

GEELONGPORT

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.

Application for Berth means GeelongPort's standard form headed "*Application For Berth*" as amended from time to time.

Contract means the contract between GeelongPort and the Customer that is formed as soon as the Vessel enters the Port waters following electronic lodgement of an Application for Berth.

Customer the Vessel's Owner and the Vessel's master.

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) 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.

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

Fees and Charges means the rates and charges set out in GeelongPort's Rates and Charges and any other fees, rates or charges that are imposed by GeelongPort 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. Amendments to these will be advised on the GeelongPort website and by email to Port Users.

Force Majeure Event means, in respect of a party, any event or situation that arises due to something beyond the reasonable control of that party.

GeelongPort means GeelongPort Pty Limited ABN 50 003 996 594 of Corio Quay Road, North Geelong, Victoria and any other person or entity who manages or controls the land based assets of the Port of Geelong from time to time.

GeelongPort's Rates and Charges means the rates and charges contained in GeelongPort's General Tariff Schedule as amended from time to time, copies of which are available on the Website and advised to existing Port Users when amended from time to time.

Harbour Master means the Port's harbour master appointed by Ports Victoria 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.

Hire Equipment means any plant, equipment or chattel that is owned, vested in, managed, leased by, licensed to or otherwise controlled by GeelongPort and made available for loading or unloading of the Vessel, storage, cargo movement, repairs or any other purpose requested or required by GeelongPort, 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 Geelong 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 GeelongPort or any of its related companies.

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 GeelongPort from time to time and communicated to the Customer or the Customer's Agent including any details published on the Website

Port Information Guide means the Ports Victoria Port Information Guide – Geelong 2020 as updated from time to time by Ports Victoria, available at www.vrca.vic.gov.au

Ports Victoria means the entity formerly known as the Victorian Regional Channels Authority.

Services means any services that are provided by or arranged by GeelongPort in connection with the Vessel's visit to the Port.

Terms means the terms and conditions set out in this document as varied from time to time in accordance with clause 11.5.

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.

Website means the website found at www.geelongport.com.au containing information on the Port.

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; *and*
- (e) 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 of an Application for Berth at the Port.

2.2 A contract will automatically bind the Customer with respect to the Vessel's visit to the Port as soon as the Vessel enters the Port waters and the contract will comprise the details set out in the Customer's Application for Berth and these Terms (incorporating GeelongPort's Rates and Charges, the Port Standards and Procedures, and the Port Information Guide.

2.3 Any variation to the details set out in the Application for Berth shall be deemed to operate as a variation to the Contract.

3. RIGHTS UNDER ACTS TO REMAIN UNAFFECTED

3.1 The Contract shall operate in augmentation of any rights, powers, defences, immunities or limitations of liability the parties have under any Act. Nothing in or arising out of these Terms or the Contract:

- (a) in any way diminishes a party's rights, powers, defences, immunities, indemnities or limitations of liability under any Act; or
- (b) in any way fetters any discretions that a party has under any Act; or
- (c) in any way diminishes or otherwise precludes GeelongPort 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 or the Vessel or any matter arising out of the Contract.

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

4.1 Allocation of Facilities, Services and Hire Equipment by GeelongPort

GeelongPort agrees 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. GeelongPort will determine availability and suitability in its reasonable discretion.

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 GeelongPort, acting reasonably, considers the use of additional or alternative Services or Facilities are necessary to ensure safety, security, Port operational efficiency and compliance with any laws or industry standards.

4.5 Reallocation or variation of access and use

If GeelongPort considers it necessary to ensure safety, security, Port operational efficiency and compliance with any laws or industry standards, then GeelongPort may at any time reallocate or otherwise vary or modify any usage or access rights that are granted to the Customer by providing reasonable prior written notice. If GeelongPort exercises any of its rights under this clause then nothing will relieve the Customer or the Customer's Agent from liability to pay any Fees and Charges already accrued or incurred and nothing will entitle the Customer to any compensation for any loss, damage, demurrage, delay or inconvenience that it or any of the Customer's Associates have suffered.

5. FEES AND CHARGES

The Customer shall pay GeelongPort 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 GeelongPort 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"). Interest may be capitalised by GeelongPort on the last day of each month and Interest shall be payable by the Customer to GeelongPort as a debt due on demand.

6. OTHER OBLIGATIONS

6.1 Maintenance and repair

(a) 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.

(b) GeelongPort shall ensure that it provides the Services and maintains Facility and Hire Equipment in a good, clean, safe and operable condition such that the Services, Facilities and Hire Equipment are fit for purpose.

6.2 GeelongPort may rectify

If any Facilities or Hire Equipment are not left in the condition required under clause 6.1, GeelongPort may carry out any work necessary to put the Facilities and Hire Equipment into the condition that Hire Equipment and Facilities were in prior to the commencement of the Customer's usage 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 GeelongPort's reasonable 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 or are otherwise communicated to them prior to the Vessel entering the waters of the Port of Geelong.

6.4 Professional standards

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

(i) is carried out by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work; and

(ii) is carried out with a high degree of skill, competence and professionalism at all times.

(b) GeelongPort shall ensure that it carries out its obligations under this Contract with a high degree of skill, competence and professionalism at all times, and carry out the Services by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work.

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 interference to GeelongPort or anyone else lawfully using the Port.

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) GeelongPort shall 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.

6.8 **Not to cause spills or pollute**

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 Terms;

(b) comply with all reasonable directions given by GeelongPort in connection with the Vessel's visit to the Port and activities within the Port;

(c) comply with all reasonable occupational health, safety and environmental requirements and associated policies and procedures of GeelongPort that are advised to the Customer or any of the Customer's Associates:

(i) prior to the Vessel entering the waters of the Port of Geelong; or

(ii) otherwise from time to time with reasonable prior notice;

(d) comply with all directions given by anyone working with the Australian Quarantine Services, the Australian Customs Services or any other relevant regulatory authority in connection with the Vessel's visit to the Port; and

(e) comply with all directions given by the Port's Harbour Master.

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 GeelongPort 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 during the Vessel's visit to the Port:

- (a) the Customer shall ensure that GeelongPort is informed of the details promptly; and
- (b) if the Customer or the Vessel's Master is requested to do so by GeelongPort, the Customer shall ensure that it or the Vessel's Master, provides a detailed written report to GeelongPort in respect of the accident or other event giving rise to the damage, injury or any other consequence. Any report shall be provided to GeelongPort 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 GeelongPort is given prompt access to the Facilities, the Vessel and any information that is reasonably required by GeelongPort in order for GeelongPort to check and monitor 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 GeelongPort 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 GeelongPort.
- (b) Prior to the Vessel leaving the Port of Geelong, the Vessel's Master, Owner or Agent must deliver to GeelongPort 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 GeelongPort.

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 GeelongPort to the Customer for anything arising out of the Contract shall be strictly limited to either of the following remedies as elected by GeelongPort:

- (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.

This limitation of liability will not apply in circumstances where there has been gross negligence or wilful misconduct by GeelongPort.

8. TERMINATION

8.1 Termination for breach

Without prejudice to any other rights or remedies the parties may have under the Contract or at law or in equity, either party may terminate the Contract with immediate effect if the other party is in breach of its obligations at any time.

8.2 **No release**

On termination of the Contract:

- (a) nothing will release or discharge either party in relation to anything occurring prior to the date of termination; and
- (b) nothing will release or discharge the Customer's Agent or Customer from liability for any Fees and Charges imposed by GeelongPort in relation to anything occurring prior to 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 GeelongPort's Rates and Charges are GST exclusive**

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

9.3 **Tax invoices**

GeelongPort 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, a party will not be in breach of any obligation it may have in circumstances where its ability to reasonably comply was interfered with, obstructed, delayed or prevented by a Force Majeure Event.

11. **MISCELLANEOUS**

11.1 **No assignment**

The rights and entitlements under 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**

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

11.5 **Variation**

GeelongPort undertakes to notify Port customers and the Customer's Agent of any update by placing the updated Terms on the Website immediately following any determination by GeelongPort to vary these Terms.