

PORT OF GEELONG
GEELONGPORT PTY LTD (ABN 50 003 996 594)

Application for Equipment Hire

Part One* - APPLICATION FORM

This Application must be completed and submitted to GeelongPort Pty Ltd (**GeelongPort**) before the use of any equipment made available by GeelongPort for hire by Port users in the Port of Geelong.

* This Application for Equipment Hire (**Application**) comprises two parts, being this Application Form (Part One) and the Contract Formation Section (Part Two).

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-------------|----------------|-----------|
| 1. Applicant's Details (all information must be completed) | | | | |
| Full Name | (Applicant) | | | |
| | (full legal name including Pty Ltd, Limited and other designations) | | | |
| Applicant's capacity | agent/vessel owner/charterer/vessel manager/cargo consignee/cargo consignor/stevedore/other (delete as appropriate) | | | |
| Applicant's Address | | | | |
| Applicant's ABN/ACN/ARBN | | | | |
| Contact Person | | Mobile | | Phone |
| Postal Address | | | | |
| Fax | | E-mail | | |
| 2. Port User's Details | | | | |
| (to be completed where the Applicant is making this Application as an agent on behalf of a vessel owner, charterer, vessel manager, cargo consignee, cargo consignor or other) | | | | |
| Full Name | (Port User) | | | |
| | (of Applicant's client) | | | |
| Port User's Address | | | | |
| Port User's ABN/ACN/ARBN | | | | |
| 3. Equipment | | | | |
| Description | Equipment/Asset No. | Site | Rental | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| 4. Hire Period | | | | |
| Commencement date | | | Time | |
| Return date | | | | |
| 5. Rates | | | | |
| Shift requirements | Day | Two | Mid | |
| | (delete those not applicable) | | | |
| Cost of Transportation | | | | To Site |
| | | | | From Site |
| Equipment preparation charge | | | | |
| Fuel costs | Diesel | | Cost per litre | |
| | Gas | | Cost per litre | |
| Daily rate for overholding | | | | |
| 6. Special Conditions | | | | |
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The Applicant acknowledges that by submitting this Application electronically or by any other means (with or without any signature) it will be deemed to have executed this Application and accepted its terms.

Where the Applicant is submitting this Application on behalf of a Port User, the Applicant warrants that it has the Port User's authority to submit this Application and bind the Port User and its related entities to the Contract pursuant to Part Two and the Applicant undertakes to advise the Port User for whom it is acting of the Contract terms.

Signed for and on behalf of the Applicant/Port User:

SignatureSignatory's NameDate.....

Part Two - CONTRACT FORMATION SECTION

1. In this part:
 - (a) **Cargo** means any goods, materials or products of any kind that are owned by the Customer or in the Customer's care custody or control.
 - (b) **Contract** has the meaning given in clause 2.
 - (c) **Customer** means:
 - (i) the Applicant and its related entities (in cases where the Applicant makes this Application on its own behalf); or
 - (ii) the Port User and its related entities (in cases where the Applicant makes this Application on behalf of the Port User).
 - (d) **Equipment** means the items listed in item 3 of the Application Form (including any additions to that list or any changes concerning those items that are made during the Application process).
 - (e) **Expiry Point** has the meaning given in clause 3.
 - (f) **Hire Period** means the hire period specified in item 4 of this Application and includes any other period during which any of the Equipment is being used by the Customer or is otherwise in the Customer's care, custody or control.
 - (g) **Port Standards and Procedures** means Port Standards and Procedures referred to in clause 2.
 - (h) Unless otherwise defined in the Application Form or in this part, capitalised words and expressions used in this part will have the meanings given in the Port Standards and Procedures.
2. As soon as any of the following events occur or arise out of this Application:
 - (a) any conditional or unconditional authorisation, consent or permit is given to the Customer (or any related people or entities) by GeelongPort or any officer of GeelongPort with respect to any of the Equipment; or
 - (b) the Customer (or anyone employed by or contracted to the Customer) commences use of any of the Equipment or enters or uses the Port for any purpose,

the Customer will be immediately and irrevocably bound by a contract with GeelongPort, which comprises the details and terms set out in this Application (including any additional details or revisions to this Application that occur during the Application process), all terms and conditions set out in GeelongPort's Port Standards and Procedures (as amended from time to time), GeelongPort's Rates and Charges (as defined in the Port Standards and Procedures and as amended from time to time) (**Schedule of Rates**) and the VRCA Handbook (as defined in the Port Standards and Procedures and as amended from time to time) (**Contract**). Copies of the Port Standards and Procedures and the Schedule of Rates may be obtained from GeelongPort's website www.geelongport.com.au or by submitting a request to GeelongPort by facsimile or telephone or by calling in person at GeelongPort's office. Copies of the VRCA Handbook are available from the Victorian Regional Channels Authority or on the VRCA website www.regionalchannels.vic.gov.au.
3. Subject to the terms of the Contract, the Customer has a contractual licence to enter the Port and use the Equipment that is allocated by GeelongPort and the term of the licence will, in the absence of any written agreement to the contrary, run as follows (unless terminated earlier):
 - (a) for the hire period specified in item 4 of this Application or as designated by GeelongPort in any authorisation, consent or permit that arises out of this Application or any subsequent Application (the later term to prevail) (**Fixed Term**); or
 - (b) in the absence of a Fixed Term, for a term that runs at the will of GeelongPort (**Ad Hoc Term**) and GeelongPort can terminate an Ad Hoc Term with immediate effect at any time and for any reason by giving the Customer a notice of termination (being a notice that may given verbally or in writing).

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In cases where the initial Fixed Term or Ad Hoc Term expires or is terminated, the Contract will continue to bind the Customer every time that the Customer (or anyone employed by or contracted to the Customer) enters or uses the Port or uses any of the Equipment after the time of expiry or termination (**Expiry Point**). In the absence of any new Fixed Term being designated by GeelongPort after an Expiry Point, the Ad Hoc Term will apply on every occasion that the Customer (or anyone employed by or contracted to the Applicant) enters or uses the Port or uses any of the Equipment.

4. Allocation of the items comprising the Equipment is always subject to availability and suitability. GeelongPort will determine availability and suitability in its absolute discretion.
5. If GeelongPort considers it necessary for any reason, GeelongPort may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted to the Customer in regard to any item of Equipment. If GeelongPort exercises any of its rights under this clause, nothing will relieve the Customer from any liability accrued nor entitle the Customer to any Costs and Losses.
6. If GeelongPort considers that the Customer should use certain services, extra resources or equipment in order to ensure safety, security, operational efficiency, general expediency or Customer compliance with any laws or industry standards in relation to the use of any Equipment (**Extra Requirements**) then the Customer must promptly utilise and otherwise comply with any Extra Requirements that are imposed by GeelongPort.
7. GeelongPort does not warrant or represent that any of the Equipment is suitable for any use or that any item of Equipment is or will be clean or free of contaminants. The Customer must ensure that the Equipment is carefully checked prior to use and the onus is on the Customer to satisfy itself that the Equipment to be used on each occasion is:
 - (a) free from any substances which may damage or contaminate Cargo or anything else; and
 - (b) suitable for the Customer's intended purpose and is safe to operate,and the Customer bears and assumes all risks associated with damage or contamination occurring as a consequence of using or preparing to use any Equipment including the risk of damage or contamination arising out of circumstances where GeelongPort or any of its Associates have carried out or failed to carry out any cleaning, wash down, maintenance or other work concerning any item of Equipment.
8. The Customer must ensure that it and its Associates:
 - (a) accurately describe any Cargo that is to be moved or handled by any of the Equipment (if requested to do so by GeelongPort or any of its Associates);
 - (b) follow all operating instructions posted on the Equipment and any operating directions given by GeelongPort or its Associates;
 - (c) treat and care for the Equipment as would a careful and prudent owner in order to prevent any damage to or excessive wear and tear of the Equipment;
 - (d) have all the training, expertise, licences and permits necessary to use the Equipment properly and safely;
 - (e) are properly supervised when using any of the Equipment;
 - (f) only use the Equipment in the manner and for the purpose the Equipment was designed;
 - (g) permit GeelongPort and its Associates to inspect the Equipment at any reasonable time; and
 - (h) keep the Equipment free from any distress, execution or other legal process and take all reasonable steps to safeguard GeelongPort's title, rights and interests in the Equipment, and not do or permit anything which might reasonably be expected to expose the Equipment to penalty, forfeiture, impounding, detention or destruction.
9. The Customer must ensure that neither it nor any of its Associates:
 - (a) removes any identification marks on any of the Equipment;
 - (b) damages any of the Equipment (fair wear and tear excepted);
 - (c) injures any person or damages any property during the course of using or preparing to use any of the Equipment;
 - (d) abandon any part of the Equipment in any location; or
 - (e) remove any Equipment from the site designated by GeelongPort or the Port if no site is designated.
10. The Customer must pay all Contract rates, hire charges, rental and other expenses or costs relating to the Equipment (including any Equipment preparation charges and transport charges) and, unless otherwise specified in the Contract, payment is due 14 days after the date of invoice.
11. GeelongPort will arrange for the Equipment to be serviced and adjusted if it is reasonably necessary to do so during the Hire Period. However, if any of the Equipment breaks-down, malfunctions or fails in any way:
 - (a) as a consequence of any breach of a Contract term by the Customer; or

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- (b) due to lack of reasonable care on the part of the Customer or any of its Associates; or
- (c) due to Cargo which does not match the description declared or given to GeelongPort by the Customer or any of its Associates,

then the Customer must pay GeelongPort all of its Costs and Losses incurred in returning the relevant Equipment to good working order and condition on demand.

12. Unless otherwise agreed, only GeelongPort and its Associates may arrange for or carry out Equipment repairs and maintenance.
13. If the Customer or any of its Associates knows or suspects that any of the Equipment is damaged or malfunctioning, the Customer must ensure that:
 - (a) the Equipment is not used by the Customer or any of its Associates; and
 - (b) GeelongPort is immediately notified of the known or suspected damage or malfunction.
14. GeelongPort is not liable to the Customer or any other person for any Costs and Losses (including any delay or demurrage costs) that arise out of:
 - (a) any delay in Equipment delivery; or
 - (b) Equipment that is damaged or malfunctioning for any reason, including reasons attributable to negligent or otherwise wrongful acts or omissions on the part of GeelongPort or any of its Associates.
15. Except to the extent caused by GeelongPort, the Customer will indemnify GeelongPort and keep GeelongPort indemnified from and against all actions, claims, notices, demands, Costs and Losses of whatever nature that GeelongPort may suffer or incur as a result of anything arising out of the use of the Equipment or anything else in the Port by the Customer or any of its Associates. This indemnity is a continuing obligation that is independent from any of the Customer's other obligations and shall survive termination of the Contract.
16. On or prior to the Expiry Point, the Customer must:
 - (a) clean and remove any contaminants from the Equipment; and
 - (b) return and deliver the Equipment in good order and condition (fair wear and tear excepted) to a place in the Port as directed by GeelongPort (**Return Point**).

If the Customer does not deliver any of the Equipment to the Return Point on or before the Expiry Point, GeelongPort may collect the Equipment and arrange for it to be delivered to the Return Point (**Equipment Return**). The Customer must pay all GeelongPort's Costs and Losses relating to Equipment Return on demand and the Customer must pay the daily rate for overholding for each day between the day on which the Expiry Point occurs and the day that Equipment Return occurs.

17. The Customer must insure and remain insured during the Hire Period with a reputable insurer against all claims and liabilities arising (whether at common law or under statute) in relation to workers' compensation and against public liability, any accident or injury to any person or damage to any property, for each and every occurrence arising out to the use of the Port by the Customer or any of its Associates for an amount of not less than \$10,000,000 for any single event and naming GeelongPort as joint insured on the policy of insurance. Taking out insurance does not in any way affect or limit any rights, obligations or liabilities under the Contract. If requested by GeelongPort, the Customer must provide GeelongPort copies of certificates of currency for the insurances required under this clause within 48 hours. If requested by GeelongPort, the Customer must make and pursue a claim under its insurance policies in circumstances where:
 - (a) a breach of the Contract has occurred and some or all of the resulting loss or damage (**Loss or Damage**) is covered under the Customer's insurance policies;
 - (b) there are reasonable prospects of the claim succeeding; and
 - (c) some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,

however, (a), (b) and (c) will not apply in circumstances where the Customer is ready, willing and able to pay for the Loss or Damage on its own account.

18. If requested by GeelongPort at any time, the Customer must provide GeelongPort with bond money not exceeding \$20,000 (**Bond**) to hold as security for the Customer's compliance with its obligations under the Contract. If the Customer breaches the Contract or any of the Equipment is damaged, lost or destroyed during the Hire Period (**Damages**) or any rates, hire charges, rental or other expenses or costs remain unpaid (**Outstanding Sums**), GeelongPort will be entitled to apply any or all of the Bond towards satisfaction of any Damages and Outstanding Sums. If the Bond is insufficient to satisfy any Damages and Outstanding Sums, GeelongPort is free to pursue any other remedy available to it in order to satisfy the remainder of the Damages and Outstanding Sums owing to it after drawing down on the Bond. As soon as GeelongPort (acting reasonably) is satisfied that there are no Damages or Outstanding Sums owing to it after the Expiry Point, GeelongPort must return the Bond (or any remaining balance) to the Customer promptly.

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19. All warranties and conditions which would otherwise be implied in the Contract are expressly excluded to the extent permitted by law. GeelongPort's liability for breach of any condition or warranty that cannot be excluded by agreement is limited, at GeelongPort's election, to either supplying the equivalent items of Equipment again or payment of the costs of having the relevant items of equipment supplied again.
20. None of the Customer's rights or obligations under the Contract are capable of being assigned or transferred.
21. The Contract is governed by the laws of Victoria and comprises the entire agreement between the Customer and GeelongPort. Any variations to the Contract must be in writing.