



SOUTHERN PORTS
ALBANY BUNBURY ESPERANCE

Port Standards and Procedures (Southern Ports – Esperance)

Port standards and procedures for all users of Southern Ports at Esperance Port in Western Australia

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Preliminaries

- A. Southern Ports manages and controls the Port.
- B. The Port User wishes to access and use the Port for the purposes of the Operations.
- C. Southern Ports has agreed to give the Port User access to and use of the Port to undertake the Operations on the condition that the Port User complies with terms and conditions contained in these Port Standards and Procedures and any other Port Agreement to which the Port User may be a party.

1. Definitions and interpretation

1.1 Definitions

In these Port Standards and Procedures:

Act means the *Port Authorities Act 1999* (WA).

Agreed Amount, for the purposes of GST, means any consideration provided for a supply made pursuant to these Port Standards and Procedures other than under clause 21.1 or any value deemed for GST purposes in relation to that supply.

Application for Credit means any Southern Ports "Application for Credit" form, which may be amended from time to time.

Associates means:

- (a) in the case of the Port User, all Port User Personnel, employees, invitees, contractors and agents of the Port User; and
- (b) in the case of Southern Ports, all officers and employees of Southern Ports.

Authority means an Australian federal, state or local governmental authority, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

Berthing Rules means any rules, guidelines and directions for and to all users of a berth at the Port made and published on the Southern Ports Website from time to time in relation to Vessel berthing reservations, order of Vessel berthing and Vessel time alongside berth allocations.

Biosecurity Regulator means *Federal Government of Australia's* biosecurity regulator, which performs or requires biosecurity inspection and quarantine for international passengers, cargo, mail, animals, plants and animal or plant products arriving in Australia and which, as at the issue date of these Port Standards and Procedures is the *Federal Government of Australia, Department of Agriculture and Water Resources*.

Biosecurity Services means any services or work required in order to comply with the requirements established, notified or enforced by the Biosecurity Regulator that apply to the Port User's use of the Port.

Cargo means any solid, liquid or gaseous product, substance or material that is loaded or is intended to be loaded onto or unloaded from or kept aboard a Vessel while it is in the Port.

Classified Plant means any plant that is classified plant for the purposes of the *Mines Safety and Inspection Act 1994* (WA) and the *Mines Safety and Inspection Regulations 1995* (WA).

Common Areas means those areas of the Port provided by Southern Ports from time to time for use by the public or use in common by any other tenants, licensees, visitors and other beneficiaries of any Port entry, exit, occupation or usage rights granted by Southern Ports (including all common user roadways in and around the Port).

Compliant Heavy Vehicle means a Heavy Vehicle that is carrying a Legal Load.

Contaminant means:

- (a) any solid, liquid, gas, odour, heat, sound, vibration or radiation;
- (b) any combination of these items; or
- (c) any substance of any kind,

which is or may be harmful to the environment or to the health, safety or welfare of any person or animal or cause damage to any property.

Contaminated Sites Auditor means a person credited under section 69 of the *Contaminated Sites Act 2003* (WA) as a contaminated sites auditor.

Costs and Losses means all losses, damages, costs, charges, expenses and other expenditure of whatever nature (including all legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against a party) whether:

- (a) arising from or in connection with any demand, notice proceeding or claim or not;
- (b) liquidated or not;
- (c) present, prospective or contingent; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Dangerous Goods Rules means any rules made and published on the Southern Ports Website from time to time regarding the operation of the Port during times where dangerous goods are moving through the Port.

Delay means:

- (a) any delay in the performance of all or any aspect of any Services; or
- (b) any delay to the berthing, loading, unloading or departure of any Vessel or vehicle; or
- (c) any delay in the receipt or delivery of anything,

howsoever arising, including delays arising out of any breach of any agreement for Southern Ports to provide any Services and including delays arising out of any negligent or wrongful acts or omissions on the part of Southern Ports or any of its Associates or contractors.

Dredged Areas means the shipping channel in the Port that leads to a berth and that berth's pocket waters and associated swing basin.

Emergency Response Plan means any plan made by Southern Ports from time to time and published on the Southern Ports Website governing the operation of the Port during times of emergency at or affecting the Port as declared by Southern Ports if required from time to time which must be complied with by all Port Users.

Environmental Incident means any event that gives rise to an environmental hazard or situation that is potentially hazardous to the environment in the Port or any surrounding areas.

Environmental Regulator means the *Government of Western Australia's* environmental regulator which, as at the date of issue, is the *Government of Western Australia, Department of Water and Environmental Regulation*.

Esperance Contractor Handbook means a contractor handbook summarising the Port's health, safety, environment and security requirements as developed and varied from time to time, a copy of which is available is available for reference only at:

http://www.epsl.com.au/downloads/information/SP_Contractor_Handbook.pdf

Force Majeure Event means any situation that has arisen due to something beyond the reasonable control of a party or its Associates, which interferes with or prevents the performance by a party of any one or more of its obligations in these Port Standards and Procedures. However, the expression does not include the inability of a party, for whatever reason, to pay money it is obliged to pay.

Good Industry Practice means, in relation to the performance of any obligation in these Port Standards and Procedures, adherence to a high standard of practice as is customary at the prevailing time, which includes:

- (a) the exercise of the degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified person of the type and kind as the Port User;
- (b) the exercise of reasonable judgment and decision making in a manner that promotes operational reliability and efficiency, safety, security, environmental protection and expedition; and
- (c) the use of procedures, systems and techniques that minimises any risk of damage and injury or disruption to the environment in the Port.

Governmental Requirements means all approvals, conditions, consents, licences, permits, training requirements and other authorisations of an Authority that may be required in relation to each party's respective operations and activities in the Port and the Operations.

Gross Default means any wilful or deliberate act or omission on the part of Southern Ports that is so malicious, calculated, reckless, fraudulent, deceitful or criminal in nature that it amounts to a knowing, fundamental and complete disregard for the interests of the Port User.

Harbour Master means the harbour master appointed for the purposes of the Act and any deputy harbour master or other person carrying out any of the Harbour Master's functions from time to time.

Hazardous Substance means any hazardous substance under the *Occupational Health and Safety Act 1984* (WA), including any fuels, radioactive substances, industrial waste, volatile, inflammable or explosive substances, chemicals, and associated items of a hazardous or potentially hazardous nature.

Heavy Vehicle means any vehicle in the class of "heavy vehicle" as defined by the *Government of Western Australia, Department of Transport* that is used by the Port User, its Associates or a Transport Provider for the provision of the Services in and around the Port.

HRW Licence means a *High Risk Work Licence* issued in accordance with the *Occupational Safety and Health Regulations 1996* (WA).

Industrial Action refers collectively to any measure taken by trade unions or other organised labour with the purpose of reducing productivity in a workplace for any reason

Interest means the rate that is 3% greater than the overdraft reference rates published by the Bank of Western Australia during the time period from and including the due date for payment up to and including the date that the outstanding balance is paid.

Legal Load means a vehicle axle load that is no greater than the legal maximum vehicle axle load for use on roads in Western Australia.

Local Community means the members of the local community in the vicinity of the Port.

Loss or Damage means the occurrence of liability, loss or damage that is covered under any of the Mandatory Insurances.

Mandatory Insurance means any insurance cover specified by Southern Ports as being required by the Port User for the purposes associated with its access to and use of the Port or any part thereof.

Marine Accident means an event where material damage of any kind is caused to any Vessel or any person or property during the course of using the Port.

Marine Incident means an event occurring during the course of using the Port that gives rise to a hazardous or potentially hazardous situation that would not normally occur during the course of using the Port.

Marine Safety Plan means any plan made by Southern Ports from time to time and published on the Southern Ports Website governing all aspects of marine safety at the Port which must be complied with by all Port Users.

Marine Security Plan means any plan made by Southern Ports from time to time and published on the Southern Ports Website governing all aspects of Southern Ports' requirements for the response to a Security Incident at the Port which must be complied with by all Port Users.

Mooring Standards means any standards made by Southern Ports from time to time and published on the Southern Ports Website governing all aspects of the mooring of Vessels at the Port which must be complied with by all Port Users.

Operating Area means those parts of the Port that are used by the Port User or any of its Associates for a purpose permitted by Southern Ports in accordance with these Port Standards and Procedures and/or a Port Agreement.

Operations means all operations and activities carried out by the Port User or any of its Associates in the Port.

Orders and Directions means any and all orders and directions that may be given by Southern Ports to the Port User or to any third party from time to time pursuant to the terms of these Port Standards and Procedures or pursuant to the Act or any other law.

Permissible Delay means any Delay (other than a Delay to the extent that it is caused by Gross Default on the part of Southern Ports or any of its Associates) including, without limitation, and Delay to the extent that it is caused by or contributed to or arises out of:

- (a) the Port Facilities or anything else that is necessary to provide the Services;
- (b) Port congestion of any kind (including Vessel or vehicle queues that arise for any reason);
- (c) any act or omission on the part of the Port User or the beneficiary of any Services work or any of their respective Associates;
- (d) any act, omission, decision or direction of the Harbour Master;
- (e) any act, omission, decision or requirement of the master or crew of any Vessel;
- (f) any act, omission, decision, direction or requirement of Southern Ports or its Associates arising out of a safety concern as determined by Southern Ports at its absolute discretion;
- (g) any electrical outage;
- (h) any damage to, or the breakdown of, any of the Port Facilities, any item of Port Equipment or anything else in the Port; and
- (i) any Delay to the extent that it arises as a consequence of any act, omission, decision or direction on the part of Southern Ports or any of its Associates or contractors:
 - (i) relating to the safety of any person, Vessel or property;
 - (ii) relating to any security issue, security concern or any emergency;
 - (iii) relating to the compliance with any law or any Ministerial direction or Ministerial request;
 - (iv) relating to any Vessel, berthing, mooring or navigation matter;
 - (v) relating to any issue concerning the environment; or
 - (vi) relating to any maintenance or repair works.

Permitted Period means the period for Southern Ports grants the Port User with the right to enter and remain in the Port for the purposes of the Operations pursuant to these Port Standards and Procedures and, where relevant, any Port Agreement.

Port has the meaning ascribed to that term in the Act and is, for the purposes of these Port Standards and Procedures, Southern Ports Esperance, in Western Australia.

Port Agreement means, where relevant, any agreement entered into between Southern Ports and the Port User with respect to the Operations under which the Port User is required to comply with these Port Standards and Procedures, including a lease, access licence or any other agreement of a similar nature.

Port Charges means all port fees, charges and expenses levied pursuant to the Act as detailed, and in the amounts specified on, the Southern Ports Website from time to time, and if relevant, includes on a reimbursable basis in accordance with Southern Ports' instructions, any amounts that Southern Ports is required to pay to the Biosecurity Regulator in relation to Biosecurity Services provided to the Port User by Southern Ports.

Port Equipment means any equipment, goods, tools, supplies or materials owned, controlled, hired or provided by Southern Ports.

Port Facilities means any berth, plant, equipment, facility or infrastructure in the Port (including the Port Equipment) that is used or required by the Port User for the Operations.

Port Services has the meaning ascribed to that term in the Act.

Port Standards and Procedures means the rules, rights, powers, obligations, standards, procedures and other provisions contained in this document.

Port User means any person or entity:

- (a) in the Port at any time;
- (b) using Port Facilities or Port Equipment;
- (c) who is bound by a Port Agreement; or
- (d) who is the owner, charterer or master of any Vessel in the Port.

Port User Personnel means all employees, agents, contractors and subcontractors employed or engaged by the Port User for the undertaking or performance of the Operations.

Port User Works means any works or services to be performed for the benefit of Southern Ports or a Port User that requires a Port User Work Permit.

Port User Work Permit means a permit issued by Southern Ports pursuant to the Port User Work Permit System permitting a Port User to Perform Port User Works in the Port.

Port User Work Permit System means any work permit system adopted by Southern Ports, and published on Southern Ports' Website from time to time governing all aspects of the Port User Works at the Port which must be complied with by all Port Users conducting Port User Works.

Prior Vessel means a Vessel, other than a Vessel, which berthed at the Allocated Berth prior to a Vessel.

Qualified Personnel means personnel who are fit for work and suitably qualified and experienced to undertake and carry out the work they are allocated.

Regulations means the *Port Authorities Regulations 2001 (WA)*.

Right of Lien means the right of Southern Ports to place an encumbrance on the Port User's property to secure an amount the Port User owes to Southern Ports in the circumstances specified in clause 3.6(a).

Safety and Emergency Training means training of the following kinds:

- (a) oil spill response drills;
- (b) emergency response exercises; and
- (c) safety and security drills.

Safety and Emergency Training Costs means all reasonable costs associated with Safety and Emergency Training including time incurred in training, the cost of the training facilitator(s), equipment purchase and hire necessary for the training and the development of procedures, protocols and manuals necessary for the training.

Safety Incident means:

- (a) an event occurring during the course of using the Port that gives rise to a non-safe or potentially non-safe situation that would not normally occur during the course of using the Port; or
- (b) any circumstances likely to be a danger or cause damage to the Port, Port Facilities, the Port Equipment or a person or a Vessel in the vicinity of the Port.

Security Incident means:

- (a) any security incident, breach or threat at the Port or any event occurring during the course of using the Port that gives rise to a suspicion of a potential security incident, breach or threat; or
- (b) any circumstances likely to be a security threat to the Port, Port Facilities, Port Equipment or a person or a Vessel in the vicinity of the Port.

Southern Ports Website means www.southernports.com.au.

Transport Provider means any provider of Heavy Vehicle or other haulage services engaged by the Port User for the Operations to drive in and around the Port.

Uncontrolled Escape means the uncontrolled escape of any substance at the Port caused by the Port User or its Associates that is potentially dangerous, inflammable or capable of causing loss or damage of any kind to people, property or the environment.

Vessel means any vessel visiting the Port.

1.2 Defined terms in legislation

Unless clearly indicated to the contrary, terms used in:

- (a) these Port Standards and Procedures where the meanings of those terms are expressly intended, have the meanings ascribed to those terms by the Act and the Regulations;
- (b) **clause 10 (Environment)**, and any other provisions of these Port Standards and Procedures where the meanings of those terms are expressly intended, have the meanings ascribed to those terms by:
 - (i) the *Environmental Protection Act 1986 (WA)* and its associated regulations; or
 - (ii) the *Contaminated Sites Act 2003 (WA)* and its associated regulations;
- (c) **clause 5.4 (Dangerous goods)**, and any other provisions of these Port Standards and Procedures where the meanings of those terms are expressly intended, have the meanings ascribed to those terms by the *Dangerous Goods Safety Act 2004 (WA)* and its associated regulations; and
- (d) **clause 21 (GST)**, and any other provisions of these Port Standards and Procedures where the meanings of those terms are expressly intended, have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

1.3 Interpretation

In these Port Standards and Procedures:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including these Port Standards and Procedures) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of these Port Standards and Procedures, and a reference to these Port Standards and Procedures includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, is taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (k) any reference to time is to local time in Perth, Western Australia; and
- (l) **includes** in any form is not a word of limitation.

1.4 Port Authorities Act 1999 (WA)

- (a) All of Southern Ports' rights, powers, defences, immunities, indemnities or limitations of liability in the Act augment Southern Ports' rights and powers in these Port Standards and Procedures and the parties agree that nothing in or arising out of these Port Standards and Procedures in any way:
 - (i) diminishes Southern Ports' rights, powers, defences, immunities, indemnities or limitations of liability under the Act;
 - (ii) fetters any discretions that Southern Ports has under the Act; or
 - (iii) precludes Southern Ports from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability in the Act in relation to any matter concerning the Port, the Port User or any matter arising out of or relating to these Port Standards and Procedures.
- (b) To the extent of any inconsistency between anything in the Act and these Port Standards and Procedures, the Act will always prevail and override the terms of these Port Standards and Procedures.

2. Application of Port Standards and Procedures

- (a) All provisions of these Port Standards and Procedures apply to the Port User upon entry to, and at all times within, the Port and the Port User agrees that its entry into and presence within the Port at all times is on the condition that they agree to observe and be bound by these Port Standards and Procedures.
- (b) All other obligations, standards, notices, rules, powers, practices and procedures relating to health, safety, welfare, emergencies, environmental protection, security, operations, traffic and other matters concerning the Port or any surrounding areas

that are adopted by Southern Ports and published on the Southern Ports Website from time to time are incorporated into and form part of these Port Standards and Procedures, whether specifically mentioned in this document or not, and must be complied with by the Port User.

- (c) The Port User must ensure that it and its Associates comply with these Port Standards and Procedures (which augment Southern Ports' rights and powers under the Act and any Port Agreement) in respect of its activities within, and its use of and access to, the Port generally.
- (d) Any rights that Southern Ports may have that arise out of these Port Standards and Procedures are in addition to any other rights that Southern Ports has at law and in equity.
- (e) To the extent of any inconsistency between anything in these Port Standards and Procedures and any provision in any Port Agreement, the provision in that or those Port Agreements will always prevail and override these Port Standards and Procedures.
- (f) Where Southern Ports' consent or approval is required by these Port Standards and Procedures, then:
 - (i) Southern Ports may, in its absolute discretion, grant or withhold its consent or approval subject to any conditions that it considers appropriate; and
 - (ii) In giving or withholding consent, Southern Ports shall not under any circumstances be taken as acting as an expert or expressing an opinion on or approving the subject matter of the consent or approval.
- (g) Southern Ports may, in its absolute discretion from case to case enforce, ignore or otherwise deal with any rights that it may have as a consequence of any breach of these Port Standards and Procedures by any Port User.

2.2 No interests granted in Port

Nothing in these Port Standards and Procedures confers upon the Port User any right of exclusive possession or use of any part of the Port nor does anything in these Port Standards and Procedures give the Port User any legal or equitable interest, tenancy or estate in any land that is owned by, vested in or otherwise controlled or managed by Southern Ports.

2.3 No priority

The Port User agrees that, unless otherwise agreed or specified by Southern Ports, the Port User does not have any right to use any part of the Port in priority to or to the exclusion of any other user or occupier of the Port.

2.4 No Port Services licence

- (a) Nothing in these Port Standards and Procedures is intended to oblige Southern Ports to provide any Port Services to the Port User or applies to the provision of any Port Services that Southern Ports may provide to the Port User.

- (b) Nothing in these Port Standards and Procedures in any way constitutes a Port Services licence for the purposes of the Act or the Regulations and if the Port User wishes to procure any Port Services from any Port Services provider, that Port Services provider (other than Southern Ports) must be authorised and hold a valid and current licence issued by Southern Ports to provide those Port Services in accordance with the Act and the Regulations.

2.5 No Southern Ports capacity or suitability warranties

- (a) Southern Ports does not expressly or impliedly represent or warrant:
- (i) the nature, quality or condition of the berths, the Port Facilities, the Port Equipment, the Common Areas or any other part of the Port;
 - (ii) that the berths, the Port Facilities, the Port Equipment or the Common Areas are or will be suitable, adequate or have the capacity for the use for which the Port User may decide to use them; or
 - (iii) the rate at which a Vessel may be loaded or unloaded.
- (b) The Port User acknowledges that it is entering a working port and accordingly assumes all risks:
- (i) in relation to whether or not the Port is suitable for the undertaking of any development or business use whatsoever;
 - (ii) associated with its use of the Port or any delay and interference arising out of or in connection with the berths, the Dredged Areas, the Port Facilities, the Port Equipment or the Common Areas being used by Southern Ports and other Port User for various operational and other purposes,

and the Port User is not entitled to make any claim against Southern Ports whatsoever in relation to any of these matters.

2.6 Port works

Southern Ports may, at any time, from time to time and at its absolute discretion as it sees fit, carry out any works on or to the berths, the Port Facilities, the Port Equipment, the Operating Area, the Common Areas or any other part of the Port and may for that purpose suspend the Port User's rights or use and access to the Port without compensation.

3. Payment of Port Charges

3.1 Port Charges and payment in advance

Unless otherwise agreed in writing by Southern Ports:

- (a) the Port Charges will apply with respect to the Port User's use of the Port or any Port Facilities, Port Services or Port Equipment; and
- (b) the Port User must pay in advance all Port Charges, fees and any other amounts estimated to be due and payable to Southern Ports.

3.2 Application for credit

- (a) A Port User may apply for credit in writing to Southern Ports by requesting and submitting a completed Application for Credit form.
- (b) The provision of credit to a Port User by Southern Ports will be on terms acceptable to Southern Ports at its absolute discretion and attached to the Application for Credit.

3.3 Provision of security

- (a) If requested by Southern Ports, the Port User must provide to Southern Ports security in the form of a bank guarantee, or other form of security approved by Southern Ports in its absolute discretion, as security for the performance of the Port User's obligations in these Port Standards and Procedures, including the payment of any Port Charges for which the Port User is or may become liable.
- (b) The bank guarantee (or other form of security, if approved by Southern Ports) must be in a form acceptable to Southern Ports and provided promptly upon the request being made by Southern Ports.

3.4 Interest and overdue moneys

- (a) Without prejudice to any other rights, powers and remedies that the parties may have in these Port Standards and Procedures or otherwise, a party must pay to the other party on demand Interest on any moneys that are due and payable to the other party but unpaid for 7 days after the date of the relevant tax invoice.
- (b) Interest is calculated on the outstanding balance from the due date for the payment of the moneys until but excluding the date on which payment is made in full and Interest may be recovered by the other party as a debt due and owing.

3.5 Suspension for Outstanding Amounts

Not in any way limiting any other rights or remedies Southern Ports may have, if any amounts due to Southern Ports by the Port User in respect of any Port Charges or charges for the engagement of any Port Services or any other amounts payable by the Port User to Southern Ports remain owing and outstanding for more than 30 days or past the date specified for payment of that amount in these Port Standards and Procedures in any tax invoice or any notice issued to the Port User, Southern Ports may suspend any of the Port User's rights in relation to the Port User's use of the Port or activities in the Port or the provision of Services until payment of that outstanding amount is received in full by Southern Ports.

3.6 Right of Lien

- (a) Not in any way limiting any other rights or remedies Southern Ports may have, Southern Ports may exercise a Right of Lien over the property of the Port User to secure:
 - (i) payment of all Port Charges for which the Port User is liable and for which a demand for payment has been made by Southern Ports; or

- (ii) the Port User's performance of all its obligations under the Port Standards and Procedures or any Port Agreement in which these Port Standards and Procedures have been incorporated.
- (b) In exercising the Right of Lien, Southern Ports may seize and detain the Port User's property until all monies owing are paid and all costs and expenses associated with the Right of Lien are recovered from the Port User as a debt due on demand.

4. Management and control of Operations

- (a) The Port User is exclusively responsible for managing and controlling itself and all of its Associates, and all relevant areas of the Port, during the Port User Operations, and in particular all issues and risks associated with the workplace health and safety and environmental protection of it and its Associates while the Operations are being carried out.
- (b) Nothing in this clause 4 affects the Port User's obligation to comply with any Orders and Directions.
- (c) Nothing arising out of the Orders and Directions in any way diminishes the Port User's exclusive responsibility for the management and control of the Operations while any Operations are being carried out.

5. Berths, Port Facilities and Port Equipment

5.1 Berthing generally

- (a) The Port User must ensure that neither it nor any of its Associates uses any berth, Port Facilities or Port Equipment unless that request has been made to and accepted by Southern Ports or the Harbour Master.
- (b) The Port User must ensure that it and its Associates comply with the Berthing Rules.
- (c) Nothing obliges Southern Ports to:
 - (i) alter any allocated berthing windows reserved for a Vessel under the Berthing Rules although Southern Ports shall use reasonable endeavours to accommodate a Vessel's requirements if it arrives early or late if the Vessel can, in Southern Ports' sole opinion, be accommodated without interference to other Vessels using, scheduled to use or planning to use a berth;
 - (ii) order the removal of a Prior Vessel in order for a Vessel to berth; or
 - (iii) accept a Vessel into the Port regardless of whether a berthing window has been reserved for that Vessel.
- (d) The Port User must use its best endeavours to ensure that any Vessel only occupies the berth allocated for its berthing at the Port, if, and for so long as, loading or unloading continues (except where occupation of that berth is necessary due to inclement weather or breakdown of Southern Ports Equipment in the Port or the requirement of an Authority or as otherwise directed by Southern Ports).

5.2 Berthing availability

- (a) Notwithstanding any other term of these Port Standards and Procedures, nothing prevents Southern Ports from giving priority berthing of any berth to any other use of the Port over the Port User including (but not limited to) in the following circumstances:
- (i) to another user of the berth allocated for the Port User, or another user of the Port;
 - (ii) to a Vessel in circumstances involving requirements for safe haven;
 - (iii) where required by any naval Vessel; or
 - (iv) in circumstances involving:
 - A. emergencies;
 - B. matters of security;
 - C. berth repairs and maintenance; or
 - D. dredging within the Port in the vicinity of a berth that has been allocated to the Port User.
- (b) The allocation of berths, Port Facilities and Port Equipment is always subject to availability and suitability for the Port User's requirements in Southern Ports' opinion in its absolute discretion.
- (c) If Southern Ports considers it necessary for any reason, Southern Ports may at any time withdraw, suspend, relocate, terminate or otherwise vary or modify any usage or access rights that are granted with respect to any berth, Port Facilities or Port Equipment.
- (d) If Southern Ports exercises any of its rights in clause 5.2(c), nothing will relieve the Port User from any liability accrued nor entitle the Port User to any Costs and Losses.
- (e) If Southern Ports considers that the Port User should use certain services, extra resources or equipment in order to ensure safety, security, operational efficiency, general expediency or Port User compliance with any laws or Good Industry Standards, then the Port User must:
- (i) promptly utilise and otherwise comply with any such extra requirements that are imposed by Southern Ports; and
 - (ii) pay any applicable usage costs for such extra requirements in accordance with the Port Charges.

5.3 Port User's duties

If the Port User uses any berth, Port Equipment or Port Facilities, the Port User must ensure that it and its Associates:

- (a) have checked the berth, Port Facilities or Port Equipment prior to their use and are satisfied that the Port Facilities or Port Equipment to be used are:
 - (i) free from any substances which may damage or contaminate its Cargo or other goods or materials; and
 - (ii) in all respects safe to operate, and the Port User bears all risk associated with any contamination of any Cargo or other goods or materials, including any contamination arising in circumstances where Southern Ports or any of its Associates have undertaken any cleaning, wash down, maintenance or other work concerning the berth, Port Facilities or Port Equipment;
- (b) follow all operating instructions posted on the berth, Port Facilities or Port Equipment or any directions given by Southern Ports;
- (c) treat and care for the berth, Port Facilities or Port Equipment as would a careful and prudent owner in order to prevent any damage to the berth, Port Facilities or Port Equipment;
- (d) do not remove any identification marks on the berth, Port Facilities or Port Equipment;
- (e) have all the training, expertise, licences and permits necessary to use the berth, Port Facilities or Port Equipment;
- (f) only use the berth, Port Facilities or Port Equipment in the manner and for the purpose the berth, Port Facilities or Port Equipment were constructed and in accordance with the manufacturer's specifications and instructions;
- (g) keep the berth, Port Facilities or Port Equipment at all times in the exclusive possession, control and operation of the Port User or any of its Associates;
- (h) permit Southern Ports and its Associates to inspect the berth, Port Facilities or Port Equipment at any reasonable time;
- (i) do not abandon or permit to be abandoned any part of the Port Facilities or Port Equipment in any location;
- (j) keep the berth, Port Facilities or Port Equipment free from any distress, execution or other legal process and take all reasonable steps to safeguard Southern Ports' title, rights and interests in the berth, Port Facilities or Port Equipment, and not do or permit anything which might reasonably be expected to expose the berth, Port Facilities or Port Equipment to penalty, forfeiture, impounding, detention or destruction;
- (k) if the Port Facilities or Port Equipment are seized, notify any person seizing the Port Facilities or Port Equipment of Southern Ports' interest and immediately notify Southern Ports in writing of the seizure; and
- (l) clean and remove any Contaminants from the berth, Port Facilities or Port Equipment when the berth, Port Facilities or Port Equipment are no longer required to be used.

5.4 Dangerous goods

- (a) The Port User acknowledges and agrees that:
- (i) other Port Users import and export dangerous goods (including dangerous and hazardous products and materials) to and from the Port;
 - (ii) as a consequence of the movement of dangerous goods in the Port, Southern Ports may make or be required to make the Dangerous Goods Rules which may affect other Port Users' access to or efficient use of the Port;
 - (iii) as a consequence of the Dangerous Goods Rules and the movement of dangerous goods through the Port, the Port User may incur delays or may be restricted from accessing certain parts of the Port or the Port waters, resulting in costs and expenses being incurred by the Port User, such as demurrage fees;
 - (iv) it will promptly comply with the Dangerous Goods Rules; and
 - (v) Southern Ports is not liable for anything arising out of the application of any Dangerous Goods Rules or the movement of any dangerous goods in the Port.
- (b) Notwithstanding any other provision in these Port Standards and Procedures, the Port User must use reasonable endeavours to notify Southern Ports not less than 7 days prior to the arrival of a Vessel at berth if the Vessel contains any dangerous goods that will remain on the Vessel while the Vessel is in Port to enable Southern Ports to make any necessary arrangements at the Port to accommodate those dangerous goods.

5.5 Maintenance and repair

- (a) The Port User shall ensure that any Port Facilities or Port Equipment used by the Port User or any of its Associates are:
- (i) kept and maintained in good condition (having regard to their age and general condition); and
 - (ii) left in a good, clean and operational condition after use.
- (b) If the Port User fails to comply with any of its obligations in clause 5.5(a), then Southern Ports may carry out any work necessary to rectify the breach and the costs of the work shall be paid by the Port User on demand.
- (c) Nothing in this clause 5.5 obliges the Port User to repair or make good any damage comprising fair wear and tear or any damage that was not caused by the Port User or any of its Associates.

5.6 Damage or malfunction

- (a) If the Port User or any of its Associates suspect that any damage or malfunction has occurred to any berth, Port Facilities or Port Equipment, the Port User must ensure that:

- (i) the berth, Port Facilities or Port Equipment are not used by the Port User or any of its Associates; and
 - (ii) Southern Ports is immediately notified of the damage or malfunction.
- (b) Southern Ports shall not be liable to the Port User or any other person for any Costs and Losses that arise from the damage or malfunction of the berth, Port Facilities or Port Equipment for any reason, including any negligence or other tortious conduct on the part of Southern Ports or any of its Associates.
- (c) The Port User must at its own cost, repair any damage caused to the berth, Port Facilities or Port Equipment by it or any of its Associates.
- (d) If Southern Ports is not satisfied with the condition of berth, Port Facilities or Port Equipment after they have been used by the Port User or any repairs made to the berth, Port Facilities or Port Equipment by the Port User, then Southern Ports and its Associates may do everything necessary to put the berth, Port Facilities or Port Equipment into the condition that they were in prior to their use by the Port User.
- (e) Without limiting any of Southern Ports' other rights or remedies, the Port User shall promptly reimburse Southern Ports for all of its Costs and Losses that arise out of anything done by Southern Ports or any of its Associates under clause 5.6(d).

6. Moorings

- (a) The Port User must ensure that neither it nor any of its Associates installs, uses or sets any mooring buoys, tackle or other mooring equipment, unless and until on each occasion:
- (i) such a request has been made to Southern Ports or the Harbour Master; and
 - (ii) Southern Ports or the Harbour Master has accepted that request and granted the Port User a licence to install, use or set such mooring buoys, tackle or other mooring equipment.
- (b) If Southern Ports grants the Port User a licence to install, use or set such mooring buoys, tackle or other mooring equipment, the Port User must ensure that it and its Associates comply with that licence and the Mooring Standards at all times.

7. Services provided or arranged by Southern Ports

7.1 Application to Services and Services-related work

Without in any way limiting any other provisions in these Port Standards and Procedures, the provisions of this clause 7 apply only to Services and Services-related work provided to the Port User or any of its Associates by Southern Ports or any of its Associates or contractors.

7.2 Directions

- (a) Subject to clause 7.2(b), Southern Ports shall use reasonable endeavours to comply with all reasonable directions given by the Port User in relation to the Services.

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- (b) Southern Ports is not obliged to comply with any Port User direction or request (**Direction**) in circumstances where:
- (i) compliance is likely to expose any person or any property to risks that are unacceptable to Southern Ports (acting reasonably);
 - (ii) compliance is likely to expose any person or any property to risks that are unacceptable to Southern Ports (acting reasonably);
 - (iii) compliance would be contrary to any law;
 - (iv) compliance would be contrary to the directions given to the Harbour Master, or contrary to any right, power or benefit that is given to Southern Ports under the Act or in these Port Standards and Procedures;
 - (v) compliance would entitle any insurers of Southern Ports to deny cover or otherwise refuse to indemnify Southern Ports under any of Southern Ports' insurance policies;
 - (vi) compliance requires a third party to do something in circumstances where Southern Ports, having been given the relevant Direction and having made reasonable attempts to obtain third party compliance, has no legal power to compel the third party to comply;
 - (vii) compliance would constitute a departure from the scope of the relevant Services work;
 - (viii) compliance would render Southern Ports in breach of any lease, licence or agreement entered into by Southern Ports with anyone;
 - (ix) compliance would require Southern Ports to spend money or incur expenses that it is not entitled to recover from the Port User; or
 - (x) Southern Ports considers that compliance is not reasonably practicable having regard to the resources that Southern Ports has at its disposal.

7.3 Suspension

- (a) If Southern Ports, acting in good faith, considers it necessary to suspend Services for reasons concerned with safety, security, damage to anything in the Port or for reasons concerned with safety, security, damage to anything in the Port or for reasons connected with any emergency, then Southern Ports may suspend all or any part of the Services until such time as Southern Ports considers the suspension is no longer necessary.
- (b) Southern Ports shall use its reasonable endeavours to keep any period of suspension of the Services arising out of clause 7.3(a) to a minimum and shall promptly notify the Port User when the suspension has been lifted.

7.4 Port User to provide relevant information

- (a) The Port User must ensure that it provides Southern Ports with any information (including copies of relevant documents) that Southern Ports reasonably requests (**Relevant Information**):
- (i) in order to carry out any aspect of the Services work;
 - (ii) in order to identify the nature and risks associated with any cargo that is to be loaded, unloaded or handled by Southern Ports or any of its Associates as part of any Services work (including all necessary dangerous goods information); or
 - (iii) in order to ensure that Services work can be carried out safely and in an environmentally friendly and efficient manner.
- (b) If Southern Ports considers that it does not have any Relevant Information, then Southern Ports may elect not to commence any Services work or elect to stop any Services work that is underway until such time as Southern Ports obtains the Relevant Information.

7.5 Variation of Services

- (a) The Port User may at any time request Southern Ports to submit a quotation in relation to any variations to the scope of Services work (**Variation Request**).
- (b) As soon as reasonably practicable after receipt of a Variation Request, Southern Ports shall advise the Port User as to whether or not it is able and prepared to carry out the Variation Request and, if applicable, provide the Port User with a quotation for the relevant work (**Quotation**).
- (c) If the Port User accepts the original or any revised Quotation, then Southern Ports shall carry out the work that is the subject of the relevant Variation Request as if the work was part of the scope of the Services and the Port User shall pay for the work in accordance with the accepted Quotation.
- (d) If the Port User and Southern Ports do not agree upon the change or rate that is to apply to any work that constitutes a departure from or a variation to the scope of any Services work (**Variation Work**) and the Variation Work proceeds substantially in compliance with the relevant Variation Request or any direction from the Port User, then Southern Ports shall be entitled to be paid by the Port User at a fair rate for the work performed.

7.6 No obligation to provide rates for Services

Rates for Services which are not available on Southern Ports Website may be:

- (a) advised to the Port User by Southern Ports on request by the Port User; or
- (b) agreed between the parties,

and in circumstances where Services are provided prior to rates for such Services being agreed, then Southern Ports shall be entitled to be paid by the Port User at a fair rate for the Services performed.

7.7 Payment for Services

The Port User must pay Southern Ports the invoiced fees and charges for all Services work (without set-off or deduction in any way whatsoever) by the payment date specified in Southern Ports' tax invoice.

8. Delay

8.1 Southern Ports' obligations and limited liability in relation to Delays

- (a) Southern Ports' obligations and liabilities and the Port User's rights and remedies in respect of any Delays are strictly limited in all circumstances to the obligations, liabilities, rights and remedies set out in this clause 8.1.
- (b) Subject to clauses 8.1(c) and 8.1(d), where a Permissible Delay occurs, Southern Ports must use its reasonable endeavours to resolve the Delay and mitigate the effect of the Delay on the Port User as soon as reasonably practicable.
- (c) To the extent that a Permissible Delay which has occurred affects the interests of Port Users or customers other than the Port User, nothing is intended to give the interests of the Port User any priority over the interests of any other Port User or customer.
- (d) Nothing in clause 8.1(b) obliges Southern Ports to incur any expenses in order to resolve any Delay unless Southern Ports considers (in its absolute discretion):
 - (i) that it has the money readily available to it; and
 - (ii) that the expenditure is warranted in the circumstances.
- (e) In the event of a Permissible Delay, Southern Ports has no liability to the Port User for loss, damages or compensation of any kind in respect of anything arising out of the Permissible Delay, other than any liability that Southern Ports may have as a consequence of Southern Ports breaching any of its obligations under clause 8.1(b).
- (f) If a Delay arises out of any Gross Default on the part of Southern Ports or any of its Associates (**Gross Default Delay**), then:
 - (i) Southern Ports must use its best endeavours to resolve the Delay as quickly as possible and mitigate the effect of the Delay on the Port User as quickly as possible (however, to the extent that a Gross Default Delay affects the interests of Port Users or customers other than the Port User, nothing is intended to give the interests of the Port User any priority over the interests of any other affected Port User or customer; and
 - (ii) Except to the extent provided for elsewhere, there is no restriction on Southern Ports' liability to the Port User with respect to anything arising out of a Gross Default Delay and no restriction on the rights, remedies or recourse available to the Port User at law or in equity with respect to anything arising out of a Gross Default Delay.

8.2 Exclusion of non-delay liability

Despite anything to the contrary in clause 8.1, and subject to clause 8.4, Southern Ports is not liable in tort, contract, bailment or otherwise (regardless of how negligent or otherwise wrongful any act or omission may be) to the Port User under any circumstances for:

- (a) anything arising out of any acts or omissions on the part of any third party towage, lines, mooring or bunkering service providers;
- (b) anything arising out of any acts or omissions on the part of any marine pilot (whether employed or supplied by Southern Ports or anyone else); or
- (c) any claims for demurrage that may be charged to the Port User or anyone else for any reason.

8.3 Limitation of non-delay liability

Southern Ports' liability to the Port User for any incident or series of related incidents arising out of a single event resulting in loss or damage to goods, damage to or loss of a Vessel or any cargo or other property, is limited in all circumstances (regardless of how negligent, tortious or otherwise wrongful the relevant acts or omissions of Southern Ports or any of its Associates or contractors may be) as follows:

- (a) for cargo or goods, the least of:
 - (i) the insured value of any goods lost;
 - (ii) the reduction in value of any goods damaged;
 - (iii) 2.75 SDR per kilogram gross weight of any cargo or goods lost or damaged; or
 - (iv) \$100,000;
- (b) for a Vessel, the least of:
 - (i) the depreciated value of the Vessel;
 - (ii) the market value of the Vessel;
 - (iii) the reasonable cost of repairing the Vessel; or
 - (iv) \$500,000; and
- (c) for other property, the least of:
 - (i) the depreciated value of the property;
 - (ii) the market value of the property;
 - (iii) the reasonable cost of repairing the property; or
 - (iv) \$50,000.

8.4 Gross Default

Clauses 8.3(a), 8.3(b) and 8.3(c) do not apply to the extent that a Port User suffers loss or damage as a consequence of Gross Default on the part of Southern Ports or any of Southern Ports' Associates.

8.5 Non-excludable rights

- (a) Southern Ports and the Port User acknowledge and agree that:
 - (i) under relevant state, territory and commonwealth law, certain conditions and warranties may be implied in any contracts and rights and remedies may be conferred on consumers that cannot be excluded, restricted or modified by agreement (**Non-excludable Rights**); and
 - (ii) notwithstanding anything contained in these Port Standards and Procedures, the Non-excludable Rights shall not be excluded, restricted or modified except to the extent permitted by law.
- (b) The liability of Southern Ports to the Port User for a breach of any Non-excludable Right shall be limited in every case, at Southern Ports' option, to:
 - (i) supplying the Services again; or
 - (ii) payment of the cost of having the Services supplied again.

8.6 Complete defences

- (a) The provisions in this clause 8 are intended to provide Southern Ports with absolute and complete defences and limitations with respect to any claims that the Port User may have against Southern Ports at law or in equity in relation to the matters covered in those provisions (**Excluded Matters**) and the defences and limitations specified shall be available to Southern Ports as complete defences and absolute bars to any claims that the Port User may have or make with respect to the Excluded Matters, including breach of contract or indemnity claims (including claims for breach of these Port Standards and Procedures), claims in negligence or any other tort and claims pursuant to any other cause of action available at law or in equity.
- (b) Clause 8.6(a) is intended to have reciprocal application for the benefit of the Port User in relation to clause 8.5(b).

9. Port User Works

9.1 Work Permits

- (a) The Port User who wishes to carry out Port User Works within the Port must advise and liaise with Southern Ports prior to commencing any Port User Works and must continue to liaise with Southern Ports for the duration of the Port User Works or as advised by Southern Ports.
- (b) The Port User must ensure that neither it nor any of its Associates carries out any Port User Works of any kind in the Port without a Port User Work Permit.

- (c) If Southern Ports considers it necessary for any reason, Southern Ports may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify the terms of any Port User Work Permit.
- (d) If Southern Ports exercises any of its rights under clause 9.1(c), nothing will relieve the Port User from any liability accrued nor entitle the Port User to any Costs and Losses.

9.2 Port User's duties

If Southern Ports grants a Port User Work Permit to the Port User to perform Port User Works in the Port, the Port User must ensure that it and its Associates:

- (a) comply with the Port User Work Permit System;
- (b) complete the Port User Works within the time required by Southern Ports;
- (c) perform the Port User Works in a conscientious, expeditious and workmanlike manner with a high degree of skill, competence and professionalism;
- (d) where required by Southern Ports, do not permit or cause any person to provide any part of the Port User Works unless that person is approved by Southern Ports;
- (e) do not interfere with any other Port User's property or operations in the Port except with Southern Ports' permission;
- (f) provide progress reports and any other information concerning the Port User Works as required by Southern Ports;
- (g) do not vary, modify or exceed the Port User Works permitted under the Port User Work Permit without Southern Ports' permission;
- (h) remove, re-execute, replace or amend any aspects of the Port User Works if required by Southern Ports;
- (i) take all necessary precautions to ensure the safety of people and property in the Port; and
- (j) supply and wear any safety clothing and apparatus required by Southern Ports to be worn.

9.3 Notifications required

If Southern Ports grants a Port User Work Permit to the Port User to conduct Port User Works in the Port, the Port User must ensure that Southern Ports is notified:

- (a) when the Port User Works have been commenced, suspended or completed;
- (b) when the Port User is unable to provide the Port User Works; and
- (c) of any accident or incident that occurs in relation to the Port User Works.

10. Environment

10.1 No spills or pollution

- (a) The Port User must:
 - (i) ensure that neither it nor any of its Associates:
 - A. causes any spills, pollution or contamination of any kind in the Port (except in relation to any activity authorised by licence or authority from any governmental, semi-governmental, statutory, local or public Authority, in which case, only to the extent permitted by such licence or authorisation); or
 - B. Handles any industrial waste or potentially Hazardous Substance in a manner that is likely to cause an environmental hazard;
 - (ii) ensure that any part of the Port it accesses for the Operations is left in a clean, tidy and safe state after use by the Port User or any of its Associates; and
 - (iii) remove all debris left by it on, and make good any contamination or pollution to the extent caused or contributed to by it to, any part of the Port it accesses for the Operations.
- (b) If any environmental hazard is caused or contributed to by the Port User or any of its Associates then, without limiting any other rights or remedies that Southern Ports may have, the Port User must, unless otherwise directed by Southern Ports, do whatever is necessary to clean up or rectify and eliminate that environmental hazard as soon as possible.
- (c) If any spills, pollution, contamination or environmental hazards are caused or contributed to by the Port User or any of its Associates, the Port User and its Associates must immediately assist any Southern Ports' emergency response team existing or created from time to time and any other official oil spill or environmental hazard management team or responsible officials to combat the environmental hazard and contain and minimise the environmental risk.

10.2 Uncontrolled Escape

- (a) The Port User must take all necessary precautions and appropriate action to avoid and prevent an Uncontrolled Escape.
- (b) In the event of an Uncontrolled Escape, the Port User must, at its own cost, take immediate action to stop the Uncontrolled Escape and rectify and repair any loss or damage arising from, including cleaning up and reinstating those parts of the Port that may be affected.
- (c) Without limiting its obligations in clauses 10.2(a) and 10.2(b) in any way, the Port User must clean that part of the Port and return the waters or other affected areas to a standard and condition that is consistent with the state they would have been in if the Uncontrolled Escape had not occurred.

10.3 Fire and danger

The Port User must take all necessary precautions and appropriate action to avoid any event occurring on any part of the Port it accesses for the Operations that is potentially dangerous or capable of causing loss or damage of any kind to people, property or the environment, including by taking all reasonable precautions against causing an outbreak of fire.

10.4 Environmental compliance

(a) The Port User must:

- (i) not use, or permit or allow any of its Associates to use, any part of the Port it accesses for the Operations so that:
 - A. Contaminants are discharged onto or from those areas in contravention of any environmental law;
 - B. pollution occurs;
 - C. any substantial dust, noise or odour is emitted at levels that exceed permitted limits in environmental licence conditions for the Port applicable to the Operations;
 - D. any industrial waste, Contaminant or potentially Hazardous Substance is abandoned or dumped on or near the Port or discharged in the Port, or any surrounding land, waterway, water table or seabed; or
 - E. any industrial waste, Contaminant or potentially Hazardous Substance is handled in a manner which is likely to cause an environmental hazard,

except in relation to any activity authorised by licence or authority from any governmental, semi-governmental, statutory, local or public Authority, in which case, only to the extent permitted by such licence or authorisation;

- (ii) not disturb the land surface or environment of the Port without the prior written consent of Southern Ports; and
- (iii) obtain and maintain in full force and effect and comply with the terms of all permits and licences required in order to release or emit anything from any part of the Port it accesses for the Operations into the air or water or on to the ground or otherwise into the environment.

(b) Where Southern Ports considers that the Port or any surrounding land, waterway, water table or sea bed have been polluted or contaminated during the Permitted Period due to the acts or omissions of the Port User or its Associates, or there has been a breach of clauses 10.2 or 10.4(a), then if directed to do so by Southern Ports, the Port User must:

- (i) obtain the report of a Contaminated Sites Auditor or other environmental report satisfactory to Southern Ports, identifying the cause, nature and extent of any such pollution, contamination or breach;

- (ii) take all steps to discontinue the probable cause of the pollution, contamination or breach; and
 - (iii) take all steps to remediate the pollution and contamination or rectify the breach to a standard required of and approved by Southern Ports.
- (c) Where the Port User has not carried out a clean-up or remediated pollution and contamination in accordance with clause 10.4(b)(iii) within a time which is reasonable in the opinion of Southern Ports, Southern Ports may, at the Port User's cost, clean-up or remediate the affected part of the Port areas or any surrounding land, waterway, water table or sea bed to a condition consistent with all the Port User's obligations having been complied with.

10.5 Marine health

Notwithstanding any other provision in these Port Standards and Procedures, the Port User must ensure, and warrants to Southern Ports, that it and its Associates:

- (a) will, at all times when in or around the Port, comply with and remain in compliance with all relevant federal and state legislation relating to the identification and control of marine pests such that their translocation to any areas of the Port is prevented; and
- (b) will not remove, kill, damage or otherwise interfere with any form of animal or plant marine life from anywhere in the Port without Southern Ports' consent.

11. Safety

11.1 Safety and Emergency Training

- (a) The Port User acknowledges that any operator that operates at the Port may be required by Southern Ports to participate in Safety and Emergency Training.
- (b) The Port User must ensure that it and its Associates participate in all Southern Ports' Safety and Emergency Training as requested by Southern Ports from time to time.
- (c) The Port User must pay all reasonable Safety and Emergency Training Costs throughout the Permitted Period.
- (d) Southern Ports will use its reasonable endeavours to apportion the Safety and Emergency Training Costs on a fair and equitable basis between the Port User and any other operators that Southern Ports' requires to participate in the Safety and Emergency Training from time to time.
- (e) The Port User must provide an experienced representative to join any committee established by Southern Ports for the purposes of monitoring and managing safety, emergency and oil spill response procedures and protocols in the Port.

11.2 Port User's responsibility for safety

- (a) The Port User must ensure that it and each of its Associates complies with the Marine Safety Plan.

- (b) The Port User must ensure that neither it nor any of its Associates causes any injury to any person.
- (c) The Port User must take all necessary precautions and appropriate action to avoid and prevent any Safety Incident from occurring.
- (d) If the Port User causes or contributes to a Safety Incident (either in whole or in part) at the Port, the Port User must, at its own cost:
 - (i) take immediate action to mitigate that non-safe or potentially non-safe situation; and
 - (ii) reinstate its conduct of the Operations to a level of safety required by law and commensurate with that which is customary and necessarily required for a safe port environment.

11.3 Supply of safety information

The Port User must promptly report to Southern Ports any filing of a complaint or the commencement of proceedings against the Port User, a person engaged by the Port User or Southern Ports in relation to an alleged failure to observe or perform obligations under occupational safety and health law or an alleged failure in undertaking the Operations.

11.4 Personal protective equipment

The Port User must, at its cost, ensure that each of the Port User Personnel wears and uses personal protective equipment at all times when present at or on the relevant parts of the Port, as required by law or Southern Ports requirements.

12. Emergencies

- (a) The Port User must ensure that it and each of its Associates complies with the Emergency Response Plan.
- (b) In an emergency, the Port User must ensure that it and each and all of its Associates comply with Southern Ports' directions and do not obstruct or interfere with any effort by Southern Ports and its Associates to combat or mitigate the effects of the emergency.
- (c) Except in an emergency, or as directed by Southern Ports, the Port User must ensure that neither it nor any of its Associates deactivates or interferes with any emergency facility or equipment in the Port, including any:
 - (i) life saving and first aid equipment; or
 - (ii) alarm or signalling device.
- (d) The Port User must:
 - (i) ensure that neither it nor any of its Associates deliberately raises any false alarm; and
 - (ii) without limiting any of Southern Ports' other rights or remedies, promptly reimburse Southern Ports for all costs and expenses that arise out of or

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in connection with any deliberate false alarm raised by the Port User or any of its Associates.

13. Security

13.1 Port User's responsibility for security

- (a) The Port User must ensure that it and each of its Associates complies with the Maritime Security Plan.
- (b) The Port User must take all necessary precautions and appropriate action to avoid and prevent any Security Incident from occurring.
- (c) If the Port User causes or contributes to a Security Incident (either in whole or in part) at the Port, the Port User must, at its own cost:
 - (i) take immediate action to mitigate that non-secure or potentially non-secure situation; and
 - (ii) reinstate its conduct of the Operations to a level of security required by law and commensurate with that which is customary and necessarily required for a secure port environment.

13.2 Supply of security information

The Port User must promptly report to Southern Ports any filing of a complaint or the commencement of proceedings against the Port User, a person engaged by the Port User or Southern Ports in relation to an alleged failure to observe or perform obligations under maritime security law.

13.3 Maritime Transport and Offshore Facilities Security Act 2003

The provisions of these Port Standards and Procedures relating to access and security are in addition to the provisions of the *Maritime Transport and Offshore Facilities Security Act 2003* which must be observed by all Port Users to whom that legislation applies.

14. Other Port User duties and obligations

14.1 Compliance

- (a) Notwithstanding any other provision of these Port Standards and Procedures, in addition to:
 - (i) the Berthing Rules in accordance with clause 5.1(b);
 - (ii) the Dangerous Goods Rules in accordance with clause 5.4(a)(iv);
 - (iii) the Mooring Standards in accordance with clause 6(b);
 - (iv) the Port User Work Permit System in accordance with clause 9.2(a) (if relevant);

- (v) the Marine Safety Plan in accordance with clause 11.2(a);
- (vi) the Emergency Response Plan in accordance with clause 12(a); and
- (vii) the Maritime Security Plan in accordance with clause 13.1(a),

the Port User must ensure that it and its Associates comply with:

- (viii) the Esperance Contractor Handbook;
- (ix) the Orders and Directions;
- (x) any directions given by the Harbour Master; and
- (xi) any other directions given by Southern Ports:
 - A. relating to security, safety, environmental protection or any emergencies or hazards that are perceived by Southern Ports;
 - B. in relation to the day to day control of vehicle and pedestrian traffic in the Port;
 - C. to comply with any of the Port User's obligations pursuant to these Port Standards and Procedures;
 - D. as to the use of any of Southern Ports' property; and
 - E. to facilitate the discharge of any of its functions under the Act or any other law.

(b) If the Port User or any of its Associates fail to comply with a direction given by Southern Ports or by the Harbour Master pursuant to clause 14.1(a), Southern Ports and its Associates may do anything that Southern Ports considers necessary in order to give effect to the direction, including:

- (i) removing or relocating any property in the possession, custody or control of the Port User or its Associates to anywhere within or outside the Port; and
- (ii) conducting maintenance or repair works.

(c) Without limiting Southern Ports' other rights and remedies, the Port User must reimburse Southern Ports for all its costs, losses and damages that arise out of anything done by Southern Ports or its Associates under clause 14.1(b).

14.2 Identification cards

(a) The Port User is responsible for obtaining and paying for identification cards for it and each of its Associates:

- (i) who:
 - A. are in the Port; and

- B. are required to hold an identification card for their presence in the Port as determined by Southern Ports in its absolute discretion; or
 - (ii) who are required to hold an identification card under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth).
- (b) The Port User must ensure that neither it, nor any of its Associates, enters any landside or marine side maritime security zone (as defined in the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth)) at the Port unless they:
- (i) hold and carry valid identification cards as required pursuant to clause 14.2(a); or
 - (ii) are accompanied by a representative of the Port User or one of the Port User's Associates who holds and carries valid identification cards as required pursuant to clause 14.2(a).

14.3 Induction

The Port User must ensure that its Associates attend any Port induction courses if and when required by Southern Ports.

14.4 Compliance with laws

The Port User must ensure that it and its Associates comply with:

- (a) all laws, regulations and orders of any competent Authority so far as they may affect or apply to the Port User or its Operations, the Port User's equipment, any plant or facility use or any works or other operations carried out by the Port User in the Port, including but not limited to obtaining, keeping current and complying with any licences, consents, approvals or permits that the Port User holds or is required to hold in relation to anything that the Port User does in the Port; and
- (b) all directions, approvals, conditions, consents, licences, permits, training requirements and other authorisations of any regulatory or other authority having jurisdiction over anything done within the Port (including any Australian federal, state or local governmental authority, department, commission, public authority, agency, minister, statutory corporation, instrumentality, the police, customs, the *Australian Maritime Safety Authority*, the Environmental Regulator or the Biosecurity Regulator) that may be required in relation to each party's respective operations and activities in the Port.

14.5 Licences and permits

The Port User must as soon as practicable following a request being made by Southern Ports, provide Southern Ports with a copy of any licences, consents, approvals or permits that the Port User holds or is required to hold in relation to anything that the Port User does in the Port.

14.6 High risk work

Without in any limiting any other obligation in these Port Standards and Procedures, the Port User must, at the Port User's cost and expense, ensure that all Port User Personnel intending to operate or work at the Port during the Permitted Period of the type and kind where a

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particular class of HRW Licence is required by law, hold and carry a current HRW Licence of that same particular class.

14.7 No damage

The Port User must ensure that neither it nor any of its Associates causes damage to any part of the Port, excluding fair wear and tear, including but not limited to:

- (a) Port User equipment;
- (b) Port Facilities;
- (c) berths;
- (d) jetties;
- (e) roads or access ways;
- (f) sheds;
- (g) mooring lines, slings or chains; or
- (h) any other part of the Port.

14.8 No interference

- (a) The Port User must ensure that neither it nor any of its Associates do anything that obstructs or interferes with the proper performance by Southern Ports of its statutory functions and duties under the Act or any other law or the proper exercise by Southern Ports of any of its rights.
- (b) In exercising its rights in respect of these Port Standards and Procedures, the Port User must ensure that it and its Associates use best endeavours to minimise obstruction or interference with:
 - (i) Southern Ports;
 - (ii) the activities or operations in the Port; or
 - (iii) any other Port User, Vessel, person or property in the Port.
- (c) Nothing in this clause is intended to preclude the Port User from carrying on any lawful activity that is being undertaken in the normal course of undertaking the Operations.

14.9 No nuisance

The Port User must not do or permit anything to be done which may reasonably be considered noxious, noisome, offensive or a nuisance to Southern Ports or any other Port User.

14.10 No intoxication by drugs and alcohol

- (a) The master or owner of a Vessel must not permit any social functions (other than functions involving the Vessel's Master and crew and less than 5 invited guests) to occur on the Vessel without Southern Ports' prior permission.
- (b) The Port User must ensure that neither it nor any of its Associates enter or remain in the Port if intoxicated by drugs or alcohol.
- (c) If a person in the Port appears to Southern Ports or its Associates to be intoxicated by drugs or alcohol, then Southern Ports and its Associates may do everything necessary to refuse entry to or remove that person from the Port.

14.11 Qualified Personnel

In undertaking the Operations, the Port User must ensure that:

- (a) only Qualified Personnel are used;
- (b) the Port User Personnel are properly supervised at all times;
- (c) they are carried out in accordance with Good Industry Practice; and
- (d) it always has an appropriate number of Qualified Personnel available and ready to ensure that the Operations are undertaken in a safe and efficient manner.

14.12 Port User Equipment

- (a) The Port User may provide the Port User equipment to undertake the Operations.
- (b) The Port User must ensure that any Port User equipment:
 - (i) is approved for use in the Port by Southern Ports prior to the Port User bringing the Port User equipment into the Port;
 - (ii) complies with all relevant laws;
 - (iii) is in a good, clean and safe condition at all times;
 - (iv) is maintained and serviced at regular intervals in accordance with Good Industry Practice; and
 - (v) is removed promptly from the Port promptly at the end of the Permitted Period (subject to the terms of any storage licence or lease that may be agreed with Southern Ports).
- (c) If requested to do so by Southern Ports, the Port User must supply Southern Ports with a list of all of Port User equipment that is being used at the time of the request, and any that it proposes to use for the Operations.

14.13 Notices to and from Southern Ports – accidents, threats, emergencies, hazards

- (a) The Port User must promptly notify Southern Ports in writing and must comply with all statutory and regulatory requirements to give prompt notice of any of the following events as soon as it or any of its Associates become aware of their occurrence:
- (i) any Marine Accident;
 - (ii) any Marine Incident;
 - (iii) any Environmental Incident;
 - (iv) any Safety Incident;
 - (v) any Security Incident;
 - (vi) any material accident or any circumstances likely to cause any material danger, risk or hazard to the Port or any person; or
 - (vii) any actual or suspected damage to the Port or anything in or around the Port, including but not limited to:
 - A. the Port User Equipment;
 - B. Port Facilities;
 - C. berths;
 - D. jetties;
 - E. roads or access ways;
 - F. sheds;
 - G. mooring lines, slings or chains; or
 - H. any other part of the Port.
- (b) The Port User must give Southern Ports immediate notice of any actual or potential threat, emergency or hazard that the Port User becomes aware of in any part of the Port.
- (c) The Port User must promptly deliver to Southern Ports copies of all material notices, orders or summonses relating to any part of the Port received by the Port User from any person or any governmental, statutory, local or public Authority.

14.14 Southern Ports' access

The Port User must ensure that it and all of its Associates permit Southern Ports and its Associates prompt access to:

- (a) any Vessel to which the Port User has access rights while it is in the Port;
- (b) any property or any area of the Port being used, occupied or controlled by the Port User; and
- (c) any information that Southern Ports reasonably requires in order to check and monitor compliance with the Port User's obligations in these Port Standards and Procedures.

14.15 Suspension of access and use - safety, security, emergency or environment

Southern Ports, if acting in good faith considers it necessary to do so for reasons concerned with safety, security, any emergency or the environment, may notify the Port User in writing that all of the Port User's rights of access and use of the Port are suspended until such time as Southern Ports considers it is safe and secure for the Port User to do so and the Port User must comply with that notice.

14.16 Vehicles and Heavy Vehicles

- (a) The provisions of these Port Standards and Procedures in relation to vehicles (including Heavy Vehicles) in the Port are in addition to any state or federal legislation relating to roads, vehicles (including Heavy Vehicles) and traffic.
- (b) The Port User must ensure that neither it nor any of its Associates operate a vehicle in the Port unless it and its Associates:
 - (i) have all the training, expertise, licences and permits necessary to operate the vehicle;
 - (ii) drive at a safe speed and within all signposted speed limits;
 - (iii) drive with due care and attention; and
 - (iv) wear seat belts at all times.
- (c) If required by Southern Ports, the Port User must ensure that neither it nor any of its Associates operates a vehicle in the Port unless the Port User has insurance on terms acceptable to Southern Ports.
- (d) The Port User must ensure that neither it nor any of its Associates park a vehicle on any berth, wharf or jetty for a period that exceeds 4 hours without the prior consent of Southern Ports.
- (e) If a collision or accident occurs in the Port involving any vehicle in the possession, custody or control of the Port User or any of its Associates, the Port User must ensure that Southern Ports is notified as soon as possible of the collision or accident specifying:
 - (i) the time and location of the collision or accident;
 - (ii) the persons involved in the collision or accident;

- (iii) the events leading up to and during the collision or accident;
 - (iv) any damage to vehicles, property or people in the Port; and
 - (v) any other matter that may affect the efficient or safe operation of the Port.
- (f) The Port User must ensure that any vehicle under the control of the Port User when in the Port:
- (i) is registered or licensed under any applicable law, unless otherwise agreed by Southern Ports;
 - (ii) complies with the *Road Traffic (Vehicles) Act 2012 (WA)* and the *Road Traffic (Administration) Act 2008 (WA)*; and
 - (iii) is not left unattended at the Port in any way impeding the operations of the Port or at any times unsafe.
- (g) Southern Ports may remove from the Port at any time any vehicle or movable item of the Port User or any Associate of the Port User which is parked or stationed at the Port in breach of these Port Standards and Procedures, and such removal will be at the sole risk and expense of the Port User in all respects.
- (h) The Port User must ensure each Heavy Vehicle in the Port operated by the Port User or any Transport Provider is in a good and safe operational condition and complies with all relevant laws and Governmental Requirements.
- (i) When required by Southern Ports, the Port User must promptly provide Southern Ports with information concerning anticipated Heavy Vehicle visits and movements in and around the Port.
- (j) The Port User must ensure that any Heavy Vehicle entering onto a wharf is a Compliant Heavy Vehicle.
- (k) The Port User must undertake random weight testing of any Heavy Vehicle if requested by Southern Ports at any time during the Permitted Period. If, in conducting random weight testing, a Heavy Vehicle is determined not to be a Compliant Heavy Vehicle, the Port User must:
- (i) immediately cease using the Heavy Vehicle and offload such amount so that its weight does not exceed a Legal Load; and
 - (ii) if requested by Southern Ports, submit to compulsory weight testing of every Heavy Vehicle proposed to enter and move around the Port until such time as Southern Ports provides notice in writing to the Port User that Southern Ports is satisfied that the Port User's loading and unloading practices are in continuous compliance with this clause 14.16(k) and that the compulsory weight testing may cease.

14.17 Port User to liaise and consult

The Port User must ensure that it liaises and consults with Southern Ports and other Port Users on a regular basis whilst undertaking the Operations in an effort to minimise the impact

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that those Operations might have on Southern Ports and those other Port Users and the day to day operation and management of the Port.

14.18 Dealings with Local Community

The Port User must:

- (a) act openly, fairly and reasonably in all of its dealings with the Local Community;
- (b) use its reasonable endeavours to enhance good relations with the Local Community;
- (c) use its reasonable endeavours to minimise disruption and inconvenience to the Local Community; and
- (d) meet and consult with Local Community groups when reasonably requested to do so by Southern Ports or a Local Community group in an effort to ensure that any Local Community concerns and interests are considered and, where practicable in all of the circumstances, met in relation to matters concerning the Port User or the Port.

14.19 Industrial Action

- (a) The Port User shall use its best endeavours to:
 - (i) avoid any Industrial Action involving the Port User or its Associates; and
 - (ii) mitigate and overcome the effects of any Industrial Action and resume the ability to comply with the Port User's obligations in these Port Standards and Procedures.
- (b) If the Port User reasonably suspects that Industrial Action involving the Port User or any of its Associates has occurred or will occur, the Port User shall immediately notify Southern Ports of:
 - (i) the expected duration of the Industrial Action;
 - (ii) the obligations which cannot be performed in these Port Standards and Procedures; and
 - (iii) the action proposed by the Port User to mitigate the effects of the Industrial Action.
- (c) Subject to the Act, Southern Ports agrees that it shall keep confidential any sensitive information obtained pursuant to this clause 14.19.

15. Insurance

15.1 Mandatory Insurances

If required by Southern Ports, the Port User must promptly effect and maintain the Mandatory Insurances.

15.2 Notification of claims

If an event occurs which, in the opinion of the Port User, may give rise to a claim against Southern Ports that is covered under any Mandatory Insurance Policy, the Port User must notify the other parties and must fully inform them as to the progress of any such claim to the extent that this is possible.

15.3 Application of proceeds

If the Port User is requested to do so by Southern Ports, it must promptly make and pursue a claim under the Mandatory Insurance Policies in circumstances where:

- (a) there has been Loss or Damage;
- (b) there are reasonable prospects of the claim succeeding; and
- (c) some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,

however this clause 15.3 does not apply in circumstances where the Port User is ready, willing and able to pay for the Loss or Damage on its own account.

15.4 Effect of Mandatory Insurance

The taking out of the Mandatory Insurance Policies or any other insurance by the Port User does not in any way affect or limit its contractual rights, obligations and liabilities in these Port Standards and Procedures.

15.5 Not to invalidate Mandatory Insurance

The Port User must not do or allow any act, matter or thing to occur that may render any of the Mandatory Insurance Policies void or voidable.

16. End of Permitted Period

16.1 Yield up

Upon the expiry of each Permitted Period, the Port User must, in a manner that is entirely consistent with all of the Port User's obligations in these Port Standards and Procedures having been fully complied with:

- (a) yield and deliver up to Southern Ports the Operating Area (and those parts of the Common Areas and the Port Facilities where used by the Port User) in a state of good repair, condition, order and preservation, and having regard to the condition of those areas at the commencement of the Permitted Period;
- (b) remove all of the Port User Equipment from the Operating Area and the Common Areas; and
- (c) leave the Operating Area and the Common Areas in a clean and tidy condition, free of rubbish and repair any damage or contamination to those areas caused by the Port User or its Associates during the Permitted Period.

16.2 Port User Equipment not removed

If the Port User fails to remove any or all of the Port User Equipment in accordance with clause 16.1(b), Southern Ports may:

- (a) as an agent of the Port User:
 - (i) remove any or all of the remaining Port User Equipment;
 - (ii) store any Port User Equipment at the cost and risk of the Port User; and
 - (iii) sell any Port User Equipment, with such power of sale being for non-payment of storage charges;
- (b) treat any or all of the Port User Equipment remaining as abandoned and deal with it as it sees fit in its absolute discretion at the Port User's cost; and
- (c) carry out the Port User's obligations under clause 16.1 at the Port User's cost,
and the Port User:
 - (d) shall be deemed to have irrevocable waived its right to assert any property rights to that Port User Equipment as against Southern Ports; and
 - (e) releases Southern Ports absolutely from all loss paid, suffered or incurred by the Port User or its Associates as a result of Southern Ports' actions in this clause 16.2.

17. Force Majeure

A party is not in breach or default of any obligation in these Port Standards and Procedures to the extent that the party's compliance with the particular obligation was interfered with or delayed or prevented by a Force Majeure Event.

18. Indemnity

18.1 Indemnity

Except to the extent caused or contributed to by any tortious or wrongful acts or omissions on the part of Southern Ports or any of its Associates, the Port User must indemnify and keep indemnified Southern Ports and its Associates from and against all actions, claims, notices, demands, losses, damages, costs and expenses of whatever nature (including the legal cost of defending or settling any action, claim or demand on a solicitor/client basis) that Southern Ports or its Associates may suffer or incur as a result of:

- (a) any act or omission on the part of the Port User or any of its Associates in the Port;
- (b) any act, breach or default in the performance of any of the Port User's obligations under these Port Standards and Procedures; or
- (c) any personal injury or death of any person or damage to property of a third party arising out of any occupiers liability claim in tort or pursuant to any legislation made by anyone against Southern Ports to the extent that the claim relates to any part of

the Port that was under the control of the Port User or its Associates at the time of the relevant incident.

18.2 Continuing indemnity

Each indemnity given by the Port User:

- (a) is a continuing obligation;
- (b) is independent from any of the Port User's other obligations in these Port Standards and Procedures; and
- (c) survives termination of these Port Standards and Procedures.

19. Limitations and exclusions, acknowledgements and qualifications

19.1 Consequential loss

The liability of Southern Ports pursuant to these Port Standards and Procedures (if any) excludes all liability (including in respect of negligence) for indirect, incidental, special, exemplary, punitive or consequential damages, including damages for:

- (a) loss of profits or savings (actual or anticipated);
- (b) loss of revenue;
- (c) loss of production;
- (d) loss of contracts;
- (e) loss of opportunities;
- (f) wasted overheads;
- (g) loss of goodwill or business reputation;
- (h) business interruptions of any nature; and
- (i) losses suffered by the Port User due to claims by third parties whether or not Southern Ports knew of the possibility of such damage or such damage was foreseeable.

19.2 Limitations and exclusions

Subject to clause 19.4, regardless of any contributing acts or omissions on the part of Southern Ports or any of its Associates (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be), Southern Ports does not and will not owe the Port User or any of its Associates any duty of care in relation to, and is not responsible for or liable to the Port User for:

- (a) anything arising out of the activities, acts or omissions of any other Port User while they or any of their employees, agents or contractors are in the Port (regardless of how negligent, tortious or otherwise wrongful the activities, acts or omissions may be);
- (b) anything arising out of circumstances where Port Facilities or Port Equipment are being used, have been used or are going to be used to handle different products or materials from time to time (regardless of any product or materials incompatibility, regardless of any product or materials contamination and regardless of the risk of cross product or cross material contamination);
- (c) anything arising out of any Port access or egress delays or delays of any other kind that occur in relation to anything concerning the Port including any Vessel, train or truck delays and delays caused by or arising out of any shutdowns, breakdowns, construction works, earth works, demolitions, road closures, rail closures or product or materials handling exclusion zones;
- (d) anything arising out of the temporary or permanent closure of any part of the Port for any reason;
- (e) anything arising out of theft or disappearance of anything that is in the possession, custody or control of the Port User or any of its Associates while that property is in the Port (except theft by any employee of Southern Ports);
- (f) anything arising out of any security breach, security failure or lack of security anywhere in the Port;
- (g) any:
 - (i) interruption or breakdown with respect to the supply of water, gas, electricity, phone service, lighting or any other services in the Port; or
 - (ii) inadequacy or unsuitability of water services for the prevention, control or extinguishment of fires;
- (h) any loss or damage suffered by the Port User as a consequence of any breakage, blockage or overflow of any sewer, stormwater drain, waste drain or pipe or any water run-off from any other parts of the Port or surrounding areas;
- (i) any loss or damage suffered by the Port User as a consequence of any contamination of its products, fuel or other goods or materials owned or in the possession, custody or control of the Port User; or
- (j) the cancellation, revocation, lapsing or withdrawal of any Governmental Requirement.

19.3 Acknowledgements

Nothing in any circumstances whatsoever:

- (a) obliges Southern Ports to stop (either temporarily or permanently) any third party from commencing or carrying on any activity in the Port in order to enable the Port User to do anything or to protect the Port User's interests or protect any property owned by or in the possession, custody or control of the Port User;

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- (b) precludes Southern Ports from granting third parties rights to use any part of the Port or anything in the Port for any purpose;
- (c) in or arising out of these Port Standards and Procedures is intended to create or import into these Port Standards and Procedures any implied obligations or responsibilities of any kind on the part of Southern Ports; or
- (d) in or arising out of these Port Standards and Procedures is intended to create any duty of care on Southern Ports' part in favour of the Port User.

19.4 Qualifications

- (a) Nothing in this clause 19 is intended to relieve Southern Ports from any liability it may have in relation to anything that arises out of Gross Default on Southern Ports' part.
- (b) Subject to clause 19.4(a), this clause 19 is intended to provide Southern Ports with absolute and complete defences and limitations to any claims that the Port User may have against Southern Ports at law or in equity in relation to the matters covered in those clauses and the defences and limitations are available to Southern Ports as complete defences and absolute bars to any claims that the Port User may have or make with respect to the those matters including claims in negligence or any other tort and claims pursuant to any other cause of action available to the Port User at law or in equity.

19.5 Act and Regulations

All provisions in the Act and the Regulations that state that a port authority is not liable or does not become liable in relation to anything are deemed to be incorporated into these Port Standards and Procedures as contractual provisions and shall limit Southern Ports' liability.

20. Limited Liability

20.1 Limited liability of Southern Ports' directors

- (a) Subject to clause 20.1(b), the Port User will not under any circumstances take action, sue or initiate any proceedings of any kind against any director of Southern Ports for damages or compensation or any other remedy at law or in equity arising out of or relating to the death of or injury to any person while they are in the Port.
- (b) This clause does not apply in circumstances where the death of or injury to a person is personally and physically inflicted by a director of Southern Ports. It is the intention of this clause to provide each director of Southern Ports from time to time with:
 - (i) an absolute and complete defence and bar to all claims that the Port User may have against the director at law or in equity in relation to the death of or injury to any person while they are in the Port including claims based on negligence or any other tort or cause of action; and
 - (ii) a direct and personal benefit and the intention is that each director of Southern Ports from time to time may personally enforce the provisions

of this clause in the same manner as if the director was a party to these Port Standards and Procedures.

20.2 Limited liability of Southern Ports

- (a) Except to the extent that any rights or warranties cannot be excluded or limited at law, the liability of Southern Ports to the Port User for anything arising out of these Port Standards and Procedures or any Port Agreement will be limited at the election of Southern Ports to:
 - (i) the resupply of equivalent services, Port Facilities or Port Equipment; or
 - (ii) the payment of the cost of having the services, Port Facilities or Port Equipment supplied again.
- (b) Nothing in this clause in any way limits any of Southern Ports' immunities under the Act.

21. Goods and Services Tax

21.1 GST payable

If GST is payable by the supplier of any supply that it makes under, in connection with or resulting from these Port Standards and Procedures, the parties acknowledge and agree that:

- (a) any Agreed Amount is exclusive of GST;
- (b) an additional amount shall be payable by the recipient of the supply equal to the Agreed Amount for that supply multiplied by the applicable rate of GST;
- (c) the additional amount is payable in the same manner as for the Agreed Amount and at the same time as any part of the Agreed Amount is to be first provided for that supply; and
- (d) the supplier shall provide, on or prior to the due date for payment, a tax invoice to the recipient that complies with the requirements of relevant legislation.

21.2 Variation

- (a) If, following the payment of an additional amount pursuant to clause 21.1(b) in relation to a supply made by the supplier, the GST payable by the supplier to the *Australian Taxation Office* in respect of that supply varies from the total consideration provided by the recipient to the supplier on account of GST on that supply such that:
 - (i) the supplier is required to pay a further amount of GST in respect of that supply; or
 - (ii) the supplier receives a refund or credit of the whole or any part of the GST paid by the supplier in relation to that supply,

then the supplier must provide a corresponding refund or credit to the recipient or is entitled to receive the amount of that variation from the recipient (as appropriate).

- (b) For the purposes of calculating variations in this clause 21.2, any additional amount referred to in clause 21.1(b) is taken to be amended by the amount of any earlier variation made pursuant to this clause.

22. General

22.1 Relationship

Nothing in these Port Standards and Procedures creates any agency, joint venture, partnership or employer and employee relationship between the Port User and Southern Ports.

22.2 Governing law

The agreement formed between the Port User and Southern Ports incorporating these Port Standards and Procedures is governed by and must be construed according to the law applying in Western Australia.

22.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to these Port Standards and Procedures; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 22.3(a).

22.4 Indemnities

- (a) Each indemnity in these Port Standards and Procedures is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of these Port Standards and Procedures.
- (b) It is not necessary for a party to incur expenses or make any payment before enforcing a right of indemnity conferred by these Port Standards and Procedures.

22.5 Severance

In the event of any part of these Port Standards and Procedures being or becoming void or unenforceable whether due to the provisions of any law or otherwise then that part is severed from these Port Standards and Procedures to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by any severance.