

# PORT OF HASTINGS

## STANDARD CUSTOMER TERMS

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In these Terms:

**Act** means any legislation or regulation applying to the Port, the Facilities, the Hire Equipment, the Services, the Customer or the Vessel applying for the benefit of Port of Hastings.

**Application for Berth** means Port of Hastings standard form headed "*Application For Berth*" as available from [www.PortofHastings.com](http://www.PortofHastings.com) as that form may be amended from time to time.

**Contract** means the contract between Port of Hastings and the Customer that is formed in accordance with clause 2.

**Customer** means the Vessel's Owner and the Vessel's master and each of them.

**Customer's Agent** means the Vessel agent (if any) specified in the Application for Berth or, if no agent is specified in the Application for Berth, the Vessel agent (if any) including the agent who lodged the Application for Berth.

**Customer's Associates** means employees of the Customer, the Customer's Agent, other agents of the Customer, the Customer's contractors and any agents or contractors engaged by any of the Customer's Agents to carry out work or provide services in the Port in connection with the Vessel or its cargo or crew.

**Exempt Vessel** means vessel that is a current expected arrival at the steel industry wharves and has prior to entering port waters of the Port of Hastings been issued with a current valid permission of the VRCA to proceed to the steel industry wharves.

**Facilities** means any Port land, seabed, buildings, berths, wharfs, jetties, lay down areas and any associated plant and equipment and other amenity, installation or infrastructure of any kind that is owned, vested in, managed, leased by, licensed to or otherwise controlled by Port of Hastings to which the Customer or any of its Associates seeks or are given access to, or use of, by Port of Hastings in connection with the Vessel's visit to the Port.

**Fees and Charges** means the rates and charges set out in Port of Hastings's Rates and Charges and any other fees, rates or charges that are imposed by Port of Hastings from time to time on the Customer or any of the Customer's Associates for access to or use of any Facilities, Services or Hire Equipment in connection with the Vessel's visit to the Port.

**Force Majeure Event** means an event or circumstance beyond the reasonable control of Port of Hastings not able to be overcome by the exercise of due care, proper precautions and the consideration of reasonable alternatives and which could not reasonably have been foreseen.

**Harbour Master** means the Port's harbour master appointed by VRCA and any deputy harbour master, acting harbour master or other person authorised to carry out any harbour's master's function or duties in the Port including any appointed duty marine controllers.

**Harbour Master's Direction** includes standing directions contained in the Port of Hastings Harbour Master's Directions on the website of VRCA at [www.regionalchannels.vic.gov.au](http://www.regionalchannels.vic.gov.au) and any direction issued from time to time by a Harbour Master.

**Hire Equipment** means any plant, equipment, fixture, chattel, labour or service hired, licensed or leased and made available by Port of Hastings to the Customer or any of the Customer's Associates in connection with the Vessel and use of the Port by the Customer or any of the Customer's Associates.

**Port** means the Port of Hastings in Victoria and its seabed and port waters together with all wharves, piers, land and areas that are owned, vested in, occupied by, licensed to, managed or controlled by Port of Hastings or any of its related companies.

**Port of Hastings** means Port of Hastings Development Authority ABN 33 737 350 749 of 1d Stony Point Road, Stony Point Victoria and any other person or entity who manages or controls the land based assets of the Port of Hastings from time to time.

**Port of Hastings Rates and Charges** means the rates and charges contained in Port of Hastings's General Tariff Schedule as amended from time to time, copies of which are available on the Website or on request from Port of Hastings.

**Port Standards and Procedures** means all obligations, standards, rules, powers, practices and procedures relating to operations, environmental protection, traffic, security, emergencies, health, safety, welfare or other matters concerning the Port, the Facilities, the Hire Equipment or the Services that are put in place by Port of Hastings and VRCA from time to time and communicated to the Customer or the Customer's Agent including Port of Hastings Port Operating Handbook and any details published on the Website or on the website of the VRCA at [www.regionalchannels.vic.gov.au](http://www.regionalchannels.vic.gov.au) (details of which shall be deemed to have been communicated as soon as they are published).

**Terms** means the terms and conditions set out in this document as varied from time to time.

**Services** means any services that are requested, provided by or arranged by Port of Hastings in connection with the Vessel's visit to the Port.

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

**Vessel's Owner** means the owner of the Vessel and includes any charterer of the Vessel.

**VRCA** means the Victorian Regional Channels Authority.

**Website** means the website found at [www.PortofHastings.com](http://www.PortofHastings.com) containing information on the Port or any other website advised by Port of Hastings from time to time.

## 1.2 Interpretation

In these Terms:

- (a) words importing the singular will include the plural and vice versa and any word or expression defined in the singular has the corresponding meaning if used in the plural and vice versa;
- (b) a reference to any act or statute or regulation will include a reference to any amendment, re-enactment or extension thereof or any statutory or regulatory provision that may be substituted from time to time.



- (c) references to any deed, document, instrument or other writing will be deemed to include references to the deed, instrument or other writing as varied or supplemented from time to time;
- (d) where any party to the Contract is comprised of more than one person or entity then those people or entities will be bound jointly and each of them will be bound severally by the terms of the Contract;
- (e) where the Customer is more than one person or entity any reference in these Terms to Customer is a reference to each such person or entity and all of them as the context permits; and
- (f) any reference to "Port", "Facilities", "Hire Equipment" or "Services" shall be read as a reference to all or any part of the "Port", the "Facilities", the "Hire Equipment" or the "Services".

## **2. APPLICATION OF THESE TERMS**

- 2.1 These Terms form part of the Contract that arises out of the submission to Port of Hastings of an Application for Berth.
- 2.2 No Vessel is permitted to enter the Port of Hastings until an Application for Berth has been submitted to Port of Hastings unless it is an Exempt Vessel.
- 2.3 Without affecting clause 2.2, by entering the Port waters the Applicant, the Vessel and Owner agree to be bound by these Standard Customer Terms, the Port of Hastings Rates and Charges, the Port Standards and Procedures with respect to the Vessel's visit to the Port and must immediately on request make, complete, update or sign any document required to evidence their agreement to such Contract.
- 2.4 Any variation to the details set out in the Application for Berth shall operate as a variation to the Contract.
- 2.5 These Terms cannot be varied unless the variation is agreed in writing and has been signed by authorised representatives of both the Customer and Port of Hastings.

## **3. OPERATION OF ACTS TO REMAIN UNAFFECTED**

- 3.1 The Contract shall operate in augmentation of Port of Hastings' rights, powers, defences, immunities or limitations of liability under any Act. With reference to the Port of Hastings, its servants, agents, contractors and representatives nothing in or arising out of these Terms or the Contract:
  - (a) in any way diminishes its or their the rights, powers, defences, immunities, indemnities or limitations of liability under any Act; or
  - (b) in any way fetters any discretions under any Act; or
  - (c) in any way diminishes or otherwise precludes it or them from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under any Act in relation to any matter concerning the Port, the Customer, any vessel or any matter arising in connection with the Contract.

#### **4. USE OF AND ACCESS TO FACILITIES, SERVICES AND HIRE EQUIPMENT**

##### **4.1 Allocation of Facilities, Services and Hire Equipment by Port of Hastings**

Port of Hastings agrees on the terms of the Contract to allocate the Vessel a berth in the Port and give the Customer access to and use of the Facilities, Services and Hire Equipment.

##### **4.2 No interest in Facilities**

Nothing in the Contract will create any tenancy, estate or proprietary interest of any kind in or over the Port, the Facilities or any Hire Equipment.

##### **4.3 Availability of requested Facilities, Services and Hire Equipment**

Allocation of Facilities, Services or Hire Equipment requested by the Customer or the Customer's Associates will always be subject to availability and suitability for the use intended by the Customer or the Customer's Associates. Port of Hastings will in its discretion determine availability, allocation and prioritisation.

##### **4.4 Additional Services, Facilities or Hire Equipment**

In addition to the use of any Facilities, Services or Hire Equipment requested by the Customer or any of the Customer's Associates, other Services, Facilities and Hire Equipment shall be utilised (and paid for as part of the Fees and Charges) in circumstances where Port of Hastings reasonably considers the use of additional or alternative Services or Facilities are necessary to ensure safety, security, Port operational efficiency or compliance with any laws or industry standards.

##### **4.5 Withdrawal, suspension, reallocation and termination of access and use**

If Port of Hastings reasonably considers it necessary it may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access granted to the Customer. If Port of Hastings exercises any of its rights under this clause the Customer and the Customer's Agent remains liable to pay any Fees and Charges already accrued or incurred and the Customer will not be entitled to claim compensation for any loss, damage, demurrage, delay, cost, loss of opportunity or inconvenience that it or any of the Customer's Associates have suffered as a result.

##### **4.6 Manner of decision**

Whenever the Port of Hastings makes a decision or determination or exercises a right or discretion under this clause it will do so reasonably having regard to such matters as but not limited to safety, security, efficiency, Port operations and compliance with applicable laws and industry standards.

#### **5. FEES AND CHARGES**

The Customer shall pay Port of Hastings all applicable Fees and Charges arising out of the Vessel's visit to the Port and the Customer shall pay interest on all Fees and Charges that are not paid to Port of Hastings by the date that they are due for payment. Interest on all outstanding amounts shall accrue daily at the rate that is 3 percentage points higher than the then current Reserve Bank of Australia "Cash Rate Target". Interest may be capitalised by Port of Hastings on the last day of each month and Interest shall be payable by the Customer to Port of Hastings as a debt due on demand.

#### **6. OTHER OBLIGATIONS**

##### **6.1 Maintenance and repair**

The Customer shall ensure that any Facilities or Hire Equipment used by the Customer or any of the Customer's Associates are kept and maintained in good condition (having regard to their age and

general condition when the Customer's usage commences) and the Customer shall ensure that any Facilities and Hire Equipment used are left in a good, clean and operational condition after use.

## **6.2 Port of Hastings may rectify**

If any Facilities or Hire Equipment are not left in the condition required under clause 6.1, Port of Hastings may carry out any work necessary to put the Facilities and Hire Equipment into the condition required under clause 6.1 and the costs of the work shall be paid by the Customer on demand.

## **6.3 Port Security**

The Customer shall ensure that it and the Customer's Associates comply with Port of Hastings's security rules, procedures and requirements relating to the Port, cargo, Facilities, Hire Equipment, Services and access to and from the Port when such procedures and requirements are set out in the Port Standards and Procedures at [www.PortofHastings.com](http://www.PortofHastings.com) or are otherwise communicated to them.

## **6.4 Professional standards**

The Customer shall ensure that all work carried out by it or any of the Customer's Associates in or around the Port in connection with the Vessel's visit:

- (a) is carried out by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work; and
- (b) is carried out with a high degree of skill, competence and professionalism at all times.

## **6.5 No damage**

The Customer shall ensure that neither it nor any of the Customer's Associates causes any damage to the Facilities, Hire Equipment or anything else in the Port.

## **6.6 No interference with other users**

The Customer shall ensure that neither it nor any of the Customer's Associates obstructs or causes any hazard, interference or nuisance to Port of Hastings or anyone else lawfully using the Port or Facilities.

## **6.7 Comply with all Acts and Regulations**

- (a) The Customer shall ensure that it and the Customer's Associates comply with all laws relating to the Vessel or the use of or access to the Port, the Facilities, the Hire Equipment or the Services.
- (b) Prior to unloading the Vessel's cargo, the Applicant or Customer must deliver to Port of Hastings a true and complete record of the Vessel's manifest inwards of cargo by submitting a completed Manifest of Cargo Inwards in the form approved by Port of Hastings.
- (c) Prior to the Vessel leaving the Port of Hastings, the Applicant or Customer must deliver to Port of Hastings a true and complete record of the Vessel's manifest of cargo outwards by submitting a written Manifest of Cargo Outwards form or other documentation that provides reasonable details of the cargo that has been loaded onto the Vessel and any fuel that has been bunkered by the Vessel at the Port.



- (d) If any cargo is or contains any hazardous or dangerous substance full details and relevant materials safety data sheet must be provided in advance and submitted in the form approved by Port of Hastings.

#### 6.8 **Not to contaminate**

The Customer shall ensure that neither it nor any of the Customer's Associates causes any spills, pollution or contamination of any kind in the Port.

#### 6.9 **Compliance**

The Customer shall ensure that it and the Customer's Associates:

- (a) comply with all Port Standards and Procedures;
- (b) comply with all directions given by Port of Hastings in connection with the Vessel's visit to the Port and all activities within the Port;
- (c) comply with all occupational health, safety and environmental requirements and associated policies and procedures of Port of Hastings at [www.PortofHastings.com](http://www.PortofHastings.com) or that are otherwise advised to the Customer or any of the Customer's Associates from time to time;
- (d) comply with all directions given by anyone working with the Australian Department of Agriculture and Water Resources, Australian Customs, Border Security and all relevant regulatory agencies and authorities; and
- (e) comply with Harbour Master's Directions.

#### 6.10 **Induction**

The Customer shall ensure that it and the Customer's Associates attend any Port induction briefings or courses as and when required by Port of Hastings in relation to anything connected with the Vessel's visit to the Port.

#### 6.11 **Notification of accidents, damage or injury**

As soon as the Customer or any of the Customer's Associates become aware of any accident, incident, damage to the Facilities, the Hire Equipment or anything else in the Port, injury to any person or any circumstances presenting a risk of damage or injury:

- (a) the Customer shall ensure that Port of Hastings is informed of the details promptly; and
- (b) if the Customer or the Vessel's Master is requested to do so by Port of Hastings, the Customer shall ensure that it or the Vessel's Master, provides a detailed written report to Port of Hastings in respect of the accident or other event giving rise to the damage, injury or any other consequence. Any report shall be provided to Port of Hastings within 24 hours of a request being made.

For the purpose of this clause:

**accident** means any event where damage of any kind is caused to any Vessel, person or property; and

**incident** means any event occurring, which gives rise to a hazardous or potentially hazardous situation.

## 6.12 Port access

The Customer shall ensure that Port of Hastings is given prompt access to the Facilities, the Vessel and any information that is reasonably required by Port of Hastings in order for Port of Hastings to inform itself concerning the Customer's compliance with its obligations under the Contract.

## 6.13 Cargo Manifests

- (a) Prior to unloading the Vessel's cargo, the Vessel's Master, Owner or Agent must deliver to Port of Hastings a true and complete record of the Vessel's manifest inwards of cargo by submitting a completed manifest of cargo inwards in the form approved by Port of Hastings.
- (b) Prior to the Vessel leaving the Port of Hastings, the Vessel's Master, Owner or Agent must deliver to Port of Hastings a true and complete record of the Vessel's manifest outwards of cargo by submitting a completed manifest of cargo outwards in the form approved by Port of Hastings

## 7. LIMITATION OF LIABILITY

Except to the extent that any rights or warranties cannot be excluded or limited as a matter of law, the liability of Port of Hastings to the Customer for anything arising out of the Contract shall be strictly limited to either of the following remedies as elected by Port of Hastings:

- (a) the re-supply of equivalent Services, Facilities or Hire Equipment; or
- (b) the payment of the costs necessary to have the Services, Facilities or Hire Equipment supplied again.

## 8. TERMINATION

### 8.1 Port of Hastings may terminate

Port of Hastings may terminate the Contract with immediate effect if the Customer is in breach of its obligations at any time without prejudice to any other rights or remedies Port of Hastings may have under the Contract or at law or in equity.

### 8.2 No release

On termination of the Contract:

- (a) nothing will release or discharge the Customer from liability to Port of Hastings in relation to anything occurring prior to the termination; and
- (b) nothing will release or discharge the Customer's Agent or Customer from liability for any Fees and Charges imposed by Port of Hastings in relation to anything occurring prior the date of termination.

## 9. GOODS AND SERVICES TAX

### 9.1 GST provisions

For the purpose of this clause unless the context otherwise requires:

- (a) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* or any replacement or relevant legislation and regulations; and

- (b) where any other term is used in this clause, which is defined in the GST legislation, it will have the meaning which it bears in the GST Legislation.

## **9.2 Amounts in Port of Hastings Rates and Charges are GST exclusive**

Every item in Port of Hastings's Rates and Charges payable under these Terms is exclusive of GST (unless otherwise stated).

## **9.3 Tax invoices**

Port of Hastings will provide the Customer or the Customer's Agent with tax invoices and/or adjustment notes with respect to the Fees and Charges (but will not be obliged or required to create tax invoices for amounts in excess of amounts received from the Customer). The tax invoices and /or adjustment notes will show the Fees and Charges exclusive of GST and the relevant GST amount payable on those Fees and Charges.

## **10. FORCE MAJEURE**

Despite anything to the contrary contained elsewhere in these Terms and the Contract, Port of Hastings will not be in breach of any obligation it may have in circumstances where Port of Hastings ability to perform the Contract was obstructed, delayed or prevented in whole or party by a Force Majeure Event or the consequences of a Force Majeure Event and may suspend its performance accordingly by promptly notifying the Customer.

## **11. MISCELLANEOUS**

### **11.1 No assignment**

The benefits of the Contract are not capable of being assigned or transferred by the Customer.

### **11.2 Severance**

If any term or part contained in these Terms or elsewhere in the Contract is declared or becomes unenforceable, invalid or illegal for any reason then that term or part will be severed and the other terms and parts will remain in full force and effect.

### **11.3 Governing law and jurisdiction**

The Contract is governed by and will be construed in accordance with the laws of Victoria and the Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

### **11.4 Website**

Port of Hastings undertakes to place these Terms on the Website, so that the Customer can easily access them.

### **11.5 Variation**

Port of Hastings will notify any variation of these Terms by placing the varied Terms on the Website.