

## LYTTELTON PORT COMPANY LIMITED

### STANDARD CONDITIONS OF BUSINESS

LYTTELTON PORT COMPANY LIMITED ("the Company") is the owner and/or operator of port and Container/Cargo handling facilities at the Port of Lyttelton. The Customer wishes to use those facilities and/or receive services from the Company.

These terms and conditions apply whenever the Company provides facilities, equipment or services of any kind, or does anything else, for a Customer ("Services"), except where (and to the extent) a separate written agreement applies. By requesting (or being deemed to request) or using any Services, a Customer accepts these terms and conditions.

#### 1 Request for Services

##### Customer to request Services

1.1 At least seven (7) days' prior to the estimated date of arrival of a Vessel or, if earlier, at least seven (7) days' prior to the first date on which Services are required, the Customer shall provide the Company with the following information in writing in the form and manner specified by the Company from time to time:

- (a) details of the Services requested by the Customer, including by completing, signing and submitting to the Company all applicable Company booking forms;
- (b) details of the entity or entities responsible for the Company's charges;
- (c) the name of the Vessel, date built and flag;
- (d) the estimated time of arrival ("ETA") of the Vessel; and
- (e) the length, draft and other relevant specifications of the Vessel and such other information as may be required by the Company.

##### Company may accept or reject

1.2 Notwithstanding any other provision of this Agreement, the Company may at any time accept or reject, in whole or in part, any request for Services and/or, on any reasonable ground, any Vessel nomination made under clause 1.1 or any Vessel (notwithstanding any previous acceptance).

##### Customer to report Vessel ETA

1.3 The Customer shall arrange for its Vessel to report its ETA to the Company each of 72, 48 and 24 hours prior to its arrival and otherwise in accordance with the Company's directions.

##### Electronic Data Interchange ("EDI")

1.4 The Company may require information to be provided in connection with this agreement by EDI messaging in the format specified by the Company from time to time. The Company:

- (a) is entitled to rely on, and not be responsible for verifying, the accuracy and completeness of any EDI message received by the Company which appears to have originated from or on behalf of the Customer, any of the Customer's Personnel or other persons acting under the apparent authority of the Customer or any governmental or regulatory authority; and
- (b) is not responsible for any unauthorised access to or interference with any EDI message whether such access or interference occurs in transit or on the Company's or the Customer's systems.

## **2 Marine Services - Pilotage, Navigation, Berthage, Line Services and Towage**

2.1 The Company shall provide the Marine Services which:

- (a) are requested (and accepted by the Company) in accordance with clause 1; and/or
- (b) in the interests of the safe operation of the Port, the Company deems are necessary or desirable (including Pilotage, Towage and Line Services (including the number of tugs and lines handlers the Company considers appropriate)).

### **Mooring and Berthage**

2.2 The Customer shall ensure that the Master of every Vessel owned or controlled by the Customer arriving within the Harbour, shall anchor, moor or place such Vessel where directed by the Company. The position of the Vessel shall not be changed, nor shall it be berthed at any Wharf, or moved from any berth without permission of the Company, subject to any emergency requirements of the Lyttelton Harbour Master.

2.3 The Company may refuse to berth a Vessel, require a Vessel to be removed from its berth (and/or the Port) and/or require a Vessel to be moved from one berth to another, including without limitation on the grounds of safety, the avoidance of disruption to the operations of the Company or its other customers, vessel breakdown, industrial action, the actions of any governmental or regulatory authority, or other actual or threatened legal action or the actual or threatened breach of any term of this Agreement. The Company will endeavour to consult with and notify the Customer prior to any such refusal or requirement if and to the extent practicable in the circumstances.

2.4 The Customer will ensure that any stevedoring or other services provided in relation to a vessel which are not carried out by the Company are carried out promptly and in accordance with good industry practice.

2.5 The Customer will ensure that its Vessel vacates the berth as soon as loading and/or unloading has been completed. Without limiting any other right or remedy the Company may have for a failure to comply with this Agreement, the Company's charges will continue to accrue for use of the berth (and any other Services provided by the Company) and the Company may charge a higher rate than that in its Pricing Tariff for each day or part day that the Customer's Vessel does not vacate its berth or depart from the Port when required under this Agreement.

### **Pilotage**

2.6 The Customer shall ensure that a pilot is taken on board the Vessel in accordance with and whenever required by applicable law (including when directed to do so by any regulatory authority) or by the Company. The Customer will provide such documentary evidence as the Company may require to support any claim by the Customer that a pilot is not required by applicable law.

2.7 During Pilotage, Company pilots will be deemed to be agents of the Customer, under the control of the Master of the relevant Vessel, and not Workers of the Company. Neither the Company, nor the pilot, is liable for any neglect or want of skill of any Company pilot at any time during Pilotage. A pilot may decline to undertake, and once commenced may terminate, any Pilotage on the grounds of:

- (a) adverse weather conditions;
- (b) mechanical defects of the Vessel;
- (c) non-availability of competent crew;
- (d) unreasonable trim or insufficient stability; or
- (e) any other reason which, in the opinion of the pilot, jeopardises or may jeopardise the safe navigation of the Vessel or the safety of the crew or Cargo or any other person or property.

### Navigation

- 2.8 The Master of a Vessel shall be responsible for the safe and proper navigation, management and operation, of that Vessel at all times while that Vessel is within the Port.
- 2.9 The Company is not responsible or liable for any loss, damage or liability arising out of any lack of draught, adverse actual or forecast weather, adverse sea or tidal conditions, condition of berths and approaches to them or the inadequacy of any mooring lines or bollards. The Customer warrants that it is familiar with the Port's latest vessel size restrictions and will not nominate a vessel exceeding such limitations.

### Towage

- 2.10 The Company shall provide the Towage services listed in the Pricing Tariff which are requested (and accepted by the Company) in accordance with clause 1. All Towage services will be provided on the terms and conditions set out in the "U.K. Standard Conditions for Towage and other Services (revised 2024)" ("UK Terms"), provided that:

- (a) references to "tugowner" and to "hirer" in the UK Terms shall be read and construed as references to the "Company" and "Customer" respectively;
- (b) clause 9 of the UK Terms shall be deleted and clause 16.9 of this Agreement shall apply instead.

The UK Terms are accessible [here](#) and are deemed to be incorporated in, and form part of, this Agreement. In the event of any conflict between the UK Terms and this Agreement, then this Agreement shall prevail.

- 2.11 Where applicable, the Company's liability in relation to the navigation, management and salvage of a vessel shall also be limited by Part 7 of the Maritime Transport Act 1994.

### Garbage disposal

- 2.12 The Customer warrants that any garbage for disposal from its Vessels is capable of being incinerated and handled in the normal course of business, using the equipment and operating procedures usually employed by the Company, and does not include any Hazardous Substances or Dangerous Goods.

## 3 Container Terminal and Cargo Services

- 3.1 The Company shall provide the Container Terminal Services and the Cargo Services which are requested (and accepted by the Company) in accordance with clause 1.

### Booking and information requirements

- 3.2 The Customer shall make a booking for any Container Terminal Services and/or Cargo Services it requests. Each booking must be submitted by EDI message unless otherwise agreed by the Company and must contain the information specified by the Company from time to time. Accurate and complete booking information must be received by the Company before the Company can accept the pre-advice information referred to in clause 3.3.
- 3.3 The Customer shall procure that the Company is provided with pre-advice information for all export and other outbound Containers and/or Cargo. The pre-advice information must be submitted in electronic format (unless otherwise agreed by the Company), in the form required by the Company, and must include:
- (a) the gross mass of each Container, signed by a person duly authorised by the shipper of the Container, and verified, in accordance with Rule 24B.4 of the Maritime Rules ("VGM Information"); and
  - (b) details of the carrier, Vessel and destination as well as details of the Containers and/or Cargo and Services required and any other information required by the Company from time to time.

Subject to clause 3.5, pre-advice information (including VGM Information) must be received by the Company no later than the time of receipt of the relevant Containers or Cargo at the Port.

- 3.4 The Customer shall also provide the Company with the following information in electronic format (unless otherwise agreed by the Company) to confirm the details of the requested Container Terminal Services and/or Cargo Services for each Vessel call at the Port:
- (a) all relevant details of the Containers and/or non-Containerised Cargo (including, but not limited to, weight, number, type/description and dimensions); and
  - (b) a stowage programme containing all necessary information for loading and discharge.  
All such information must be received by the Company:
  - (c) at least 24 hours prior to the ETA of a Vessel for Containers; and
  - (d) at least 48 hours prior to the ETA of a Vessel for non-Containerised Cargo.

**Notice of Hazardous Substances/Dangerous Goods**

- 3.5 The Customer will provide the Company with at least 48 hours prior notice in writing if any Containers or any Cargo contains or includes any Hazardous Substances or Dangerous Goods, or otherwise requires any special care (including any temperature control or ventilation), before presenting those Containers or that Cargo at the Port for handling or storage. The Customer's notice will include full details of the relevant Containers or Cargo (including lists or manifests and applicable permits or certificates) and the Customer will also promptly provide any other information or documentation requested by the Company in relation to those Containers or that Cargo. Additional charges may apply for handling or storing Hazardous Substances or Dangerous Goods or Containers or Cargo which require special care.

**Export cut-off**

- 3.6 The Customer must deliver to the Port all export and other outbound Containers and non-Containerised Cargo for Container Terminal Services and/or Cargo Services prior to the relevant cut-off date specified by the Company from time to time.

**Import collection**

- 3.7 Subject to clause 7.8, the Company shall make Cargo and Containers available for collection:
- (a) in the case of non-Containerised Cargo: to any person holding a delivery order (or other industry standard documentation) entitling them, or which purports to entitle them, to uplift that Cargo, but only following receipt by the Company of all applicable release confirmations from relevant governmental authorities; and
  - (b) in the case of Containers: to any person who quotes the container number of that Container at any time after the "hold" instructions on that Container are released in the Company's systems by (or by any person who purports to be) the relevant carrier and applicable governmental authorities.
  - (c) The Company shall not be responsible for verifying the entitlement of any such person to collect the relevant Cargo or Containers, nor shall the Company be liable for any loss to the Customer (or any other person) in the event that any such person is not entitled to collect the relevant Cargo or Containers.

**Company may refuse to handle or store Containers or Cargo**

- 3.8 The Company may refuse to handle and/or store Containers or Cargo where, in the reasonable opinion of the Company, the handling or storage by the Company's Workers of the relevant Containers or Cargo, using the Company's usual processes, procedures, facilities or resources, is or would be dangerous, hazardous or unsafe due to size, weight, dimension or any other reason. Any such refusal shall not be made unreasonably or arbitrarily. The Customer shall, at the Customer's own expense and risk and in the manner directed by the Company, remove or otherwise deal with any Containers or Cargo which the Company has refused to handle and/or store.

### **Storage**

- 3.9 Unless otherwise expressly agreed in writing:
- (a) no Containers or Cargo or other items may be stored on any part of the Port other than those areas designated by the Company for that purpose; and
  - (b) the Company may at any time require Containers or Cargo to be moved or removed for operational or safety reasons.

### **Company may refuse to load**

- 3.10 The Company may refuse to load Containers where accurate and complete VGM Information has not been provided on time and in a form satisfactory to both the Company and the master of the relevant Vessel. Unless the Company has agreed to store such Containers, the Customer shall, at the Customer's own expense and risk and in the manner directed by the Company, remove or otherwise deal with any Containers which the Company has refused to load.

## **4 Dry Dock Services**

- 4.1 The Company shall provide the Dry Dock Services which are requested (and accepted by the Company) in accordance with clause 1.

### **Vacation of Dry Dock/Patent Slip**

- 4.2 Where the Customer has exceeded its allocated booked time, the Company may require a Vessel to immediately vacate the Dry Dock or Patent Slip unless any repairs to the Vessel which are required in order to make the Vessel seaworthy have not been completed and cannot be completed without the continued use of the Dry Dock or Patent Slip (as determined by the Company acting reasonably), in which case the Customer will vacate the Dry Dock or Patent Slip as soon as reasonably practicable.

### **Moving Vessel in and out of Dry Dock**

- 4.3 The Company will manage the docking and undocking or slipping and relaunching of any Vessel in consultation with the Customer.

### **Customer responsible**

- 4.4 The Customer is solely responsible and liable for its use of the Dry Dock and/or Patent Slip, including, arranging and paying for any inspection, maintenance or repairs to a Vessel whilst in the Dry Dock or Patent Slip (unless otherwise agreed), for shoring, blocking and doing everything required for the Vessel whilst docking or slipping on to, undocking or relaunching from, whilst works are performed on, or whilst in, the Dry Dock and/or Patent Slip (including complying with any Port Regulations in relation to such matters) and for any associated third party services.

## **5 Equipment Hire/Use**

- 5.1 The Company may from time to time, make Equipment available for hire to or use by the Customer and provide certain ancillary services (including Crane Services) which are requested in accordance with clause 1. The Pricing Tariff sets out a full list of such Equipment and ancillary services.

### **Company retains title to Equipment**

- 5.2 The Company will at all times retain ownership of the Equipment and the Customer will not acquire any right, title or interest in the Equipment, other than the rights as a bailee to use the Equipment in accordance with this Agreement. The Customer will not transfer, part with possession of, grant any security interest (as defined in the PPSA) in, create (or allow to be created) any lien, or otherwise alter, modify, deal with or dispose of the Equipment.

### **Customer responsible**

- 5.3 The Customer is solely responsible for the Equipment and the use of the Equipment from the time it is delivered or made available to the Customer. The Customer must promptly notify the Company if the Equipment is stolen, damaged, requires repairs that are not minor or routine, or is involved in an accident and/or Notifiable Event and must provide such further information as the Company may require.
- 5.4 The Company is not liable in any manner whatsoever for any loss or damage suffered or incurred by the Customer (or any third party), including any damage to any Container or Cargo, arising out of the Customer's possession and/or use of the Equipment however caused. Clause 10.3 (as is, as available) applies to the provision of Equipment.

### **Crane Services**

- 5.5 Crane operators may require Company dogmen to be engaged (at the cost of the Customer) as a condition of hire.
- 5.6 The Customer warrants that the weight of the object or objects to be lifted by a Crane in any one lift and the radius of the proposed lift (metered from the radial point of the Crane) will not exceed the Crane's limit at any time.

### **Return of Equipment**

- 5.7 The Customer must promptly return the Equipment when the hire period ends or if this Agreement is suspended or terminated, in good working order and condition and to a place or in a manner directed by the Company.

## **6 Charges for Services**

### **Charges in Pricing Tariff**

- 6.1 The Customer will pay all applicable charges for Services provided by the Company. Unless otherwise agreed in writing, the Company's charges for Services are those referred to in this Agreement and/or set out in the Pricing Tariff.

### **Company may amend its charges**

- 6.2 The Company may amend its charges or introduce new charges or Services from time to time. Any such changes will be effective when the Company publishes a revised Pricing Tariff on its website or on such other date as may be specified by the Company. By requesting or continuing to request (or being deemed to request) any Services after the effective date, the Customer accepts and agrees to be bound by such changes.

### **Pricing Tariff incorporated**

- 6.3 The Pricing Tariff is incorporated in, and forms part, of this Agreement.

### **Non-compliance of VGM Information**

- 6.4 In the event that any VGM Information is not supplied in accordance with clause 3.3 or is changed in any way by the Customer after it is submitted or required to be submitted under clause 3.3, then storage and/or ancillary charges may apply at the rate specified by the Company. The Customer will indemnify the Company from and against any loss, cost, liability, claim or expense suffered or incurred as a result of any VGM Information being inaccurate or incomplete or otherwise not supplied in accordance with clause 3.3.

## **7 Payment for Services**

### **Payment terms**

- 7.1 Unless otherwise agreed in writing prior to the provision of Services, the Customer shall pay the Company all applicable charges (as detailed in an invoice from the Company), together with GST (if any):

- (a) in respect of Marine Services, prior to the Vessel's departure from its berth at the Port;
- (b) in respect of Container Terminal Services and/or Cargo Services, prior to the release by the Company of the relevant Containers and/or Cargo; and
- (c) in all other cases, prior to the provision of the relevant Services.

7.2 The Customer may be granted extended credit terms subject to completion of any credit application form and satisfaction of any conditions the Company may require from time to time. Any credit approval must be in writing.

**Deposit may be payable**

7.3 The Company may require the payment of a deposit, in an amount and at a time specified by the Company, in order to confirm a Customer booking of any Service.

**Invoices**

7.4 All amounts shown as due and payable on any invoice shall be deemed to be final and conclusive save for manifest error and the Customer shall pay the full amount due and owing in New Zealand dollars and without any set-off, counterclaim, condition, qualification, deduction or withholding whatsoever.

7.5 The Customer shall supply to the Company prior to the due date for payment referred to in clause 7.1 (in the form and manner specified by the Company from time to time), such information as the Company may require in relation to the Vessel and the type and quantity of goods, Containers (including empties) and/or Cargo handled by the Company and/or Services received to enable the Company to calculate and recover all applicable charges and maintain statistical records. If the Company does not receive such information within that timeframe, the appropriate amount payable may be assessed and invoiced by the Company. Without limiting clause 7.4, if information is subsequently received by the Company which demonstrates to the Company's satisfaction that the initial invoice was incorrect, the Company may issue a credit note or a further invoice, as may be appropriate. Any such subsequent invoice will be due and payable by the Customer within seven (7) days following the date of the invoice.

**Interest**

7.6 If any amount is not paid when due, interest may be charged on the overdue amount from the due date for payment until payment in full at a rate of 1.5% per month.

**Enforcement costs payable**

7.7 The Customer shall pay or reimburse the Company for all costs and/or expenses incurred by the Company in connection with recovering or attempting to recover any amount due for payment or otherwise enforcing the Company's rights and the Customer's obligations under this Agreement, and such costs and expenses shall bear interest as provided in clause 7.6 from the date upon which they are paid or incurred by the Company up to and including the date upon which the Customer pays or reimburses the Company.

**Lien**

7.8 The Company shall have a contractual lien over all property of the Customer in the Company's possession with respect to any outstanding charges or other amounts payable to the Company by the Customer (including any amount payable (or that would be payable) in connection with any breach (or threatened or anticipated breach) of this Agreement by the Customer), irrespective of whether those charges or amounts relate to the property in the Company's possession or otherwise. The contractual lien shall give the Company the right to sell any property subject to the lien. Where the Services are subject to a common law or statutory lien, that lien shall take precedence over the provisions of this clause 7.8 if and to the extent that a security interest in favour of a third party has priority over the contractual lien in this clause.

7.9 The Customer acknowledges and agrees that the contractual lien under this Agreement creates, and to avoid doubt the Customer grants, in favour of the Company a security interest over all property of the Customer in the Company's possession and any proceeds of the same. Unless the context otherwise requires, the terms and expressions used in this clause have the meanings given to them in, or by virtue of, the PPSA. The Customer:

- (a) waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest referred to in this clause;
- (b) waives its rights and, with the Company's agreement, contracts out of its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and
- (c) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this agreement and, with the Company's agreement, contracts out of such sections.

## 8 General obligations of the Customer

### Condition of Cargo and Containers

- 8.1 The Customer shall ensure that all Cargo and Containers are properly packed and labelled, are in every way safe for carriage and handling, do not exceed their rated gross capacity, and, unless otherwise notified by the Customer under clause 3.5, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed by the Company.

### Customer must comply with law and Company instructions

- 8.2 The Customer will at all times comply strictly with:
- (a) all applicable laws and legal requirements (including any by-laws, rules, standards or codes of practice) relating to the Customer's Vessel's, Cargo or Containers or the Customer's activities at and use of the Port and its facilities (including any Equipment), including without limitation the Health and Safety at Work Act 2015, the Customs and Excise Act 2018, the Maritime Transport Act 1994, the Maritime Security Act 2004 and the Biosecurity Act 1993 (and any rules, regulations and codes promulgated under those Acts);
  - (b) the provisions of all licenses, requisitions, permits, consents, approvals and notices issued by any competent authority in respect of the Customer's Vessel, Cargo, Containers, the Port or the Customer's activities at and use of the Port and its facilities (including any Equipment);
  - (c) any requirements or procedures set by owners or manufacturers of the Cargo (which the Customer will notify to the Company) in respect of any Hazardous Substances or Dangerous Goods contained or included in any Cargo; and
  - (d) all Company directions and instructions and all notifications, Port signage, and other operational, security, health & safety or environmental processes, procedures, plans, policies, protocols, rules and requirements notified or otherwise published by the Company from time to time (each of which will be deemed to be incorporated into this Agreement) ("Port Regulations").
- 8.3 The Customer will, on request, provide the Company with evidence that the Customer and its Personnel are complying with its obligations under this Agreement, including clause 8.2.

### Information accuracy

- 8.4 The Customer represents and warrants that all information and documentation provided by the Customer under or in connection with this Agreement is accurate, complete and not misleading (including by omission).

### No interference

- 8.5 The Customer shall not obstruct or interfere with the conduct of the Company's business (and that of its other customers) or the operation of the Port facilities, including any obstruction to any Wharf or Vessel. The Customer shall not cause or permit the Port facilities to be used for any unauthorised, noisy, obnoxious, illegal or offensive activity or for any illegal purpose.

### **Company may move or remove**

- 8.6 If the Customer fails to promptly comply with its obligations under this Agreement (including in respect of operational, health and safety, security or environmental matters) or any directions given by the Company (including under clauses 2.3, 3.9(b), 4.4 or 9.7) to the reasonable satisfaction of the Company, the Company may, at the Customer's sole risk and cost: (a) move or remove any Vessel, vehicle, goods, Cargo, Containers or other property of the Customer; (b) enforce its lien and exercise its rights pursuant to that lien under clauses 7.8 and 7.9; (c) repossess any Equipment in the Customer's possession or control; and/or (d) take such other action, in whatever manner and by whatever means the Company considers necessary in its absolute discretion in order to address such non-compliance. The Company may charge the Customer the cost of taking any such action. The Company shall not be liable for any damage or loss of any kind incurred by the Customer in connection with the exercise by the Company of its rights under this clause.

### **Inspection**

- 8.7 The Company (or its nominated representative) may at any reasonable time on reasonable notice inspect any Vessel, vehicle, goods, Cargo, Containers or other property (and/or any related documentation) in the Customer's possession or control for the purposes of ensuring, and/or otherwise audit or require the Customer to provide evidence of, the Customer's compliance with this Agreement. The Customer will co-operate with, and provide all assistance requested by the Company in connection with, any such inspection or audit.

### **Customer to ensure compliance**

- 8.8 The Customer is responsible for ensuring that it and all of its Personnel:
- (a) are aware of and abide by the terms of this Agreement;
  - (b) obtain and maintain all necessary licenses, permits, consents and approvals relating to their activities and the use of the Port;
  - (c) are trained and competent, and are supplied with and use all appropriate personal protection equipment, to properly and safely carry out their activities at the Port.

### **Company to conduct industrial relations**

- 8.9 The Customer shall not correspond, discuss or enter into negotiations with any Worker of the Company or any representative, bargaining agent or employee organisation representing such Workers in relation to any employment matter. All such negotiations (if any) shall be exclusively conducted by the Company.

### **Indemnity**

- 8.10 Without limiting any other provision of this Agreement, the Customer shall be liable for and, to the extent permissible by law, indemnifies the Company, its Workers, other Personnel and agents (each an "Indemnified Person") from and against any loss, cost, liability, claim or expense (including legal costs on a solicitor-client basis) suffered or incurred by an Indemnified Person in connection with:
- (a) any personal injury or property damage ("Damage") caused by any Vessel (including its Master and crew) or by any act or omission of the Customer (or its Personnel);
  - (b) the Customer's use of the Dry Dock and/or Patent Slip;
  - (c) the Customer's possession and/or use of the Equipment including any Damage to the Equipment;
  - (d) any act or omission by the Company in good faith in reliance on any EDI message received by the Company which appears to have originated from or on behalf of the Customer, any of the Customer's Personnel or other persons acting under the apparent authority of the Customer or any governmental or regulatory authority; or
  - (e) any breach by the Customer of any of its obligations (including any warranty) under this Agreement.

### **Notification**

- 8.11 The Customer will immediately notify the Company:
- (a) of any Damage (in addition to complying with any applicable law or legal requirement);
  - (b) of any Notifiable Event which occurs at the Port affecting any of the Customer's Personnel or arising from the Customer's activities;
  - (c) if the Customer becomes aware that it is in breach, or is likely to be in breach, of any of its obligations under this Agreement (including any warranty).
- 8.12 The Customer will promptly provide such information and complete such forms as the Company may require in relation to any event or circumstance referred to in clause 8.11. The Customer will take all reasonable steps and follow all reasonable Company directions to avoid, remedy or mitigate any Customer breach or anticipated breach of this Agreement or any health and safety, security or environmental risk or incident.

## **9 Access to Port**

### **Security**

- 9.1 The Port is a licensed customs controlled area under the Customs and Excise Act 2018 and an approved transitional facility under the Biosecurity Act 1993. The Customer will at all times comply with (and not do or omit to do anything which may cause the Company to be in breach of) applicable law (including the Customs and Excise Act 2018, Biosecurity Act 1993, Maritime Security Act 2004) or the Company's procedure statement for its customs controlled area and the relevant Ministry for Primary Industries facilities standards for its transitional facility.
- 9.2 The Customer will:
- (a) not allow any unauthorised person or any firearm, weapon, ammunition or explosive, incendiary, biological, chemical or other dangerous substance or device on to any part of the Port;
  - (b) immediately notify the Company of any security breach, or interference with, theft of or damage to any Cargo;
  - (c) at the direction of the Company, complete or assist the Company to complete a port security incident report in relation to any matter referred to in clause 9.2(b); and
  - (d) co-operate with any investigation, inspection, audit or other requirement of any regulatory authority.

### **Searches**

- 9.3 It is a condition of entry to the Port that all Customer Personnel consent to random searches and screening of any Customer property (including vehicles) on request by Port security staff. Any Customer Personnel who refuse consent to such a search may be prohibited from accessing, or required to leave, part of or all of the Port.

### **Provision of access**

- 9.4 Subject to the remaining provisions of this clause 9, the Company shall provide access to the areas of the Port designated by the Company for the Customer and its authorised Personnel to carry out their legitimate business for so long as the Company is providing Services. The Customer shall not have any further rights of access to any part of the Port unless otherwise agreed in writing. The Company may require the Customer to supply details of its Personnel for which the Customer requests that access be granted to the Port.

### **Company may prohibit access or impose restrictions**

- 9.5 The Company may at any time prohibit access to any part of the Port (in whole or in part) or impose restrictions as to the access and/or use of any part of the Port, including without limitation regarding:

- (a) the size or weight of any vehicle permitted access to any part of the Port or any goods or Cargo which may be placed on any part of the Port;
- (b) the number, identity and/or qualifications of any Customer Personnel that may be permitted access to any part of the Port; and
- (c) the identification required to be obtained (for which the Company may impose a charge) and carried by Customer Personnel in order to gain access to any part of the Port.

#### **Health and Safety**

9.6 The Customer acknowledges the paramount importance of ensuring the health and safety of all persons at the Port so far as reasonably practicable. Without limiting the Customer's obligations under clause 8.2 to comply with the Health and Safety at Work Act 2015 and all Port Regulations regarding health & safety, the Customer will:

- (a) ensure that its Personnel follow the access routes designated by the Company at all times when on Port premises;
- (b) ensure that all of its Personnel who enter the Port have completed a site induction in accordance with the Company's requirements prior to, or immediately upon, arrival.
- (c) establish its own health and safety management system which is fit for purpose in relation to the Customer's activities at the Port, and manage, monitor, and ensure that its Personnel comply with, that health and safety management system; and
- (d) so far as is reasonably practicable, consult, cooperate with, and coordinate activities with the Company and with other persons conducting a business or undertaking (as defined in the Health and Safety at Work Act 2015) who are accessing the Port, in order to ensure the health and safety of its Personnel and all other Workers whose activities are influenced or directed by the Customer in relation to its activities at the Port.

The Company may prohibit particular Personnel from accessing part of or all of the Port or require any activity carried out by the Customer to be suspended if the Company considers that person or activity presents a health and safety or security risk to themselves or others (or otherwise fails to comply with the Customer's obligations under this Agreement). The Company shall not be liable for any damage or loss of any kind incurred by the Customer in connection with the exercise by the Company of its rights under this clause.

#### **Use of Wharf**

9.7 Customer property (including any goods, vehicles, Containers, Cargo, equipment and any other property) may only be berthed, placed or parked at the Port in such areas, for such times and on such conditions as may be authorised by the Company from time to time. In no circumstances may any Customer property be left within 5 metres of any berth. The Customer shall pay to the Company upon demand such storage or parking charges as the Company may specify. The Company may refuse to receive or accept onto the Port, or require to be moved or removed from any part of the Port, anything which, in the opinion of the Company, may damage or otherwise affect the property of the Company or of any other person or which may restrict or adversely affect the Company's operations or otherwise cause an obstruction.

#### **Customer must remove property**

9.8 The Customer shall remove all of its property and any rubbish from, and clean to the satisfaction of the Company, the Wharf (or other part of the Port) within two hours of the relevant Vessel's departure or completion of the Customer's relevant permitted activities at the Port. If any Customer property is not collected and removed when required, the Company may treat that property as abandoned and take possession of and sell or otherwise dispose of that property at the Customer's risk and cost, in such manner as the Company sees fit.

#### **Company may access and monitor**

9.9 The Company shall at all times retain the right of access to any part of the Port and may install and operate any surveillance device at any part of the Port in accordance with the Company's CCTV Surveillance Statement (available on the Company's website and as updated from time to time).

## 10 Nature of Company's obligations

### Obligations (and timing) not absolute

- 10.1 The Company's obligations under this Agreement are not absolute. The Company shall use its reasonable endeavours to provide the Services requested by the Customer and accepted by the Company at the time(s) requested and accepted. However, the Company shall not in any circumstances be liable if for any reason any Services are not available, or cannot be provided, at any particular time(s) or at all, including for example if allocated for use by a third party.

### Customer delay

- 10.2 If the Company confirms in writing that it will provide a particular Service for the Customer at a particular time(s) and the Customer is not ready, willing and able to receive those Services at that time(s), additional charges will be payable by the Customer if demanded by the Company.

### As is, as available

- 10.3 All Services are provided on an "as is" and "as available basis" and the Company gives no representations or warranties whatsoever regarding the fitness or suitability of any Services for any particular purpose. In requesting any Service, the Customer acknowledges that it relies on its own judgement.

### Company not responsible for security

- 10.4 Unless specifically agreed otherwise in writing, the Company is not responsible or liable for the safety or security of any property while at the Port. The Company shall not be responsible or liable for any theft of or from, or (except to the extent caused directly by the Company's negligence in the course of providing Services) for any loss or damage to, any Vessels, Cargo, Containers, vehicles, goods or any other thing while at the Port.

### Company engages third parties as agent

- 10.5 Except where the Company invoices the Customer directly in relation to any charges payable for Services provided by its subcontractors, if the Company engages a third party to provide any Services for and at the request of the Customer (including, by way of example, Vessel repair services) it does so as agent for the Customer and is not liable for any act or omission of that third party. The Company may charge an additional fee for arranging the relevant Service which it may retain.

## 11 Liability of the Company

### Liability limited

- 11.1 The Company shall only be liable for physical loss or damage, caused directly by the negligence of the Company, its Workers or agents, to:
- (a) Vessels and equipment on Vessels;
  - (b) Containers;
  - (c) Cargo; and
  - (d) ancillary equipment (including clip-on refrigeration units, generators, trailers and chassis and road and rail vehicles) owned, leased, or operated by the Customer but excluding Equipment and any equipment on Vessels,

and then only in accordance with this clause 11. All other liability (whether arising in contract, tort (including negligence), statute or otherwise) to the Customer or any other person, howsoever caused, is excluded to the maximum extent permitted by applicable law.

### Maximum liability

11.2 The maximum liability of the Company to the Customer or any other person arising out of or in connection with this Agreement and the Services shall be determined in accordance with the table set out below:

Type of loss or damage	Maximum liability	Maximum liability per unit		Maximum liability <sup>1</sup>	aggregate	Excess <sup>2</sup>
Vessels & equipment on Vessels	Lesser of: <ul style="list-style-type: none"> <li>reasonable cost of repair or replacement;</li> <li>market value;</li> <li>maximum liability per unit; or</li> <li>maximum aggregate liability</li> </ul>	N/A		\$200,000		\$1,000
Containers		Refrigerated	\$7,500/ Container	\$100,000		\$300
		Insulated	\$4,000/ Container			
		Other	\$1,000/ Container			
Cargo		In a closed / sealed Container (not being on board a Vessel)	\$5,000/ Container	In a closed / sealed Container (not being on board a Vessel)	\$75,000	\$300
	On board a Vessel	\$750/tonne	On board a Vessel	\$50,000		
	Elsewhere	\$1,000/tonne	Elsewhere	\$50,000		
Ancillary equipment		\$7,000/item		\$40,000		\$300

<sup>1</sup> The Company's maximum aggregate liability for any and all claims arising out of any one event or series of related events.

<sup>2</sup> The excess amount will be deducted from the amount payable by the Company in respect of each valid claim for loss or damage.

#### Important Note: Pre-conditions for any liability claim to be considered by the Company

Any claim by a Customer against the Company must strictly comply with this clause 11 to be valid.

- The Customer must give written notice of the claim, including all relevant details and documents to evidence the claim, within the timeframe in clause 11.6.
- The Customer must demonstrate that it has taken all reasonable steps to avoid or mitigate any loss, damage or liability under clause 11.12.
- The claim cannot be for any liability which is excluded under this Agreement or for any amount in excess of the limitations in the table above or the aggregate limit in clause 11.4.

11.3 All amounts in this clause 11, including in the liability table set out in clause 11.2, are in New Zealand dollars and are GST inclusive.

11.4 Notwithstanding clauses 11.1 and 11.2, the overall liability of the Company in respect of any and all claims arising out of any one event or related series of events shall not exceed in aggregate the maximum sum of NZ\$2,000,000.

### **Liability exclusions**

- 11.5 The Company shall not in any circumstances whatsoever be liable:
- (a) to the extent that applicable law or this Agreement excludes the Company's liability, or imposes liability on another person or persons;
  - (b) to the extent that the UK Terms exclude the Company's liability;
  - (c) for any loss or damage arising out of by the failure of the Customer to comply with any of the terms of this Agreement;
  - (d) for any loss or damage caused by inherent vice or seizure under legal process;
  - (e) for any loss or damage arising out of the failure by any person (whether or not a Worker, other Personnel or, agent of the Company) to properly and adequately secure any Cargo or Container on any Vessel or any rail or road vehicle or other form of transport;
  - (f) for any loss or damage caused by saving or attempting to save life or property in peril, including loss or damage caused by fire, or attempts to extinguish any fire, within the Port and the Company may recover from the Customer costs and expenses incurred in minimising loss or damage resulting from such fire;
  - (g) for any delay (including any delay in the provision of any Services), demurrage or other costs of transportation of any kind; or
  - (h) for any indirect, special or consequential loss or damage, or for any loss of profits, loss of revenue, loss of goodwill, loss of opportunity or economic loss (in each case whether direct or indirect).

### **Time limit on claims**

- 11.6 The Company shall be liable only when written notice (including all relevant details necessary to enable the Company to investigate the claim) of any relevant loss or damage is given to the Company without undue delay and:
- (a) in the case of a claim for loss or damage to Cargo, within ten (10) days after delivery of the Cargo, or the date on which the Cargo should have been delivered, to the relevant consignee;
  - (b) in all other cases, within thirty (30) days after the date on which the relevant loss or damage occurred.

If no such notice is given within the above periods any claim will be time barred and the Company shall be discharged from all liability in respect of any loss or damage whatsoever.

### **Contract of carriage limitations to apply**

- 11.7 The Customer shall ensure that all bills of lading or other contracts of carriage to be issued by the Customer, its principals, agents or subcontractors incorporate a clause to the effect that the Company, its Workers or agents will have the benefit of the provisions of that bill of lading or other contract of carriage, including any limitation or exclusion of liability. Where any Cargo or Container is received by the Company prior to the establishment of a bill of lading or other contract of carriage, the benefit of the intended bill of lading or contract of carriage will apply in all respects (in the manner contemplated by this clause) and will bind all persons interested in the Cargo or Container as though such bill of lading or contract of carriage had then been established.

### **Application of Consumer Guarantees Act**

- 11.8 Where the Customer acquires, or holds itself out as acquiring, Services for the purposes of a business, the Customer acknowledges and agrees that the conditions, warranties, and guarantees of the Consumer Guarantees Act 1993 do not apply to those Services or this Agreement and are excluded to the maximum extent permitted by law. Any other rights the Customer may have which are implied by statute, common law or custom are excluded from application to this Agreement and the Services to the maximum extent permitted by law.

### **Application of NZ carriage of goods regulation**

- 11.9 Notwithstanding any other provision of this clause 11, where and to the extent that Part 5, Subpart 1 ("carriage of goods") of the Contract and Commercial Law Act 2017 applies to the Services, the contract for carriage shall be "on declared terms" as that term is defined in that Act.

### **Customer to ensure all other liability excluded**

- 11.10 To the maximum extent permitted by law, the Customer indemnifies, and holds harmless, the Company, its Workers, other Personnel and agents (each an "Indemnified Person") from and against any cost, loss, liability, claim or expense (including legal costs on a solicitor-client basis) suffered or incurred by an Indemnified Person in connection with Services provided to the Customer ("Loss") to the extent that the Company's liability for such Loss is excluded under this Agreement or to the extent that such Loss exceeds the Company's maximum liability under clauses 11.2 or 11.3.

### **No claim against Workers/Personnel/agents**

- 11.11 The Customer shall not make any claim or allegation against any Worker, other Personnel or any agent (acting within his, her or its express or implied authority) of the Company which imposes or attempts to impose upon any such person any liability whatsoever (howsoever arising, including for negligence) in connection with this Agreement or the Services.

### **Customer to mitigate loss**

- 11.12 The Customer must take all reasonable steps to avoid or mitigate any loss, damage or liability that might give rise to any claim under this Agreement, including by fully exercising any liability limitation or exclusion to which the Customer is entitled by contract or applicable law (including any treaty or convention) against any third party. The Company will not be liable for any loss or damage that could have been avoided by the Customer.

## **12 Insurance**

- 12.1 The Customer shall effect and maintain at all times during the term of the Agreement, at its own expense, the following insurance policies:
- (a) Public Liability Insurance with limit of indemnity of not less than one million New Zealand dollars (NZ\$1,000,000) or such higher amount as the Company may from time to time reasonably require.
  - (b) Motor Vehicle Insurance with a limit of indemnity of not less than one million New Zealand dollars (NZ\$1,000,000) in respect of all vehicles used by, or under the physical or legal care, custody or control of, the Customer at the Port.
- 12.2 The Customer will if so required by the Company from time to time, provide the Company with a copy of such policies and/or a certificate of currency for such policies.

## **13 Environmental Warranties**

### **Statutory compliance**

- 13.1 The Customer warrants to the Company that it will not do or omit to do anything, or use materials, substances or processes, which breaches or is likely to breach any duty or obligation to which the Customer or the Company is subject under the Resource Management Act 1991 or other applicable law relating to the environment, Dangerous Goods or hazardous substances or which is likely to result in the issue of any requisition, order, notice, direction or requirement or the commencement of any investigation or enforcement proceedings under any applicable laws or legal requirements.

### **Compliance with plans and consents**

- 13.2 The Customer warrants to the Company that it will comply with all applicable district and regional plans, policy statements, permits and consents issued by any competent authority with respect to noise or environmental impacts.

### **No discharge**

- 13.3 The Customer will at all times ensure that, and will ensure that the Master of any relevant Vessel shall take all necessary steps to ensure that, no oil, oil refuse, petroleum of any kind or liquid or non-liquid pollutant or waste material of any kind shall be spilled, discharged or allowed to escape into the Harbour, on to any part of the Port, or on to any other land surrounding the Harbour from any Vessel. Should any such spillage, discharge or escape occur, the Customer shall advise the Company immediately and comply with the provisions of the Marine Transport Act 1994 and any other applicable law or legal requirement and with the directions and instructions of the Company.

### **Environmental management plan**

- 13.4 The Customer will establish its own environmental management system in relation to the Customer's activities at the Port, and manage, monitor, ensure that its Personnel comply with, and provide the Company on request with details of and evidence of compliance with, that environmental management system.

## **14 Suspension and termination**

### **Company may suspend or terminate**

- 14.1 Without limiting any other right or remedy the Company may have, in the event that the Customer:
- (a) breaches any provision of this Agreement (including non-payment of any amount due and payable);
  - (b) does not comply strictly with all applicable laws and legal requirements (including any by-laws, rules, standards or codes of practice); or
  - (c) suffers any insolvency event (including, without limitation, the appointment of any receiver, liquidator, administrator or statutory manager, the entry into any assignment, arrangement or composition for the benefit of creditors generally, an inability to pay debts as they fall due or any analogous event under the laws of any relevant jurisdiction),

the Company may suspend or terminate, in whole or in part, the provision of any Services to the Customer (or to any Vessel) without notice or liability. If any breach remains unremedied, the Company may arrest the Vessel or otherwise prohibit the Vessel from leaving the Port or any berth until payment is received in full (including interest) or the breach is otherwise remedied or, where the breach is not capable of remedy, until the Customer provides compensation (or security) satisfactory to the Company for the breach and any amounts owing to the Company at any time in connection with such breach.

### **Consequences of suspension or termination**

- 14.2 In the event of any suspension or termination:
- (a) that suspension or termination will not prejudice either party's rights or obligations accrued up to the date of suspension or termination;
  - (b) the Customer will immediately cease using and return to the Company any property of the Company; and
  - (c) any amounts owed by the Customer to the Company will be immediately due and payable.

## **15 Dispute resolution**

### **Negotiation**

- 15.1 If a dispute arises out of or in connection with this Agreement, the parties will co-operate and use reasonable endeavours to resolve the dispute expeditiously by negotiation or mediation.

### **Mediation**

- 15.2 If for any reason the dispute is not resolved within 7 days of entering into negotiations, or within such further period as the parties may agree upon in writing, the parties will refer the dispute to mediation. The mediator and the mediator's fee shall be agreed by the parties. If the parties cannot agree on a mediator within 7 days of the referral to mediation, the dispute may be referred by either party to the Arbitrators' and Mediators' Institute of New Zealand Inc ("AMNIZ") and the mediator will be selected by the President for the time being of AMNIZ. Each party shall bear their own costs in mediation and shall meet the costs of the mediator equally between them. If the matter is not resolved by mediation within 14 days of the appointment of the mediator (or within such further period as the parties may agree in writing) then the mediation process shall be deemed to have terminated and the matter shall be referred to arbitration.

### **Commencement of arbitration**

- 15.3 Regardless of the other provisions of this clause, any party may at any time refer the dispute to arbitration.

### **Place and person**

- 15.4 Arbitration shall be conducted, in Christchurch, by one arbitrator to be agreed upon by the parties or, failing an agreement within 14 days of notice given pursuant to clause 15.3, or 14 days after termination of the mediation process pursuant to clause 15.2, to be nominated by the President for the time being of the New Zealand Law Society at the request of either party.

### **Interim relief not affected**

- 15.5 Nothing in this clause shall prejudice the Company's right to apply for injunctive relief or interim measures, to arrest any Vessel, or to proceed against any Vessel "in rem", in any court of competent jurisdiction.

## **16 Miscellaneous**

### **Warranty of authority**

- 16.1 Any person for whom the Company provides or is to provide Services or who requests the Company to provide Services (including any agent) warrants to the Company that it has the authority to enter into and perform its obligations under this Agreement and to jointly and severally bind each and every other person falling within the definition of Customer in this Agreement. Except to the extent expressly notified otherwise in writing, the Company is entitled to rely and act upon any instruction, request, notice or other communication from any agent without prior reference to any principal of that agent.

### **Amendment**

- 16.2 The Company may amend the terms of this Agreement (or any document referred to in this Agreement, including the Port Regulations) from time to time. Any such amendments will be effective when published by the Company on its website or on such other date as may be specified by the Company. By requesting or continuing to request (or being deemed to request) any Services after the effective date, the Customer accepts and agrees to be bound by such amendments.

### **References to documents, enactments and regulations**

- 16.3 In this Agreement, a reference to any document, enactment or any regulations (or other subordinate legislation) is a reference to that document, enactment or those regulations as

amended, or to any document, enactment or regulations substituted for that document or enactment or those regulations.

#### **Privacy Policy**

- 16.4 The Company's Privacy Policy which is published on its website applies to the Company's collection, use and disclosure of any personal information about the Customer.

#### **Force Majeure**

- 16.5 The Company will not be responsible for any complete or partial failure to perform, delay in performing, incorrect performance or any damage or loss, to the extent caused by strikes, lockouts, stoppages, restraints of labour or other industrial action, acts of God, storm, wind, flood, fire, explosion, earthquake, failure of electrical or water supply, breakdown or failure of any equipment or facility, riots, civil commotions, environmental action, war, terrorism or hostilities of any kind, epidemic or pandemic, computer malware or hacking, the failure of autonomous systems, governmental acts or omissions, blockages or embargoes, inherent vice or condition or quality of goods, seizure under legal process, saving or attempting to save life or property in peril or for any other event or circumstance beyond the reasonable control of the Company.

#### **Notices**

- 16.6 All notices under this Agreement shall be given by hand, ordinary mail or email:

- (a) to the Company at: Lyttelton Port of Christchurch  
Waterfront House  
37-39 Gladstone Quay  
Lyttelton 8082  
New Zealand

Private Bag 501, Lyttelton 8841

Email: [office@lpc.co.nz](mailto:office@lpc.co.nz)

- (b) to the Customer at the physical, postal or email address of any of the Customer's last known places of business whether in New Zealand or elsewhere, or at the physical, postal or email address of the Customer's last known agent in New Zealand,

and shall be deemed to have been received:

- (c) on the date of delivery by hand;  
(d) five days after dispatch by mail; or  
(e) on the day of dispatch by email provided the sender does not receive any "out of office" auto-reply or other indication of non-receipt and provided further that, if sent by email after 5pm or on a non-business day in the place of receipt, the notice shall be deemed to have been received on the next business day.

#### **Electronic notices**

- 16.7 The Company may from time to time send the Customer notices and other information about Port operations, facilities or services by whatever means the Company considers appropriate, including by electronic means. The Customer consents to the sending of such notices and information, including for the purposes of the Unsolicited Electronic Messages Act 2007. The Customer may notify the Company at any time that it does not wish to receive sales and marketing information from the Company by contacting the Company at the address set out above.

#### **Company may subcontract**

- 16.8 The Company may subcontract any of its obligations under this agreement without notice to, or the consent of, the Customer.

### **Governing law and jurisdiction**

- 16.9 This Agreement shall be governed by and interpreted in all respects in accordance with the laws of New Zealand and the parties submit themselves to the exclusive jurisdiction of the New Zealand Courts.

### **Entire Agreement**

- 16.10 This Agreement (together with any document referred to in this Agreement) is the entire agreement between the parties on the provision of Services and replaces all earlier negotiations, representations, warranties, understandings and agreements (including any Customer terms and conditions), whether oral or written, between the parties relating to the Services.

### **No waiver**

- 16.11 No waivers, exceptions, variations or addendums to this Agreement will be recognised by the Company unless the same are in writing and signed by a duly authorised representative of the Company. A failure, delay or indulgence by the Company in exercising any power or right shall not operate as a waiver of that power or right.

### **Severance**

- 16.12 If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement.

### **Assignment**

- 16.13 The Customer shall not assign the benefit of this Agreement or otherwise deal in any manner with this Agreement or the right to use the Port facilities. The Company may at any time assign or transfer any of its rights or obligations under this Agreement.

### **Contractual privity**

- 16.14 For the purposes of Part 2, Subpart 1 ("contractual privity") of the Contract and Commercial Law Act 2017, all clauses in this Agreement providing for exclusions or limitations of liability for, and indemnities in favour of, the Company, or its Workers, other Personnel or agents are intended to be for the benefit of and to be enforceable by each of those persons individually.

## **17 Definitions**

- 17.1 In this Agreement the following meanings shall apply in every circumstance (unless the context specifically indicates otherwise):

Agreement means these Standard Conditions of Business.

Berthage means, as the context requires, the provision of a berth and related services (as specified in the Pricing Tariff) and/or the charge imposed for that berth and those services.

Cargo means any goods, merchandise or other property whatsoever, whether or not within a Container, in respect of which the Company provides or is requested to provide Services.

Cargo Services means all Cargo handling and stevedoring services and facilities provided by the Company from time to time in relation to non-containerised Cargo as set out or referred to in the Pricing Tariff and including Cargo receipt, delivery, marshalling, monitoring, transportation, stevedoring, storage and all vehicle treatment services.

Company means Lyttelton Port Company Limited and its related companies or associates.

Container means any article of transport equipment (including a lift van, moveable tank, flat rack or other similar structure) constructed to the specifications of the International Standards Organisation and having standard ISO means of top cornering, in respect of which the Company provides or is requested to provide Services.

Container Terminal Services means all Container handling and stevedoring services and facilities provided by the Company from time to time as set out or referred to in the Pricing Tariff

and including Container receipt, delivery, cleaning, marshalling, monitoring, transportation, stevedoring and storage.

Crane means either mobile cranes or ship-to-shore cranes.

Crane Services means all Crane hire and operation services provided by the Company from time to time as set out or referred to in the Pricing Tariff.

Customer means any person for whom the Company provides or is to provide Services or who requests the Company to provide Services or any person who is or who appears on reasonable grounds to be an agent, employee, subcontractor or representative of any such persons and includes any road or rail carrier and the owner, lessee, charterer, operator, manager or Master of any Vessel or road or rail vehicle, each of whom will be jointly and severally liable under this Agreement.

Damage has the meaning given to that term in clause 8.10(a)

Dangerous Goods has the meaning given to that term in Part 24A of the Maritime Rules (being the rules promulgated under and in accordance with the Maritime Transport Act 1994).

Dry Dock means the facility, including the caisson, dock, dockhouse and pumps, used for the drydocking of Vessels for inspection, maintenance and repair.

Dry Dock Services means the hire of the Dry Dock and/or the Patent Slip and associated facilities and services provided by the Company from time to time as set out or referred to in the Pricing Tariff.

Equipment means the equipment, plant and/or vehicles (including Cranes and hoppers) made available for hire by the Company from time to time.

ETA has the meaning given to that term in clause 1.1(d).

Harbour means Lyttelton harbour.

Hazardous Substances has the meaning given to that term in the Health and Safety at Work (Hazardous Substances) Regulations 2017.

Lines means the ropes, cables or lines used to secure Vessels to the Wharves.

Line Services includes tying and untying Vessel's lines.

Marine Services means all Vessel and Vessel-side services provided or arranged by the Company from time to time as set out or referred to in the Pricing Tariff and including Navigation, Pilotage, Berthage, Line Services, and Towage.

Master extends to and includes the person not being a Pilot having command or charge of any Vessel.

Navigation means the provision of services and/or navigational aids to navigate Vessels within the Harbour.

Notifiable Event has the same meaning as provided in section 25 of the Health and Safety at Work Act 2015.

Patent Slip means the facility adjacent to the drydock, including the slipway, cradle and winch used for slipping of Vessels for inspection, maintenance and repair.

Personnel means, in relation to any person, all officers, agents and Workers of that person and other persons under that person's control or on that person's invitation entering onto Company premises.

Pilotage means the piloting of Vessels within the Harbour to and from berths operated by the Company at the Port, and includes any services or advice provided by the pilot wherever the pilot is located (whether on board the Vessel, the pilot launch or any other vessel or ashore).

Port means the port located in the Harbour, together with any inland terminal or facility operated by the Company.

Port Regulations has the meaning given to that term in clause 8.2(d).

PPSA means the Personal Property Securities Act 1999.

Pricing Tariff means the Company's applicable Pricing Tariff from time to time in force.

Services means all facilities, equipment or services of any kind provided by the Company for a Customer.

Towage is any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by a Vessel and includes any other service to which the UK Terms apply.

UK Terms has the meaning given to that term in clause 2.10.

Vessel means a ship or boat of any description designed to be used for transportation on water in respect of which the Company provides or is to provide Services or to or from which the Company provides or is to provide Container Terminal Services or Cargo Services.

VGM Information has the meaning given to that term in clause 3.3.

Wharf or Wharves means and includes any area of wharf and/or land adjacent to such wharf owned and/or operated by the Company.

Wharfage means the charge imposed by the Company from time to time for the use of a Wharf and its facilities, as set out in the Pricing Tariff.

Worker and Workers has the same meaning as provided in the Health and Safety at Work Act 2015

17.2 In the construction and interpretation of this Agreement unless inconsistent with the context or otherwise specified:

- (a) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinated legislation made under them;
- (b) referring to anything after the word "including", "include" or "includes" does not limit what else might be included and any such reference is without limitation to what else might be included;
- (c) references to "written" and "in writing" include any means of permanent visible representation (including email);
- (d) where any consent or approval is required, or where a person may exercise a discretion, under this Agreement, that consent or approval may be withheld or given and that discretion may be exercised (in each case with or without conditions) in the sole discretion of the person whose consent or approval is required or who may exercise the discretion;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) obligations and agreements given by or in favour of two or more persons are given by, or for the benefit of, (as applicable) each of them jointly and severally.