



# STANDARD TERMS OF TRADE

Port Otago Limited, Fiordland Pilot Services Limited and other Port Otago subsidiaries (**Port Otago**) own and operate wharves, berths, waterways, plant and equipment at Port Chalmers, Dunedin and provide marine services, wharfage services, cruise ship pilot services and a range of other port-related services at Port Chalmers and Fiordland (**Services**).

These Standard Terms of Trade (**Terms**) apply to any person that Port Otago agrees to provide Services to, including any agent, employee, subcontractor or representative of that person (**User**). By placing an order for Services, the User agrees to be bound by these Terms.

## 1. Definitions and Interpretation

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1.1 In these Terms, unless the context otherwise requires:

**Cargo** means any goods, merchandise or other property (whether or not within a Container) in respect of which Port Otago provides or is requested to provide Services.

**Cargo Operation Procedures** mean the procedural and other documents that outline aspects such as hours of operation and other relevant matters for operations at the Port, as available on Port Otago's Website.

**Container** means any article of transport equipment (including lift van, movable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation (**ISO**) and having standard ISO means of top corner lifting.

**Liability Table** means the liability table set out in Schedule 1.

**Port Otago's Website** means the website [www.portotago.co.nz](http://www.portotago.co.nz), as updated from time to time.

**Port Representative** means the GM Customer of Port Otago or their nominated representative from time to time.

**Port Otago** means Port Otago Limited and includes its subsidiaries, employees, agents and Subcontractors.

**Port** means the wharves of Port Chalmers, Dunedin and all land and facilities owned by Port Otago.

**Services** mean the marine services, wharfage services, cruise ship pilot services and all other port-related and other services provided by Port Otago from time to time, as more specifically set out in the Schedule of Charges.

**Schedule of Charges** means the schedule of charges on Port Otago's Website, as amended from time to time

**Storage** means the area of open land and sheds used to accumulate Cargo.

**Subcontractor** includes direct or indirect subcontractors and their respective employees and agents.

**User** means any person for whom Port Otago provides or is to provide Services, who requests Port Otago to provide Services or who is (or who appears on reasonable grounds to be) an agent, employee, Subcontractor or representative of any such person. User will include without limitation the owner, lessee, charterer, operator or manager of any vessel, a road or rail carrier, a shipper, stevedore or any combination of those persons jointly.

1.2 In these Terms, unless the context otherwise requires, references to:

- (a) A person includes any individual, company, trust, partnership or other entity or association recognised by law, whether incorporated or unincorporated.
- (b) Any party includes that party's executors, administrators, or permitted assigns; or if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
- (c) Statutory provisions include those provisions as amended, re-enacted or replaced from time to time.
- (d) Any amounts, including in the Liability Table, are in New Zealand dollars and are GST inclusive.

## 2. Fees

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2.1 The fees payable for the Services are set out in the Schedule of Charges (as at the time the relevant Service is provided).

## 3. Payment

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- 3.1 Subject to clause 3.2, the User shall pay Port Otago for the Services, in full, in advance of the Services being provided.
- 3.2 If the User has been granted a credit account with Port Otago, payment for the Services shall be made by the User on or before the 20<sup>th</sup> of the month following invoice. If the User disputes in good faith the whole or any portion of any invoice, the User shall pay the portion not in dispute.
- 3.3 Where the User fails to make payment in accordance with clause 3.1 or 3.2 (as is applicable to the User), Port Otago, at its discretion may:
  - (a) charge default interest of 2.5% per month on overdue accounts; and
  - (b) refuse to provide further Services to the User.
- 3.4 The User shall be liable for all costs, expenses or fees reasonably incurred by Port Otago (including costs on a solicitor client basis) in recovering overdue accounts, including any costs incurred by Port Otago in selling any goods under clause 7.1(g).

## 4. User Warranties

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- 4.1 The User warrants that while Port Otago provides the Services to the User that:
  - (a) it has complied, and will continue to comply, with all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities including the Maritime Security Act 2004 and the Customs and Excise Act 2018;
  - (b) it will conduct its business in accordance with best industry practice;
  - (c) its vessel is in all respects seaworthy; and
  - (d) it will not do or omit to do anything that might render its vessel unseaworthy.

4.2 The User will use:

- (a) such tug power as Port Otago deems necessary for vessels arriving, departing or shifting at a Port;
- (b) the number of line handlers Port Otago determines for a vessel arriving, departing or shifting at a Port; and
- (c) such utilities as Port Otago deems necessary when the vessel is berthed at a Port.

4.3 Port Otago has established procedures in respect of its operations. Port Otago agrees to use its best endeavours to keep the User informed of such procedures. To the extent that Port Otago's procedures are documented, copies of the same can be viewed at Port Otago's offices at Port Chalmers. The User agrees to comply with all Port Otago procedures advised to the User, including on Port Otago's Website.

## 5. Verified Gross Mass

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5.1 The User will provide Verified Gross Mass (**VGM**) information for all export bound containers from road, rail or coastal transshipment vessels, and for coastal containers via the lift-on/lift-off vessel, before the containers are received onto a Port Otago container terminal (except for containers that Port Otago has packed and expressly agreed with the User to provide a VGM weighing service for). There is an online pre-advising portal available to the User on Port Otago's Website to provide this information.

5.2 By ticking the pre-advice box provided through the on-line pre-advising portal on Port Otago's Website, the User certifies that the weight is a VGM weight as calculated in accordance with either Method 1 or Method 2 (as laid out in the International Convention for the Safety of Life at Sea 1974 (**SOLAS Convention**) at Chapter VI, part A, regulation 2 and described on Port Otago's Website), and that the User is a deemed "authorised signatory" of the shipper for the purposes of responsibility under the SOLAS Convention and the Maritime New Zealand Rule 24B – Carriage of Cargo. The User will be denied entry to a Port without the vessel's VGM (except for containers that Port Otago has packed and expressly agreed with the User to provide a VGM weighing service for).

## 6. Berthage Services

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6.1 Where the Services being provided to the User include berthage:

- (a) Berthage will be subject to the absolute right of Port Otago to require the User's vessel that is berthed at any wharf to be moved or relocated to another berth in the Port, or to vacate the allocated berth and to anchor at sea if directed by Port Otago. Any such requirement will be carried out immediately by the User through the Master of the relevant vessel.
- (b) Port Otago will use reasonable endeavours to provide a berth for the User's vessel on a date convenient to the User's sailing schedules.
- (c) Port Otago at its sole discretion may deny access to berthage to any User who fails to comply with these Terms, relevant laws, security, traffic, health and safety management plans or any other plans implemented by Port Otago and notified to the User.
- (d) Port Otago excludes all liability for any loss, damage, loss of profits or revenue, or other liability whatsoever suffered by the User (whether direct or indirect) if for any reason Port Otago does not provide berthage as requested by the User.

## 7. Cargo Services

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7.1 Where the Services being provided to the User include cargo handling, Storage services and facilities:

- (a) The User will adhere to the Cargo Operations Procedures that govern the receipt and handling of Cargo through the Port.
- (b) The User will ensure that all Cargo and Containers received at or delivered from a Port are:
  - i. properly packed and labelled;

- ii. in every way safe for carriage by sea or road or rail;
  - iii. do not exceed their rated gross capacity;
  - iv. fully insured;
  - v. in a fit and proper condition to be handled or otherwise dealt with in the normal course of business; and
  - vi. compliant with all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities.
- (c) The User will:
- i. comply with any rules and directions made by Port Otago in respect of the handling of dangerous, hazardous and noxious goods;
  - ii. notify Port Otago on or before the arrival at the wharf of dangerous, hazardous or noxious export Cargo or other export Cargo requiring special care;
  - iii. give Port Otago at least 48 hours advance notice prior to the vessel's arrival of dangerous, hazardous or noxious import (including transshipment) Cargo or other import (including transshipment) Cargo requiring special care;
  - iv. comply with all statutes, statutory regulations or other legal requirements that may be in force whether presented by the New Zealand Government or any international agency or institution and also with rules, requirements or procedures set by owners of Cargo as appropriate and in addition comply with all such procedures and rules as are good operating practice; and
  - v. ensure all activities to be undertaken at any Port have the prior written approval of the Port Representative.
- (d) If Port Otago does not have knowledge of the arrival of Cargo of an inflammable, explosive, or dangerous nature or character, Port Otago shall not be liable and such Cargo can be destroyed or removed or rendered harmless without compensation to the User and the User shall indemnify Port Otago against all loss, damage or expense arising out of such Cargo being tendered for services for Port Otago.
- (e) If any User fails to remove any Containers or Cargo from a Port within the time allotted as detailed in the Schedule of Charges then Port Otago may at its sole and unfettered discretion handle, remove, warehouse or otherwise deal with such Containers and Cargo at the entire risk and expense of the User. If any Containers or Cargo are unclaimed for a reasonable period of time, or whenever in Port Otago's opinion the Cargo will become deteriorated, decayed or worthless, Port Otago may at its discretion and without notice to the User, and without prejudice to any other rights which it may have under these Terms or at law and without any responsibility attaching to Port Otago, sell abandon, or otherwise dispose of such Cargo or Containers solely at the risk and expense of the User.
- (f) The Storage facilities operated by Port Otago are managed by Port Otago. Access to and use of these Storage areas requires that receiving and delivery be undertaken by Port Otago or its authorised nominee.
- (g) In addition to any liens Port Otago may have at law (including under the Contract and Commercial Law Act 2017) all goods and other property of the User shall, immediately when they come into possession of Port Otago or any Subcontractor of Port Otago, be subject to a particular and general lien and right of detention for all amounts due to Port Otago by the User or the consignee, consignor or owner, whether in respect of such goods or otherwise. If any amounts due to Port Otago are not paid within 14 days after notice has been given to the person from whom the amounts are due that such goods are being detained, then those goods may be sold by auction or otherwise at the sole discretion of Port Otago and at the expense of such person, and the net proceeds applied in or towards the satisfaction of any such indebtedness. If on such sale the goods or proceeds fail to cover the amount due and the costs incurred then Port Otago shall be entitled to recover the deficit from the User out of all Cargo and Containers presented to Port Otago by the User in future. Any such sale is without prejudice to any other rights and remedies Port Otago may have under these Terms or at law.

If at any time payment from the User is in arrears, any subsisting obligation of Port Otago shall be suspended and Port Otago shall not be under any liability to the User during such period.

- (h) Port Otago may retain possession of and prohibit from leaving its Port any Cargo or vessel until payment of all charges in respect of any Cargo or vessel, or any previous Cargo or vessel owned by the same person, has been paid. For the purposes of this clause, Cargo or vessels owned by a receiver of the owner or an associated person of the owner (as defined in Subpart YB of the Income Tax Act 2007) shall be deemed to be owned by the User.
- (i) As between Port Otago and the persons liable to pay charges, Port Otago's lien and right to detain goods or vessels at law and under these Terms shall apply notwithstanding that such goods may have left or never have been in Port Otago's possession.
- (j) The User indemnifies Port Otago in respect of all and any liability which Port Otago might incur under all applicable laws, orders, regulations, or other requirements of the New Zealand Government and all other local or governmental authorities whatsoever (including the Amended Hague Rules set out in Schedule 5 of the Maritime Transport Act 1994) as a result of the operation of these Terms.
- (k) Port Otago may release the User's goods to any person holding a delivery order (whether in conventional, electronic or any other customary form) entitling it to uplift the User's goods. Port Otago shall not be responsible for verifying the delivery order and excludes all liability for any loss suffered by the User in the event that the delivery order is incorrect or fraudulent.
- (l) The User indemnifies Port Otago against all liability for duty, sales tax, penalties or other charges in respect of the Cargo and Containers and against all costs and expenses incurred in connection with any such liability or claim.

## 8. Liability regime

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### Liabilities of Port Otago

8.1 Subject to clauses 8.2 (Maximum Liabilities of Port Otago), 8.3 (User's Liability and Indemnity), 8.4 (Exclusions of Liability) and 8.8 (Notifications of Claims), Port Otago will only be liable for physical loss or damage (and not for any indirect, special or consequential loss or damage or lost profit or revenue) caused by the negligence of Port Otago, its employees, agents or Subcontractors to:

- (a) the User's vessel and/or equipment;
- (b) the User's Containers;
- (c) the User's Cargo; and
- (d) ancillary equipment (including clip-on refrigeration units, refrigeration towers, generators, trailers and chassis) owned by the User or any other persons.

### Maximum Liabilities of Port Otago

8.2 Notwithstanding any other clause in these Terms:

- (a) the maximum liability of Port Otago and its employees, agents and Subcontractors (together) to the User or any person claiming through the User together whether in contract, tort (including negligence) or otherwise (**Maximum Liability**) is the Maximum Liability amount set out in the Liability Table;
- (b) the maximum aggregate liability of all claims arising out of or in relation to any one event (**Maximum Aggregate Liability**) is the Maximum Aggregate Liability amount set out in the Liability Table;
- (c) the excess of any claim which sum will be deducted from the amount payable by Port Otago for any loss or damage will be in accordance with the Liability Table; and
- (d) Port Otago will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other amounts whatsoever for any injury or loss or liability caused in any manner

whatsoever to any person or property, in respect of the sum claimed or the aggregate of sums claimed under any cause of action or entitlement (including negligence) of Port Otago, its employees, agents or Subcontractors in respect of any one event or interconnected series of events, beyond the maximum aggregate sum of \$2,000,000.

### **User's Liability and Indemnity**

8.3 The User indemnifies Port Otago in respect of any loss, liability, expenses, claims, demands, actions, proceedings suffered by or commenced against Port Otago or damage caused by a breach of these Terms by, or the fault or negligence of, the User, its employees, agents or Subcontractors.

(a) **Indemnity against Joint and Several Liability:** In this clause:

- i. a reference to "**Maritime Performing Party Articles**" is a reference to Article 19 and/or Article 20 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (**Rotterdam Rules**), or statutory or contractual provisions of similar effect;
- ii. "**liability in relation to goods**" includes, without limitation, liability for loss of, damage to, or delay in delivery of goods, and liability for any cost of defending claims, actions or demands alleging such liability (whether or not such liability is proven); and
- iii. terms otherwise have the same meanings as in the Rotterdam Rules.

(b) The User indemnifies Port Otago against all liability in relation to goods except:

- i. if Maritime Performing Party Articles do not apply in relation to such liability; or
- ii. to the extent that the User can prove that Port Otago would have had such liability even if Maritime Performing Party Articles did not apply.

The indemnity in this clause 8.3 is in addition to and not in substitution for any indemnity to which Port Otago may be otherwise entitled at law, under these Terms or under any other contract.

### **Exclusions of Liability**

8.4 Notwithstanding clauses 8.1 and 8.2, Port Otago and its employees, agents and Subcontractors will not be liable in any circumstances whatsoever:

- (a) where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the User to comply with any of these Terms;
- (b) for any demurrage, delay or other costs of transportation of any kind howsoever caused including by the negligence of Port Otago, its employees, agents or Subcontractors but Port Otago will make every reasonable endeavour by liaison with Users, their carriers and others to achieve the orderly transportation of Cargo and Containers to or from the Port;
- (c) to pay any costs, charges, expenses, damages, compensation or any other amounts whatsoever for any injury or loss arising out of a failure by any person, whether or not an agent, employee, or Subcontractor of Port Otago to properly and adequately secure any Cargo or Container on any rail or road vehicle, or on any other form of transport;
- (d) for any costs, charges, expenses, damages, compensation or any other amounts whatsoever for any injury or loss arising from any failure to inspect Containers, any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any Container. Port Otago undertakes no responsibility to inspect Containers for damage or to report any damage to the User but will make every reasonable endeavour to refer all apparent damage to Containers to the User and to take any appropriate step necessary to protect the contents of any Container noted to be damaged;
- (e) for indirect, special or consequential loss or damage or lost profits or revenue howsoever caused including the negligence of Port Otago, its employees, agents or Subcontractors;

- (f) for any direct or indirect consequences of Port Otago's inability to provide services or facilities or facilities or equipment on demand;
- (g) where the Towage Conditions so provide;
- (h) where liability might otherwise be attributable to Port Otago but New Zealand law excludes Port Otago's liability, or imposes liability on another party or parties (including, without limitation, circumstances in which Port Otago provides pilots); or
- (i) where any loss, damage, expense, accident or injury to any property or person has arisen or resulted from unseaworthiness caused by want of due diligence by the User to make its vessel seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and all other parts of the vessel in which Cargo is carried fit and safe for their reception, carriage and preservation in accordance with the provisions of the Amended Hague Rules as set out in Schedule 5 of the Maritime Transport Act 1994.

### **The User Indemnifies Port Otago Where Liability Excluded or Liability is in Excess of Limits**

- 8.5 The User holds Port Otago, its employees, agents and Subcontractors free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and court expenses of Port Otago), damages, compensation or other amounts whatsoever (**Amount**) in respect of all loss, liability, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent that the liability of Port Otago or its employees, agents or Subcontractors for the Amount has been excluded under clause 8.4 and clause 8.5 or any other clause hereof and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability or Overall Limit on Liability under clause 8.2.
- 8.6 Where Port Otago is a 'contracting carrier' as defined in the Contract and Commercial Law Act 2017, these Terms shall be "at limited carrier's risk".
- 8.7 Port Otago shall be under no duty to supervise, check or issue directions to the User and the User is solely responsible for ensuring that the relevant laws are complied with.

### **Notification of Claims**

- 8.8 For loss of or damage to Cargo, Port Otago may only be held liable under these Terms if the User gives notice in writing of the loss or damage to Port Otago within 10 days after the delivery of the Cargo or the date the Cargo should have been delivered to the consignee.
- 8.9 For all other loss, damage, expense, accident or injury Port Otago may only be held liable under these Terms if notice in writing is given to Port Otago by the User within 30 days after the date when the loss, damage, expense, accident or injury occurred.
- 8.10 If no such notice is given within the above periods any claim will be deemed waived and absolutely barred.

## **9. Towage and Pilotage**

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- 9.1 **Towage:** The United Kingdom Standard Conditions for Towage and Other Services (as amended or replaced from time to time) (**Towage Conditions**) apply where the Services provided to the User include tug, towage, lineboat or similar services. The expression "whilst towing" as defined in the Towage Conditions shall also include any time where any tug (or lineboat or other such vessel) operated by Port Otago is alongside the User's vessel, whether or not that tug is in a position to receive orders direct from the User's vessel to commence pushing, holding, moving, escorting or guiding the User's vessel or to pick up ropes or lines. The User is deemed to be familiar with the Towage Conditions, however Port Otago will make a copy available on request.
- 9.2 **Pilotage:** Where the Services provided to the User include pilotage services, pilots shall cease to be the employees of Port Otago and shall be engaged as an agent of the owners of the vessel receiving the pilotage services, and shall be under the control of the master of that vessel. Port Otago will not be liable for neglect or want of skill of the pilot. Pilotage services include any services or advice provided by the pilot while on board the vessel to be piloted, from on board the pilot launch, from on board any other vessel involved in the pilotage and from ashore.

## 10. Benefits of Bills of Lading and Establishment of Bills of Lading

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- 10.1 Without prejudice to the provisions and limitations contained in these Terms, the User shall incorporate in its bills of lading or other contracts of carriage to be issued on its Cargo and Containers, or Cargo carried or to be carried on any of the User's vessels, a clause to the effect that Port Otago, its employees, agents or Subcontractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein.
- 10.2 Where any Cargo or Container is received at or delivered from Port Otago's operations areas before the establishment of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage (and in particular as set out in clause 10.1) will apply in all respects and will bind all persons interested in the Cargo or Container as though such bill of lading or contract of carriage had then been established.

## 11. Health & Safety

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- 11.1 Nothing in these Terms will affect the User's responsibility for the safe navigation and proper management of a vessel including, without prejudice, the vessel's stowage, trim and stability during the operations of berthing, mooring, unmooring and unberthing.
- 11.2 For the purposes of this clause 11, worker means any employee, director, contractor, Subcontractor or agent of the User or any other person (including their employees, directors, contractors, Subcontractors, agents or workers) who assists the User.
- 11.3 The User and its workers shall comply with the Health and Safety at Work Act 2015 (including all regulations and other delegated legislation made under that Act) in the course of using a Port.
- 11.4 The User will ensure its workers:
- (a) are suitably qualified, experienced and appropriately trained, in health and safety matters (including risk assessment and hazard identification) so as to perform their role safely and responsibly;
  - (b) are not required to carry out any unsafe work, and do not carry out any unsafe work;
  - (c) ensure any third parties who may be affected by the performance of the actions by the User are kept safe; and
  - (d) are made familiar with these Terms.
- 11.5 The User will engage, cooperate and consult with Port Otago on health and safety matters arising in the course of using the Services on a proactive basis. The User will report any notifiable events (as defined by the Health and Safety at Work Act 2015) to Port Otago.
- 11.6 The User will have in place workplace health and safety systems, processes and procedures. The User will regularly update and audit those systems, processes and procedures to reflect ongoing compliance with industry best practice. Such systems, processes and practices will be in place regardless of whether they are developed, required or recommended by Port Otago.
- 11.7 Port Otago may, at any time, raise concerns with, or audit, the User's health and safety systems, processes and procedures.
- 11.8 The User will follow any reasonable directions of Port Otago regarding health and safety.

## 12. User Environmental Warranties

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- 12.1 The User warrants that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation under the:
- (a) Resource Management Act 1991 (or which is likely to result in the issue of an abatement order to enforcement proceedings under the Resource Management Act 1991);



- (b) Maritime Transport Act 1994; and
- (c) Hazardous Substances and New Organism Act 1996

12.2 If at any time the User becomes aware that it is in breach, or is likely to be in breach, of clause 12.1, it shall immediately notify Port Otago and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.

### 13. Termination

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13.1 Port Otago may suspend or terminate access to the Services by notice in writing to the User if the User:

- (a) does not fulfill any of its obligations under these Terms and either:
  - i. the default is material and cannot be remedied; or
  - ii. the default can be remedied but has not been so remedied 14 days after the User receives written notice of the default;
- (b) commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (c) becomes liable to be placed in liquidation, has an application for it to be placed in liquidation presented or advertised, has a liquidator appointed or passes or purports to pass a resolution for it to be placed in liquidation, or has a receiver, manager or statutory manager (or similar) appointed;
- (d) cannot pay its debts when they fall due, or is deemed not to be able to pay them in accordance with section 287 the Companies Act 1993; or
- (e) suspends payment to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a scheme of arrangement with them;
- (f) transfers or disposes of a substantial part of its assets for inadequate consideration, or threatens to do so;
- (g) has an order made against it for more than \$10,000 against its property or assets; or
- (h) has a final judgment for more than \$10,000 against it which remains unpaid for 14 days.

13.2 Any suspension or termination of access to the Services under these Terms will be without prejudice to the rights of either party arising before termination.

13.3 Nothing in this clause 13 affects the operation of any clauses in these Terms which are expressed or implied to have effect after termination.

### 14. Force majeure

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14.1 Port Otago will not be liable for any complete or partial failure to perform or delay in performing or incorrect performance of any Services arising out of or contributed to by any event beyond Port Otago's reasonable control (including, without limitation, any act of God, storm, flood, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, war, civil war, hostilities, acts of terrorists, breakdown of or accident or failure of any crane, plant, machinery, equipment or other facility from any cause whatsoever, improper or insufficient or erroneous marking or addressing of any Cargo or Container, inherent vice or quality of goods).

### 15. Dispute Resolution

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15.1 Any dispute or disagreement between the parties in relation to these Terms where the amount in issue, or the value of property in issue, or a combination of the amount in issue and the value of property in issue, is \$100,000 or less will be submitted to arbitration within 30 days of notice of the dispute being given by one party to the other. The arbitration shall be by a single arbitrator agreed upon by the parties (or if they fail to agree, as appointed by

the President for the time being of the Otago Branch of the New Zealand Law Society or his or her nominee). The arbitration shall be carried out in Dunedin and the language of the arbitration shall be English. The Arbitration Act 1996 will apply, with the following amendments:

- (a) The notice provisions in these Terms shall apply to the extent inconsistent with Article 3 of Schedule 1;
- (b) Article 15(3) of Schedule 1 shall not apply in relation to replacement of an arbitrator under Article 13 of that Schedule;
- (c) Either party may request the arbitral tribunal to give an interpretation of a specific point or part of an award under Article 33(1)(b) of Schedule 1;
- (d) Article 7 of Schedule 2 shall not apply; and
- (e) Article 4(2)(a) and 4(2)(b) of Schedule 2 shall apply in the alternative, not cumulatively.

15.2 For the avoidance of doubt, nothing in these Terms shall prejudice Port Otago's right to apply for injunctive relief or interim measures, to arrest the User's vessel or to proceed against the User's vessel "in rem" in any jurisdiction.

## 16. Notices

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16.1 All notices under these Terms will be given (including by email, if an email address is provided for notices) to the relevant party at the address notified in writing by them to the other from time to time for notices, including:

- (a) To Port Otago at its address in Port Chalmers; and
- (b) To the User at any of the User's last known places of business whether in New Zealand or elsewhere, or at the address of the User's last known agent in New Zealand,

and in the case of delivery by mail will be deemed to have been received two days after dispatch by mail.

## 17. General

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- 17.1 **Non-Solicitation:** The User will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of Port Otago or any of Port Otago's agents or Subcontractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees of Port Otago. All such negotiations will be exclusively conducted by Port Otago.
- 17.2 **Governing law:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.
- 17.3 **Consumer Guarantees Act:** Services provided under these Terms are provided to the User for the purposes of a business, and the parties agree that the Consumer Guarantees Act 1993 does not apply.
- 17.4 **No Agency:** Subject to clause 9.2, nothing in these Terms shall constitute or be deemed to constitute any relationship of employment, agency, joint venture or partnership between the parties. Neither party has authority to bind the other or act on its behalf except to the extent expressly agreed in writing.
- 17.5 **No Assignment:** The User shall not assign, transfer or otherwise dispose of its liabilities or rights under these Terms without the prior written consent of Port Otago (which consent may be subject to such conditions as required by Port Otago, but shall not be unreasonably withheld). A change in the User's effective ownership or control will be deemed to be an assignment for the purpose of this clause.
- 17.6 **No waiver:** No failure or delay by Port Otago in insisting on the strict performance of these Terms or to exercise any right under these Terms will operate as a waiver of those matters. A waiver will not be effective unless it is in writing. A waiver of any breach will not be a waiver of any other breach.
- 17.7 **Partial Invalidity:** If any part of these Terms becomes legally ineffective, invalid or unenforceable, that provision will be deemed deleted from these Terms and such invalidity or unenforceability will not affect the other provisions, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made

necessary by the deletion of the ineffective, invalid or unenforceable provisions.

17.8 **Amendments:** Port Otago may amend these Terms from time to time by giving reasonable notice to the User.

## Schedule 1 – Liability Table

Loss/Liability/ Damage	Maximum Liability	Maximum Aggregate Liability	Excess
User's Vessels & Equipment	Lesser of reasonable cost of repair or market value	\$1,000,000	\$200,000
Containers	Lesser of reasonable cost of repair or market value or:		
	(i) Refrigerated \$7,500	\$100,000	\$300
	(ii) Insulated \$4,000	\$100,000	\$300
	(iii) Other \$1,000	\$100,000	\$300
Cargo	(i) In a closed or sealed Container \$5,000	\$75,000	\$300
	(ii) On board a vessel \$750 per manifest tonne or part thereof	\$50,000	\$300
	(iii) Elsewhere \$1,000 per tonne or part thereof	\$50,000	\$300
Ancillary Equipment (clause 8.1(d))	Lesser of reasonable cost of repair or market value or \$7,000	\$40,000	\$300