy of all Required Certificates to TasPorts not less than 2 Business Days before the Vessel enters any Port Area;
- (e) provide a copy of all notifications and information required by Law in respect of the Vessel and the Principal and its/their activities (including but not limited to those that can affect human health, safety and the environment) to TasPorts not less than 2 Business Days before the Vessel enters any Port Area; and
- (f) provide these Terms and Conditions to the Principal not less than 72 hours prior to each occasion the Vessel enters a Port Area.

4.2 The Shipping Agent acknowledges and agrees that:

- (a) it is unlikely TasPorts will correspond directly with a Principal in relation to any of the matters referred to in clause 4.1;
- (b) TasPorts will therefore be relying upon the Shipping Agent to comply with clause 4.1.

4.3 The Shipping Agent must not endanger, or permit its employees, contractors or visitors to endanger, another user of the Port Land or the Channel.

## **5. Use of Port Land and the Channel**

- 5.1 Access to and use of the Port Land and the Channel and any part of it or them is granted only for purposes that are:
- (a) lawful; and
  - (b) permitted by TasPorts in its sole discretion.
- 5.2 The Principal and the Vessel do not have any right of exclusive occupation or use of any of the Port Land, the Channel or any part of them.
- 5.3 No representation or warranty is made by TasPorts concerning the adequacy or suitability of the Port Land or the Channel or any part of them for the Vessel or for or in connection with any use or intended use. This includes when information is provided verbally or in writing from time to time by TasPorts, its officers, employees, contractors and/or agents.
- 5.4 The Principal and the Shipping Agent must each make its own enquiries and at its own cost take any necessary advice concerning:
- (a) all matters referred to in clause 5.3; and
  - (b) as to the relevance, applicability, meaning, effect and consequences of the TasPorts Information.
- 5.5 The Principal must not endanger or obstruct or permit its officers, employees, contractors or visitors to endanger or obstruct another user of the Port Land and the Channel and any part of it or them including but not limited to multi-user areas and the wharf apron.
- 5.6 Access to and continuing use of the Port Land and the Channel or any part of them (including but not limited to withdrawal, change and the imposition of any conditions) is always subject to compliance with:
- (a) all Laws; and
  - (b) the directions of TasPorts which may be given or amended at any time.
- 5.7 The Principal must ensure that any part of the Port Land used by the Principal or any of the Principal's Associates is kept and maintained in good condition (having regard to the age and general condition of the Port Land) and the Principal shall ensure that any Facilities used are left in a good, clean and operational condition after use.
- 5.8 The Principal must ensure that neither it nor any of the Principal's Associates causes any damage to the Port Land or any other property in the Port Area.

## **6. Refusal of Application or withdrawal of permission for access**

- 6.1 TasPorts may, acting reasonably, reject an Application, defer consideration of an Application or withdraw permission to access after allowing an Application, if it becomes aware of any of the following matters:
- (a) any breach of these Terms and Conditions by the Principal;
  - (b) if the Principal fails to satisfy a requirement imposed by TasPorts in accordance with clause 7.2;
  - (c) if the Principal fails to provide an advance payment imposed by TasPorts in accordance with clause 7.3;
  - (d) failure by the Principal or the Shipping Agent to comply with a relevant direction issued by TasPorts performing a regulatory function of an Authority;
  - (e) a relevant direction issued by an Authority;

- (f) the Port Land or any part of it is unsuitable for use;
- (g) the Channel or any part of it is unsuitable for use;
- (h) use of the Port Land or the Channel could result in TasPorts and/or other parties contravening any Law;
- (i) any contravention of Modern Slavery Legislation by the owner, charterer and/or manager of the Vessel (regardless of whether the contravention took place on the Vessel or on any other vessel), unless that contravention occurred more than 6 months before the Application is submitted and the said owner, charterer and/or manager (as applicable) is able to demonstrate to TasPorts' reasonable satisfaction that the contravention has been remedied.
- (j) previous conduct involving the Vessel or the Principal in the Port Area which, were it to occur during the Access Period, would amount to a material breach of these Terms and Conditions.

6.2 If TasPorts withdraws permission to use any part of the Port Land or the Channel, the Principal must, at its own expense, promptly reposition the Vessel and TasPorts shall refund to the Shipping Agent any monies paid prior to withdrawal of access. The amount of any such refund shall be calculated by TasPorts (acting reasonably) and the Principal and Shipping Agent agree to abide by TasPorts' decision.

6.3 TasPorts will have no liability whatsoever to the Principal or the Shipping Agent in respect of any grant, refusal, withdrawal, imposition or change of conditions in connection with access to or use of the Port Land or the Channel, including without limitation in connection with any change in the Port Land, the Channel (or any part of them) or in connection with any discretion or direction of TasPorts.

## **7. Payment of Port Charges**

7.1 Subject to this clause 7, the Principal must pay the Port Charges in Australian Dollars within 14 days of the relevant invoice(s) being provided to the Shipping Agent.

7.2 TasPorts may, acting reasonably, require the Principal to provide either a bank guarantee or some other form of security acceptable to TasPorts, equal to the sum total of:

- (a) any overdue Port Charges for which the Principal is liable; and
- (b) a reasonable estimate of the Port Charges the Principal is likely to incur during the Access Period, before the Vessel is permitted to make use of any Port Land or receive any Services.

7.3 TasPorts may, acting reasonably, invoice a Principal or the Shipping Agent for advance payment of some or all of the anticipated Port Charges before arrival of the Vessel. When TasPorts exercises this right, payment must be made within 7 days of the relevant invoice(s) being provided to the Shipping Agent.

7.4 Port Charges must always be paid in full in cleared funds and without discount, deduction, counterclaim or set-off, and regardless of any dispute between TasPorts, the Principal and/or the Shipping Agent.

7.5 In addition to the payment of Port Charges, the Principal must reimburse TasPorts' costs incurred as a result of complying with any Law in relation to the Vessel within 14 days of TasPorts requesting reimbursement. The costs referred to in this clause 7.5 include, but are not limited to, costs incurred for the provision of security or security related services.

7.6 TasPorts will be entitled to claim interest at the rate of 1.5% per month from the Principal or Shipping Agent on any amount that has not been paid in accordance with this clause 7. TasPorts' right to require payment of interest under this clause 7 does not affect any other rights or remedies it may have relating to any failure to pay an amount due under this Agreement.

7.7 The Principal and the Shipping Agent acknowledge and agree that any interest payable to TasPorts in accordance with clause 7.6 is a genuine pre-estimate of the loss that may be suffered or incurred by

TasPorts as a result of non-payment. The Principal and/or Agent must not commence any proceedings or seek to rely on any argument that any liquidated damages are a penalty or are otherwise unenforceable.

## **8. Manifests and responding to requests for information**

### **8.1 The Principal or Shipping Agent:**

- (a) must complete a separate Manifest in relation to all Vessels that:
  - (i) berth within the Port Area, for the purpose of discharging Cargo or the disembarkation of passengers and/or crew (**Inward Manifest**); or
  - (ii) depart a wharf within the Port Area, following the loading of Cargo or boarding of passengers and/or crew (**Outward Manifest**);
- (b) must ensure that an:
  - (i) Inward Manifest is provided to TasPorts no more than 2 Business Days after berthing of the Vessel in the Port Area;
  - (ii) Outward Manifest is provided to TasPorts no more than 2 Business Days after the Vessel departs the wharf in the Port Area;
- (c) must:
  - (i) utilise the correct Manifest form, having regard to the Vessel, Cargo, passengers (if any) and crew, as identified by TasPorts; and
  - (ii) submit the Manifest in accordance with the procedures stipulated by TasPorts;
- (d) represent and warrant that all information in a Manifest is accurate, complete and otherwise prepared and submitted in accordance with this clause 8;
- (e) acknowledge and agree that the information in a Manifest will be relied upon by TasPorts and Authorities.

### **8.2 The Principal and Shipping Agent must also provide TasPorts with:**

- (a) any additional information reasonably requested by TasPorts concerning any Cargo, passengers or crew, or Hazardous Substances;
- (b) that is accurate and complete,

as soon as possible after any such request is received from TasPorts (including requests that are received following the conclusion of the Access Period).

## **9. Information provided by the Principal and the Shipping Agent**

The Principal and the Shipping Agent each represent and warrant that any information they provide to TasPorts (whether in an Application, Manifest or otherwise, and whether directly or indirectly) is accurate and complete. The Principal and the Shipping Agent each acknowledge and agree that any and all such information shall be relied on by TasPorts.

## **10. Compliance with Laws and directions by an Authority**

10.1 The Principal and the Shipping Agent must comply with all Laws at all times (including at all times prior to the commencement of the Access Period).

10.2 The Principal and the Shipping Agent must each comply with all directions of any Authority, including but not limited to:

- (a) directions given pursuant to the *Australian Maritime Safety Authority Act 1990* (Cth), the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth), the *Navigation Act 2012* (Cth) and the *Marine and Safety Authority Act 1997* (Tas), as in force from time to time; and
- (b) the directions of the Australian Border Force, the Department of Agriculture and Water Resources and any other relevant regulatory authority in connection with the Vessel's visit to a Port Area,

provided that nothing in this clause 10.2 affects the Master's duty and lawful discretion concerning the safety of the Vessel, its Cargo, passengers and crew, and other persons and property.

10.3 The Principal and the Shipping Agent must each ensure that each of their respective officers, employees, contractors, agents and visitors comply with all Laws and with the directions referred to in clause 10.2.

## **11. Induction**

The Principal shall ensure that it and the Principal's Associates and visitors undertake any induction briefings and training courses, as and when required by TasPorts, in relation to anything connected with the Vessel's visit to the Port Area.

## **12. Audits**

12.1 TasPorts may at their discretion conduct, or engage an auditor to conduct, audits on the Principal and the Principal's Associates in relation to compliance with any Laws and/or TasPorts Information.

12.2 The Principal must respond to all reasonable requests for assistance in the event that any audit is undertaken in accordance with this clause 12.

## **13. Hazardous Substances**

13.1 The Principal must notify TasPorts when:

- (a) there is a Hazardous Substance on the Vessel, at least 2 Business Days before the Vessel enters any part of the Port Area;
- (b) a Hazardous Substance is to be unloaded from the Vessel in part of the Port Area, at least 2 Business Days before the unloading takes place;
- (c) a Hazardous Substance is to be loaded on the Vessel in any part of the Port Area, at least 2 Business Days before the loading takes place,

by completing and submitting a Hazardous Substances Manifest (in addition to the applicable Manifest referred to in clause 8), using the correct form and otherwise in accordance with the procedures stipulated by TasPorts.

13.2 The Principal must not without TasPorts' prior written consent use, or allow the Port Land, the Channel or any part of the Port Area to be used, for the transfer, handling, movement, carriage, placement or storage of any Hazardous Substance.

13.3 The Principal must continually comply with all codes and conventions observed by the maritime sector and port operators regarding the permitted use, transfer, handling, movement, carriage, placement or storage of Hazardous Substances, even if the codes and conventions are not Law.

## **14. Environmental obligations**

14.1 The Principal must ensure that it and the Principal's Associates do not cause or permit any Contamination or Pollution in any part of the Port Area.

14.2 The Principal must immediately upon becoming aware of any Contamination, Pollution or potential breach of its obligations under clause 13 or pursuant to the *Environmental Management and Pollution*



*Control Act 1994 (Tas), Pollution of Waters by Oil and Noxious Substances Act 1987 (Tas)* or any environmental Laws or requirements, give written notice to TasPorts with sufficient particulars of each occurrence and then:

- (a) promptly provide such further information as TasPorts may reasonably require;
- (b) upon lawful request from TasPorts or a competent authority at the Principal's own expense clean-up, remediate and rectify any Contamination that was caused by acts or omissions of the Principal's officers, employees, contractors, agents or visitors; and
- (c) comply with any lawful direction issued by TasPorts or a competent authority in connection with any Contamination and its consequences including as to the time to carry out any such direction.

## **15. Safety**

15.1 The Principal and the Shipping Agent each acknowledges that work, health and safety on and in connection with the Vessel is at all times the responsibility of the Principal and the Master of the Vessel.

15.2 The Shipping Agent acknowledges that work, health and safety of the Shipping Agent's workers, contractors and agents are at all times the responsibility of the Shipping Agent.

15.3 The Principal must:

- (a) obtain all permits required by Law;
- (b) use best endeavours to ensure that its workers are not exposed to conditions or practices that have the potential to cause personal injury;
- (c) fully comply with all Laws relating to work, health and safety;
- (d) ensure that its employees, contractors and visitors comply with all applicable work, health and safety requirements set out within the TasPorts Information;
- (e) immediately notify TasPorts of any matter which is notifiable to WorkSafe Tasmania (or successor entity) in accordance with the Law.
- (f) ensure that TasPorts is given prompt access to all parts of the Port Land, the Vessel, the Cargo and any information that is reasonably required by TasPorts in order for TasPorts to check and monitor the Principal's compliance with its obligations under this clause 15.

## **16. Emergency**

The Principal and the Shipping Agent must, in the event of emergency, accident or threat to security:

- (a) immediately notify the emergency services by dialling 000 and contact TasPorts on 1300 664 007;
- (b) provide TasPorts and any emergency services with such access, assistance and information as either of them may reasonably require;
- (c) comply with all reasonable directions of TasPorts; and
- (d) comply with all directions of any Authority.

## **17. Notification of property damage and injury**

Subject to complying with clause 16, the Principal and the Shipping Agent must:

- (a) promptly notify TasPorts on becoming aware of any damage or potential damage to any property (including the Vessel and any other valuable property owned by the Principal) or any injury or potential injury to any person; and

- (b) no later than 24 hours after the occurrence of such damage, injury or potential damage or injury, provide a written report to TasPorts.

## **18. Port security**

- 18.1 The Principal must inform itself of, and strictly comply with, the requirements of the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) (if relevant) as in force from time to time including any modification or substitute.
- 18.2 The Principal acknowledges that the Port Area may be a Security Regulated Port within the meaning of that Act.

## **19. Service providers to Vessels**

Access to the Port Land for contractors engaged by the Principal or the Shipping Agents to provide services may be given, withheld or permitted subject to conditions stipulated by TasPorts.

## **20. Towage**

- 20.1 TasPorts may determine that Towage is required for the Vessel. The Principal or the Shipping Agent may also request Towage.
- 20.2 A minimum of 2.5 hours' notice is required for ordering or amending orders for tug services.
- 20.3 Any Towage provided by TasPorts is subject to the UK Standard Towage Conditions. To the extent that there is any conflict, apparent conflict or ambiguity between the UK Standard Towage Conditions and these Terms and Conditions, the former is paramount.
- 20.4 If at any time a situation develops or an incident occurs outside the scope of normal Towage operations that threatens the safety of the Vessel or its Cargo or crew, infrastructure, the environment or the community, assistance will be provided to the best of TasPorts' ability under the circumstances. TasPorts reserves the right to negotiate the terms under which such assistance is rendered.

## **21. Pilotage**

- 21.1 Pilotage is compulsory for vessels greater than 35m Length Overall (LOA) in the Port Area, unless an exemption has been obtained in accordance with the applicable Laws.
- 21.2 When TasPorts provides any pilotage for the Vessel, the Principal agrees to abide by the pilot's discretion in decisions as to the cessation of operations due to weather and conditions.
- 21.3 Nothing in these Terms and Conditions is intended to restrict or modify the rights of TasPorts and its employees, contractors and agents (including but not limited to the pilot of the Vessel) under the Laws regarding the provision of pilotage to the Vessel.

## **22. Stevedoring**

- 22.1 The Principal is responsible for agreeing terms with the provider of stevedoring services and TasPorts is under no obligation or responsibility of any kind in respect of any provider of such services, or in respect of any statement, act or omission of any provider of such services.
- 22.2 The Principal must ensure that any provider of stevedoring services in any part of the Port Area:
  - (a) is licensed to utilise a designated part of the Port Area for stevedoring services;
  - (b) understands and agrees to abide by the obligations in clauses 10 and 17;

- (c) participates in induction briefings and training courses, as and when required by TasPorts in relation to anything connected with the provision of stevedoring services (including, but not limited to, chain of responsibility and workplace health and safety).

22.3 This clause 22 does not apply in circumstances where TasPorts, Southern Export Terminals Pty Limited or any other party authorised by TasPorts has agreed in writing to provide stevedoring services to the Principal and/or shippers, exporters and other cargo interests, in relation to the Cargo.

### **23. Slipway**

Any use of a Slipway by a Principal is always subject to the satisfactory completion of a Slip Application Form and otherwise in accordance with the Slipway Terms and Conditions. If there is any conflict, apparent conflict or ambiguity between the Slipway Terms and Conditions and these Terms and Conditions, the former is paramount.

### **24. Supply of water and other services**

- 24.1 The Principal must ensure that fresh water supplied at the Port Land is not used for industrial or commercial purposes, such as washing down decks or ballast.
- 24.2 The Principal and the Shipping Agent must each comply with all relevant requirements of the TasPorts' Information in connection with the provision by TasPorts of any services including but not limited to water, waste disposal, quarantine, bunkering, power supply and use of gangways or equipment.

### **25. Insurance**

- 25.1 The Principal warrants that at all times the Vessel will be entered with a P&I Club and have in place hull and machinery insurance with a reputable underwriter.
- 25.2 The Principal and the Shipping Agent each warrant that it will not appoint any contractor to enter the Port Land or work or operate in any other part of the Port Area that does not hold:
  - (a) public liability insurance to a minimum cover of \$5,000,000 per occurrence and unlimited in the aggregate; and
  - (b) an appropriate level of workers compensation insurance,except with the written authorisation of TasPorts (such authorisation not to be unreasonably withheld).
- 25.3 The Principal and Shipping Agent must provide evidence, to the reasonable satisfaction of TasPorts, of the insurance referred to in this clause 25.

### **26. Liability**

- 26.1 TasPorts, the Principal and the Shipping Agent acknowledge that under the *Australian Consumer Law*, as set out in Schedule 2 of the *Competition and Consumer Act 2010*, consumers (as defined) have certain rights and guarantees which cannot be excluded. Nothing in these Terms and Conditions will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by Law (including the *Australian Consumer Law*) and which by Law cannot be excluded, restricted or modified.
- 26.2 To the fullest extent permitted by Law, all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms that are not set out in these Terms and Conditions are expressly excluded.
- 26.3 TasPorts will not be liable or responsible to the Principal or the Shipping Agent for any Consequential Loss suffered or incurred by the Principal or Shipping Agent or both arising out of or in connection with the Agreement, whether in contract, tort, equity or otherwise.

26.4 Where TasPorts is precluded from excluding its liability by Law, TasPorts' liability is in all circumstances limited to:

- (a) the re-supply of the services; or
- (b) where TasPorts decides at its discretion that the re-supply of services is not practicable, then liability is limited to the payment of the cost of having the services supplied again, subject to clause 26.1.

## **27. Delay**

27.1 Subject to clause 26, TasPorts is not liable (now or in the future) for any delay, or failure in the performance of its obligations under this Agreement or any losses suffered by the Principal and/or the Shipping Agent due to delay, and the Principal and the Shipping Agent release TasPorts from any such liability, if such a delay, failure or loss is directly or indirectly the consequence of:

- (a) in whole or in part from Force Majeure;
- (b) an interruption or disruption to the supply of electricity, gas, water or telecommunication services to the relevant Port Land, other than those caused by a wrongful act, fault or gross negligence of TasPorts; or
- (c) actions, orders, directions, instructions or requirements of any Authority or any person purporting to act on behalf of such Authority.

27.2 If TasPorts is affected by any event in clause 27.1, TasPorts must give the Principal and the Shipping Agent notice in writing as soon as reasonably practicable and must take all reasonable steps to minimise the delay or failure of performance.

## **28. Indemnity**

28.1 The Principal must indemnify, defend and hold harmless TasPorts against liability, loss or damage as a result of:

- (a) any breach by the Principal or the Shipping Agent of these Terms and Conditions, including but not limited to any breach of clauses 5, 8, 9, 10, 11, 13, 14, 15 and 16;
- (b) the Principal's use of TasPorts' property including the property comprising, or on or within, the Land Area, with the exception of fair wear and tear;
- (c) claims by any person against TasPorts in respect of personal injury or death, or loss of or damage to any property, as a result of an act or omission by the Principal;
- (d) claims by any person against TasPorts in respect of loss of use, interruption, delay, obstruction or endangerment in respect of another user's use or intended use of the Port Land as a result of an act or omission by the Principal;
- (e) loss, damage or expense of any kind whatever and however arising in connection with any Contamination or Pollution caused by the Vessel.

28.2 The Shipping Agent must indemnify, defend and hold harmless TasPorts against liability, loss or damage arising out of, or in connection with:

- (a) any breach of clause 7 by the Principal;
- (b) any breach by the Principal or the Shipping Agent of these Terms and Conditions, including but not limited to any breach of clauses 4, 8, 9 and 10.

## 29. Rights of TasPorts under Admiralty Act and comparable foreign laws

Nothing in these Terms and Conditions is intended to limit or otherwise modify TasPorts' rights against the Principal and the Vessel:

- (a) at common law;
- (b) under the Admiralty Act 1988 (Cth); or
- (c) comparable foreign law.

## 30. GST

30.1 In this clause:

- (a) "GST" means GST within the meaning of the GST Act;
- (b) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (c) "supply" and "taxable supply" means respectively supply and taxable supply, within the meaning of the GST Act.

30.2 This clause 30 applies if the Principal or the Shipping Agent is or may become liable to pay GST in relation to any supply.

30.3 Unless otherwise stated, all Port Charges and any other charges are exclusive of GST. In addition to such charges, the Principal or the Shipping Agent must pay GST on the taxable supply of an amount equal to the GST exclusive consideration multiplied by the GST rate. GST shall be payable without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST shall be payable to TasPorts upon the same basis as the GST exclusive consideration is payable in accordance with these Terms and Conditions.

30.4 TasPorts must issue an invoice or invoices for the amount of GST referable to the taxable supply. TasPorts must include in any such invoice such particulars as are required by the GST Act in order that the Principal or the Shipping Agent (whichever applicable) may obtain an input tax credit for the amount of GST payable on the taxable supply. If any part of the consideration is referable to both a taxable supply and anything that is not a taxable supply, the amount of GST payable shall be determined by the TasPorts and shall be the same amount of GST that would be payable if the taxable supply were the only supply made to the Principal or the Shipping Agent (whichever applicable).

## 31. Notices

31.1 The provisions of this clause 31 do not apply to any direction or communication of an operational nature by workers, agents or contractors of TasPorts.

31.2 A notice under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by registered mail to that person's address; or
- (c) sent by email, to the email account of that person.

31.3 A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
- (b) if sent by pre-paid mail, on the third business day after posting; or

- (c) if sent by email, at the time the sender receives confirmation on its server that the message has been transmitted to the email account referred to in clause 31.2(c).

### **32. Choice of law and dispute resolution**

32.1 This Agreement is governed by the laws in force in the State of Tasmania.

32.2 Each party submits to the non-exclusive jurisdiction of the Courts in Tasmania.

### **33. Order of precedence**

If there is any conflict, apparent conflict or ambiguity between any of the documents comprising this Agreement, unless otherwise specifically stated, the order of precedence shall be:

- (a) the Slipway Terms and Conditions (only if applicable);
- (b) UK Standard Conditions for Towage;
- (c) these Terms and Conditions;
- (d) the Application; and
- (e) the Schedule of Port Charges.

### **34. Entire agreement**

The documents referred to in clause 33 constitute the entire agreement between TasPorts, the Principal and the Shipping Agent and supersedes all prior representations, communications and agreements (if any) between the parties in connection with its subject matter.

### **35. Severability of provisions**

Any provision in these Terms and Conditions or in any other part of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### **36. General provisions**

36.1 Nothing in these Terms and Conditions or in any other part of this Agreement, whether express or implied, and no conduct of TasPorts, affects the responsibility of the Master of the Vessel for the safety of the Vessel.

36.2 All rights, immunities, indemnities and limitations of liability in these Terms and Conditions and in all other parts of this Agreement continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement by TasPorts or any other person entitled to the benefit of such provisions.

36.3 Each provision of this Agreement capable of having effect after termination of this agreement survives the termination of this Agreement.

36.4 This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties. The Principal or the Shipping Agent may not assign this Agreement without TasPorts' consent.

36.5 Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.