

Berthing Advice Form

Port of Brisbane Common User Port Facility

Booking of the Facility

- (a) The booking of a Common User Facility must be made 14 calendar days prior to the intended date of use. At that time the vessel's name and ETA must be provided with an expected ETD. Successful allocation of the application will be advised within 48 hours of application. Vessel agents are to keep the Company closely advised if there are any changes to the ETA of the vessel. 48 hours definite notice of ETA must be given to the Company, failing which the Company may cancel the booking, subject to other applications being received for the window specified.
- (b) Berthing priorities for vessels will be determined in accordance with the Common User Port Facility Terms and Conditions. In particular, berthing will generally be determined by the order of arrival of vessels at the Port of Brisbane pilot station, however the Company may change the priority of the users berthing at the Facility for any reasonable purpose in its absolute discretion.
- (c) The Common User Facilities will be used for ship exchange operations only. Cargoes that require pre-assembly or are held for delivery following discharge are required to be stored clear of the working berth in a designated lease or common user storage area as agreed with the Company.
- (d) Any changes to the above rules will be made following due consultation with owners, shipping customers and the stevedores, but the Company's decision in relation to any changes will be final.
- (e) The above rules do not limit the provisions of the Common User Port Facility Terms and Conditions.

**Booking Form for Vessels Loading or Unloading Commercial Cargo, and Non-Cargo Working Vessels
(Including Naval Vessels, Trainee Vessels and Vessels on Lay-up)**

Particulars (to be completed by Hirer):

Name of Vessel		
LOA (Length Overall)		
Bridge to Bow Length		
Berth Facility	<input type="checkbox"/> Port North Common User Berth <input type="checkbox"/> Pinkenba Common User Terminal <input type="checkbox"/> General Purpose Berth <input type="checkbox"/> Fisherman Island Grain Berth / Multi – User Terminal <input type="checkbox"/> Brisbane Crew Change Berth <input type="checkbox"/> Brisbane International Cruise Terminal (Lay up only non - cruise ship)	
(Hirer to tick preferred berth. If hiring the Grain Berth, please also specify whether you wish to hire the Multi – User Terminal)		
Water Required	<input type="checkbox"/> Yes <input type="checkbox"/> No Quantity:	
Date/Time of Arrival (ETA)	Date:	Time:
Date/Time of Departure (ETD)	Date:	Time:
Lay up or Cargo vessel (please specify)		

By executing this Booking Form the Hirer agrees as follows:

- That it has read, and is bound by, the Port of Brisbane Common User Port Facility Terms and Conditions for Loading or Unloading Commercial Cargo, and Non- Cargo Working Vessels, and the Common User Port Facility Charges, copies of which can be found at www.portbris.com.au, and which are deemed to be binding on the Hirer.
- Without limiting its other obligations, it will operate in accordance with all relevant occupational, health and safety standards and undertake a risk assessment in respect to the Facility and any operations to be performed by it or on its behalf at the Facility.
- That it has obtained all relevant licences and permits to undertake the permitted use. This includes, but is not limited to, Environmentally Relevant Activity (ERA) permits (Environmental Authority), e.g. where bulk materials (as defined under the *Environmental Protection Regulation 2008*) are to be exchanged, the Hirer requires permits from the Department of Environment and Science for Environmentally Relevant Activity (ERA) 50 – Bulk material handling.
- This booking is subject to written confirmation by the Company.

The Hirer:

The party or parties signing below:

..... Name of Owner of Vessel Signature of Person authorised by the Owner to sign Position held by Authorised Person Date
..... Name of Cargo Interest Signature of Person authorised by the Cargo Interest to sign Position held by Authorised Person Date
..... Name of Stevedore Signature of Person authorised by the Stevedore to sign Position held by Authorised Person Date

**Port of Brisbane Common User Port Facility Terms and Conditions for Loading or Unloading Commercial Cargo, and Non-Cargo Working Vessels
(including training ships, research ships, vessels on lay-up and expedition vessels).**

(These Terms and Conditions are to be read together with the Common User Port Facility Charges and the Booking Form, which must be completed by the Hirer and accepted by the Company)

1. Use of Facility

1.1 Use of Facility

The Hirer agrees to use the Facility and the Company grants the use of the Facility, in accordance with these Terms and Conditions.

1.2 Permitted Use

Without limiting clause 1.1, the Hirer will only use the Facility for the Permitted Use.

2. Payment by Hirer

2.1 Facility Charges

The Hirer will pay the Company the relevant charges referred to in the Common User Port Facility Charges for the use of the Facility without any deduction or right of set-off. Payment is to be made by the Hirer within 14 days of receipt of an invoice from the Company.

2.2 Charges for Utility Services

The Hirer will pay the Company, or any relevant Utility Service provider, a charge for any Utility Services used by the Hirer at the Facility at the rate applicable to use of those Utility Services from time to time.

2.3 Documentation to be provided by Hirer

The Hirer must promptly provide the Company with all documentation necessary to enable the Company to accurately calculate any charges for the purposes of this clause. Without limitation, the Hirer will provide manifests for Vessels loading or unloading cargo within 5 Business Days from loading/discharge, and those manifests must include both weight and volume for non-containerised cargoes.

2.4 Interest

If the Hirer does not pay any amount due under this clause by the due date, in addition to any other rights of the Company, the Company may charge interest to the Hirer on the amount owed, at a rate of 1.5% per month, compounded monthly. Any such interest will be payable by the Hirer on demand, as a liquidated debt.

2.5 Recalculation

If at any time the Company can demonstrate that an account previously sent to the Hirer was incorrectly calculated, or based on incorrect information, the Company may calculate and send to the Hirer a further account and this clause will apply to that further account. The parties will make such reimbursements or additional payments as are necessary to ensure that payment is made by the Hirer of the correct amount due under this clause.

3. No Exclusive Use

3.1 No Exclusive Use

The Hirer is not granted any exclusive use of the Facility, and the Company may allow access to the Facility at all times by any other person for any purpose, including without limitation, access by employees, officers, agents or contractors of the Company. The Company will require such persons to operate in accordance with any relevant occupational health and safety standards applicable to the Facility.

3.2 Berthing Priority

- (a) Subject to paragraph (b) below, berthing of Vessels at the Facility will generally be determined by the order of arrival of Vessels at the Port of Brisbane pilot station.
- (b) The Company may change the priority of the users berthing at the Facility for any reasonable purpose at its absolute discretion, including without limitation, due to the nature of the cargo held by any relevant Vessel, the estimated time that any Vessel may be at the Facility, the nature of any Vessel at any surrounding berths, or the weather conditions from time to time.

4. Use of Facility at Risk of Hirer

4.1 Release of Company

- (a) Subject to paragraph (b) below, the Hirer will use the Facility at its own risk. The Company will not be liable to the Hirer, and the Hirer releases the Company in relation to any Claim or Loss that may be made against or incurred by the Hirer at any time arising out of or in connection with, directly or indirectly, the use of the Facility by the Hirer, or otherwise arising out of these Terms and Conditions, including without limitation:
 - (i) any Loss to any vessel, plant, equipment or other property;
 - (ii) any Loss arising from injury or damage done or suffered to any person, including death; or
 - (iii) any Loss arising from environmental damage, pollution or contamination.
- (b) Paragraph (a) above does not apply to the extent any Loss is directly caused by the negligence or wilful default of the Company.

4.2 Indemnity by Hirer

- (a) Subject to paragraph (c) below, the Hirer indemnifies and will keep indemnified the Company from and against all Claims and Loss that may be brought by any person against, or incurred by the Company, directly or indirectly, in relation to or arising from the use by the Hirer of the Facility, or under or in connection with these Terms and Conditions, including without limitation:-
 - (i) any Loss to any property, or in respect of any injury or death to any person; or
 - (ii) any Loss arising from environmental damage, pollution or contamination.
- (b) The Hirer acknowledges the existence at the Facility of equipment not owned by the Company (including ship loaders and associated gantry equipment, shore cranes and

associated equipment and cargo – the Equipment). Without limiting paragraph (a) above, the Hirer indemnifies and will keep indemnified the Company from and against all Claims and Loss that may be brought by any person against, or incurred by the Company, directly or indirectly in relation to or arising from the use of the Equipment by or on behalf of the Hirer, or resulting from any damage to or destruction of the Equipment or any part of the Equipment caused directly or indirectly by the acts or omissions of the Hirer or its agents, employees, licensees or invitees.

- (c) The indemnities in paragraphs (a) and (b) above will not apply to the extent the relevant Claim or Loss is directly caused by the negligence or wilful default of the Company.

4.3 Security at Facility

- (a) The Hirer must comply with:
 - (i) the security arrangements and ancillary procedures developed for the Facility; and
 - (ii) any direction given by or on behalf of the Company under the Maritime Transport and Offshore Facilities Security Act (Cth), the Transport Infrastructure Act (Qld) or the Transport Infrastructure (Port) Regulations (Qld); and
 - (iii) any obligation upon the Hirer under the Maritime Transport Security Act (Cth).
- (b) The Company will provide copies of any security arrangements or ancillary procedures for the Facility upon request by the Hirer.

4.4 Safety at Facility

- (a) The Hirer must ensure that it and its employees, contractors, agents and invitees maintain a safe environment at the Facility at all times.
- (b) The Hirer must at all times ensure that it complies with all relevant Laws relating to occupational health and safety.
- (c) The Hirer must ensure that the Facility is fit for its intended purpose prior to undertaking any activities at the Facility. Without limiting the generality of the foregoing, the Hirer must undertake an appropriate and fulsome risk assessment and prepare appropriate safety plans having regard to the intended use of the Facility and foreseeable risks (the **Safety Plan**).
- (d) The Safety Plan must include a consideration of, and risk mitigation strategies in respect of:
 - (i) mooring and letting go of vessels;
 - (ii) stevedoring operations;
 - (iii) receiving and delivery of cargo;
 - (iv) appropriate numbers of suitably qualified and competent personnel to perform the activities intended to be carried out at the Facility;
 - (v) site access (including for contractors, invitees and agents);
 - (vi) stores to vessels; and
 - (vii) evacuation plans.
- (e) The Hirer must, on request, provide a copy of its Safety Plan to the Company.

5. Insurance

5.1 Public Liability Insurance

Prior to use of the Facility, the Hirer must obtain and maintain comprehensive public liability insurance for an amount of at least \$20 million and ensure that the Company is noted as an interested party. The insurance must be for any single event and cover all operations by the Hirer on or about the Facility. The insurance policy must be with a reputable insurance company and a copy of the policy and any other relevant documentation must be provided to the Company upon request, prior to use of the Facility by the Hirer.

5.2 Other Insurance

The Hirer warrants that any stevedore or other contractor which it engages or uses in relation to the Facility has appropriate insurance with a reputable insurance company in relation to the following:

- (a) Workers compensation or similar employee insurance as required by any Laws.
- (b) Damage caused by the contractor at the Facility, including damage arising from the use of vehicles, cranes or any other machinery.

5.3 Effect on Company's Insurance

The Hirer will not do or allow anything which might:

- (a) increase the rate of any insurance in relation to the Facility or the Port of Brisbane effected by or on behalf of the Company (the Company's Insurance);
- (b) render void or voidable the Company's Insurance; or
- (c) conflict with any requirements relating to the Company's Insurance.

6. Damage to Facility and Surrounds

6.1 General Obligations of Hirer

The Hirer will ensure it uses the Facility in a manner which prevents damage (including any environmental damage, contamination or pollution) to the Facility or the Port of Brisbane.

6.2 Repair and Remediation

Any damage to the Facility or its surrounds resulting from use of the Facility by the Hirer may be repaired or remediated by the Company at the expense of the Hirer. The Hirer must pay to the Company any costs incurred by the Company in that regard (as a liquidated debt), within 7 days of receipt of an invoice from the Company for those costs. Without limitation, this clause will apply to any damage to the environment in or around the Facility or the Port of Brisbane resulting from or relating to damage, contamination or pollution caused by the Vessel or by any materials or liquids from the Vessel.

6.3 Condition of Facility

The Hirer must leave the Facility clean of all rubbish and in the same condition as it was in prior to use by the Hirer.

6.4 No improvements

- (a) No improvements can be constructed on or made to the Facility by the Hirer without the prior written consent of the Company. If any improvements are made to the Facility by the Hirer, it must remove those improvements upon request by the Company and make good all damage arising from the improvements or the removal of the improvements.
- (b) If the Hirer does not remove improvements or make good any damage as referred to in paragraph (a) above, the Company may remove those improvements or repair that damage and the Hirer will pay to the Company any costs incurred by the Company in that regard (as a liquidated debt) within 7 days of receipt of an invoice from the Company for those costs.

6.5 Hirer's Equipment

- (a) The Hirer must not leave equipment at the Facility without obtaining a written permit to occupy from the Company.
- (b) If the Hirer leaves equipment at the Facility the equipment shall be entirely at the Hirer's risk and the Hirer hereby releases the Company from any claim in relation to loss or damage to the equipment.

7. Compliance with Laws and Port Requirements

7.1 General

The Hirer must comply with all Laws and Port Requirements relating to the use of the Facility or the Port of Brisbane and obtain any relevant approvals required under any Laws or Port Requirements.

7.2 Environmental Compliance

- (a) The Hirer, prior to using the Facility, must carry out an environmental risk assessment to identify all potential risks to the environment posed by their operations at the Facility. The risk assessment must identify all appropriate controls that will be implemented in order to minimise risk to the environment.
- (b) Upon request, the Hirer must provide the Company a copy of the environmental risk assessment and any audits or reviews relevant to the implementation of the nominated controls.
- (c) The Hirer, where undertaking bulk material handling (as defined under the *Environmental Protection Regulation 2008*), must obtain an Environmental Authority for ERA 50 – Bulk Material Handling from the Queensland Department of Environment and Science. A copy of the Environmental Authority must be provided to the Company on request. The Company will hold a copy of submitted documentation on file. If any documentation is amended, a copy of the new permit should be submitted to the Company
- (d) The Hirer, where undertaking bulk material handling, must comply with all Conditions of their Environmental Authority for ERA 50 – Bulk material handling.
- (e) If the Hirer is aware of a breach of any Conditions of their Environmental Authority for ERA 50 – Bulk material handling, the Hirer should inform both the Company and the Department of Environment and Science as soon as practical after becoming aware of the breach.

- (f) The Hirer must comply with all Local, State and Federal Laws and Regulations, for example, the disposal of regulated wastes.
- (g) On request, the Hirer must provide the Company of any reviews or audits relevant to the Environment Authority for ERA 50 – Bulk material handling.

7.3 Biosecurity Compliance

- (a) The Hirer must comply with all relevant biosecurity legislation, including, without limitation, the Biosecurity Act 2015 (Cth) and the Biosecurity Regulation 2016 (Cth).
- (b) Without limiting paragraph (a) above:
 - (i) in accordance with the Biosecurity Regulation 2016 (Cth), the Hirer must have in place the following:
 - (A) procedures, infrastructure and equipment to ensure that an immediate response to a biosecurity incident or suspected risk is made by the Hirer; and
 - (B) procedures for managing waste goods subject to biosecurity control.
 - (ii) the Hirer is to review the guidance material issued from time to time by the Department of Agriculture and Water Resources in the *First point of entry biosecurity standards* (ports) to ensure that appropriate documentation and controls are in place prior to commencing operations.
 - (iii) the Hirer must have in place a Biosecurity Incident Response Plan that demonstrates how the Hirer's operations meet the requirements of the relevant biosecurity legislation. This plan must be made available to the Company upon request;
 - (iv) the Hirer must nominate a responsible contact for liaising with the Department of Agriculture and Water Resources during a biosecurity incident response;
 - (v) the Hirer must ensure that all staff who are involved in facilitating international arrivals are aware of any biosecurity risks arising from the Hirer's operations and their reporting requirements pursuant to sections 58(4)(a) and (b) of the *Biosecurity Regulation 2016* (Cth). The relevant staff must complete the Seaports FPOE Biosecurity Awareness eLearning package developed by the Department of Agriculture and Water Resources prior to commencing operations at the Facility.
- (c) When developing its Biosecurity Incident Response Plan in accordance with paragraph (b)(iii) above, the Hirer may take into account the First Point of Entry Biosecurity Incident Response Kits provided by the Company at each of the common user facilities for the Hirer's use in the event of a biosecurity incident. The kits each contain the following:
 - (i) general spill kit, including a broom, shovel, buckets and absorbent litter;
 - (ii) disinfectant approved by the Department of Agriculture and Water Resources;
 - (iii) commercial insect knockdown spray; and
 - (iv) tarpaulins.

- (d) The Hirer must inform the Company immediately upon becoming aware of:
 - (i) any breach by the Hirer of any relevant biosecurity legislation, including, without limitation, the Biosecurity Act 2015 (Cth) or the Biosecurity Regulation 2016 (Cth); and
 - (ii) any biosecurity incident or suspected risk.

8. Details of Facility

The Company makes no representation as to the following matters, and the Hirer will make its own enquiries in that regard:

- (a) the Utility Services that may be available at the Facility;
- (b) the access to, or the physical or other specifications of the Facility; or
- (c) the stevedoring or other services that may be available at the Facility.

9. Use of Stevedores and other Contractors

- (a) The Hirer must use best endeavours to ensure that all stevedores and other contractors which it engages or uses at the Facility are reputable and have sufficiently experienced personnel to properly undertake their duties at the Facility.
- (b) The Hirer must use best endeavours to ensure that all stevedores and other contractors which it engages or uses at the Facility operate under any Conditions of a Development Permit and any management plans relevant to the operations.

10. Directions of Company

The Hirer must promptly comply with all reasonable directions from the Company and its agents, employees, contractors and agents from time to time in relation to use of the Facility.

11. Impact on other Persons

The Hirer must:

- (a) not create any unnecessary interference, or any obstruction or danger to any other user of the Facility;
- (b) not interfere in any way with users of any area, wharf or other facilities within the Port of Brisbane;
- (c) prevent nuisance and unreasonable noise and disturbance in using the Facility; and
- (d) ensure that it co-ordinates its activities with other users of the Facility and the Port of Brisbane.

12. Change of Facility

12.1 Change of Facility

Subject to clause 12.2 below, the Company may at any time change the Facility to be used by the Hirer by giving reasonable notice to the Hirer.

12.2 Alternative to be Comparable

The Company may only change the Facility if the alternative facility has substantially the same features (relevant to the Hirer's proposed use) as the Facility originally proposed for use by the Hirer.

13. Information from Hirer

The Hirer will promptly provide the Company with all information reasonably desirable or necessary to enable the efficient use of the Facility and co-ordination with other users, including without limitation, any changes to the Time of Arrival or Time of Departure in the Particulars, and full details of any item or substance on the Vessel or which will be handled at the Facility of a hazardous, toxic or dangerous nature.

14. Termination

14.1 Breach by Hirer

The Company may terminate the use by the Hirer of the Facility at any time by written notice given to the Hirer if the Hirer is in material breach of these Terms and Conditions.

14.2 Force Majeure

The Company may terminate the use by the Hirer of the Facility at any time if it considers that an Event of Force Majeure is such that it will prevent the Company from providing the Facility for use by the Hirer within the time period originally contemplated by the parties.

14.3 Unreasonable Delay in Time of Arrival

The Company may terminate the use by the Hirer of the Facility at any time by written notice given to the Hirer if the Hirer has not arrived within a reasonable time after the Time of Arrival.

14.4 Company not Liable

The Hirer will have no Claim against the Company including without limitation, for any Loss which may be suffered by the Hirer, as a result of a termination by the Company under this clause.

15. Force Majeure

15.1 Force Majeure

If the Company is prevented or delayed in providing use of the Facility by an Event of Force Majeure then for so long as that situation continues, the Company is excused from providing use of the Facility to the extent that it is so prevented or delayed.

15.2 Company Not Liable

The Hirer will have no Claim against the Company including without limitation, for any Loss which may be suffered by the Hirer, as a result of any delay as referred to in this clause.

16. GST

16.1 Definitions

- (a) In this clause:
 - (i) **GST** means the goods and services tax imposed by the GST Law together with any related interest, penalties, fines or other charge.
 - (ii) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
 - (iii) **GST Law** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999.
- (b) Words defined in this clause which are not otherwise defined in these Terms and Conditions will have the meaning given in the GST Law.

16.2 GST to be Added to Amounts Payable

Unless otherwise expressly referred to in these Terms and Conditions, if GST is payable by a party on a Taxable Supply made under, by reference to or in connection with these Terms and Conditions, then the party paying the Consideration must also pay the GST Amount as additional Consideration.

16.3 Timing of Payment of GST Amount

The GST Amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and
- (b) the date 5 Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

16.4 GST for Reimbursements

If under another provision of these Terms and Conditions a party (the Supplier) is entitled to be reimbursed by the other party to these Terms and Conditions (the Recipient) for an amount paid by the Supplier to a third party, the amount to be reimbursed will be the amount paid by the Supplier less any amounts in respect of GST included in the Consideration provided by the Supplier to such third party for which the Supplier obtains an Input Tax Credit, whether or not such amounts of GST are separately identified by the third party to the Supplier. The Supplier will use reasonable endeavours to ensure that it obtains an Input Tax Credit where it reasonably considers that it is entitled to such an Input Tax Credit.

17. Assignment and Subcontracting

17.1 Company May Assign

The Company may assign or novate all or part of its rights or obligations under these Terms and Conditions to any person who operates or maintains the Facility.

17.2 Subcontracting by Company

The Company may subcontract any of its obligations under these Terms and Conditions.

17.3 No Assignment by Hirer

The Hirer may not assign or novate any of its rights or obligations under these Terms and Conditions without the prior written consent of the Company.

18. Notices to Company

All notices and other communications to the Company in relation to these Terms and Conditions must be in writing and sent by mail with postage prepaid, by personal delivery or by email as follows:

Name:	Port of Brisbane Pty Ltd
Address:	Port Office, 3 Port Central Avenue Port of Brisbane QLD 4178
Attention:	Manager – Port Operations
Email:	port.ops@portbris.com.au

or to such other address or person as the Company may specify by notice in writing to the Hirer from time to time.

19. General

19.1 Warranty of Authority

For the avoidance of doubt, if a person signs these Terms and Conditions as agent, attorney or representative for the Hirer (the **Agent**) they are not themselves the Hirer, and they are not liable to carry out the obligations of the Hirer under these Terms and Conditions. An Agent does however warrant to the Company that as at the date of signing that person had full authority to execute the Terms and Conditions and bind the Hirer to these Terms and Conditions.

19.2 Entire Agreement

These Terms and Conditions constitute the entire agreement between the parties relating in any way to the subject matter of these Terms and Conditions.

19.3 Proper law and Jurisdiction

These Terms and Conditions are governed by and will be construed in accordance with the Laws of Queensland. They are deemed to have been entered into in Brisbane, Queensland. Any action relating to these Terms and Conditions may be instituted and heard in a court of competent jurisdiction in Brisbane, and each party irrevocably submits to the non-exclusive jurisdiction of such

court for the purpose of any such action and irrevocably waives any objection to having such action brought in such court, or to claim that the action has been brought in an inconvenient forum.

19.4 Variations and Waivers to be in Writing

A variation or waiver of any provision of these Terms and Conditions will be of no effect unless it is by deed in writing signed by the parties or (in the case of a waiver) by the party giving it.

19.5 Execution by some parties only

Where the Hirer may be constituted by more than one party, the failure by one or more of those parties to execute these Terms and Conditions does not relieve any of the other parties who constitute the Hirer of any of their obligations, and those other parties will be bound by these Terms and Conditions.

19.6 Severance

Any provision of these Terms and Conditions which is void, illegal or otherwise unenforceable, will be severed to the extent permitted by law without affecting any other provision and, if reasonably practicable, will be replaced by another provision of economic equivalence which is not so void, illegal or unenforceable.

20. Lease

The Hirer acknowledges and confirms that:

- (a) this licence is dependent on the existence and continuance of the Lease;
- (b) the Hirer will not do anything to cause the Company to breach the Lease;
- (c) this licence ends if the Lease is terminated; and
- (d) the rights and obligations of the Company and the Hirer under this licence are in many respects governed by and subject to compliance with the provisions of the Lease.

21. Definitions and Interpretation

21.1 Definitions

The following definitions apply unless the context requires otherwise.

Booking Form means the Booking Form attached to the front of these Terms and Conditions.

Bulk materials means as defined under the *Environmental Protection Regulation 2008*

Business Days means a day other than a Saturday, Sunday or public holiday in Brisbane.

Common User Port Facility Charges means the document of that name published from time to time by the Company, which can be viewed at the Website, and which is deemed to form part of these Terms and Conditions.

Common User Port Facility Rules means the document of that name published from time to time by the Company, which can be viewed at the Website.

Company means Port of Brisbane Pty Ltd (ACN 143 384 749).

Claim means any claim, demand, action, suit or proceeding whether under contract, tort or otherwise.

Event of Force Majeure means the occurrence of any event or circumstance beyond the reasonable control of the Company, including without limitation:-

- (a) war (declared or undeclared), civil commotion, military action, act of sabotage or vandalism;
- (b) act or potential or threatened act of terrorism which could impact in any way on the Facility or the Port of Brisbane;
- (c) strike, lockout, blockade, picketing action or industrial action, dispute or disturbance of any kind;
- (d) act or omission of a Government Authority, including any change of Law;
- (e) act of God;
- (f) storm, tempest, fire, flood, earthquake or other natural calamity;
- (g) breakdown or failure of any plant, services, machinery or equipment, or unavailability of essential goods, supplies or services; or
- (h) any event resulting in an inability to allow use of the Facility, or resulting in an interruption or delay in permitting use of the Facility.

Facility means the Berth Facility identified in the Particulars. If specified in the Particulars, it includes the Passenger Transit Terminal located on Fisherman Islands.

Government Authority means the crown, a minister, a government or government department, a Company or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court and any officer, employee or agent of those entities or persons.

Hirer means each party executing the Booking Form, other than the Company.

Laws means any statutes, regulations, by-laws, policies or ordinances of any Government Authority, and any principles of law or equity established by decisions of Australian Courts, and any requirements of any Government Authority made or arising pursuant to any of these matters.

Lease means the lease between Brisbane Port Holdings Pty Limited and the Company over the Port of Brisbane and which includes the Facility.

Loss means any damage, loss (including direct or consequential loss, or loss of profits), liability, compensation, cost, charge, expense or other obligation whether arising under contract, tort or otherwise, and whether arising directly or indirectly.

Particulars means the Particulars noted in the Booking Form.

Permitted Use means the berthing of the Vessel and, where relevant, the exchange of cargo.

Port of Brisbane means the Port of Brisbane as defined from time to time by any Queensland Law.

Port Requirements means any policies, rules, regulations or notices relating to the use of the Facility or the Port of Brisbane, enacted or published from time to time by any Government Authority, by the Company, or by any other entity with any control or authority in relation to all or part of the Facility or the Port of Brisbane, including the Common User Port Facility Rules, and procedures enacted or published by the Harbour Master.

Terms and Conditions means these Common User Port Facility Terms and Conditions.

Utility Services means any utility services provided at the Facility including without limitation water, electricity, gas, telephone or computer connections.

Website means www.portbris.com.au, or any other website used by the Company as its primary website from time to time.

21.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person, Company, trust, partnership, unincorporated body or other entity includes any of them.
- (d) A reference to an agreement or document (including, without limitation, a reference to these Terms and Conditions) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Terms and Conditions or that other agreement or document.
- (e) A reference to a party to these Terms and Conditions or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to **dollars** and \$ is to Australian currency.
- (h) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (i) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (j) Nothing in these Terms and Conditions is to be interpreted against a party solely on the ground that the party put forward these Terms and Conditions or any part of them.

21.3 Consents or approvals

If the doing of any act, matter or thing under these Terms and Conditions is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless express provision to the contrary has been made.

21.4 Terms defined in Particulars

Words which are defined in the Particulars have the meanings referred to in those Particulars.