

**Terms and Conditions for use of and access to  
Port of Brisbane Common User Facilities**

**Booking Form for Vessels**

**Particulars (to be completed by Hirer):**

Name of Vessel		
LOA (Length Overall)		
Bridge to Bow Length		
Common User Facilities <i>(Hirer to tick preferred berth. If hiring the Fisherman Island Grain Berth, please also specify whether you wish to hire the Multi – User Terminal as well)</i>	<input type="checkbox"/> Port North Common User Berth 1	
	<input type="checkbox"/> Pinkenba Common User Port Facility	
	<input type="checkbox"/> General Purpose Wharf and Terminal	
	<input type="checkbox"/> Fisherman Island Coal Wharf	
	<input type="checkbox"/> Fisherman Island Grain Berth; and	
	<input type="checkbox"/> Multi – User Terminal (if applicable)	
	<input type="checkbox"/> Brisbane Crew Change Berth	
	<input type="checkbox"/> Brisbane International Cruise Terminal (Lay up only; non-cruise ship)	
Water required	<input type="checkbox"/> Yes <input type="checkbox"/> No	Quantity:
Date/Time of Arrival (ETA)	Date:	Time:
Date/Time of Departure (ETD)	Date:	Time:
Lay up or cargo vessel (please specify)		
Hirer (company name, e.g. vessel owner/master)		
Shipping agent (company name)		
Cargo interest (company name)		
Cargo interest agent (company name)		
Stevedore (company name)		

**By executing this Booking Form the Hirer and other parties agrees as follows:**

- That it has read, and is bound by, the Terms and Conditions for use of and access to, the Common User Facilities (which limit the Company's liability), the Common User Facilities Charges and the Common User Facilities Rules, copies of which can be found at [www.portbris.com.au](http://www.portbris.com.au) or provided by the Company on request, and which are deemed to be binding on the Hirer and other parties.
- The Company may require that the Hirer pay the Company a Security Deposit.

- Without limiting its other obligations, it will operate in accordance with all relevant work health and safety obligations and undertake a risk assessment in respect to the Common User Facilities and any operations to be performed by it or on its behalf at the Common User Facilities.
- That it has obtained all relevant licences and permits to undertake the Permitted Use. This includes, but is not limited to, Environmentally Relevant Activity (**ERA**) permits (Environmental Authority), e.g. where mineral and Bulk Materials (as defined under the *Environmental Protection Regulation 2019* (Qld)) are to be exchanged, the Hirer requires permits from the Department of Environment, Tourism, Science and Innovation for Mineral and Bulk Materials handling.
- This booking is subject to written confirmation by the Company.

### Execution by the parties:

Hirer	Signature of person authorised by the Hirer to sign	Position held by authorised person	Date
Cargo interest	Signature of person authorised by the cargo interests to sign	Position held by authorised person	Date
Stevedore	Signature of person authorised by the stevedore to sign	Position held by authorised person	Date
Company (Port of Brisbane Pty Limited)	Signature of person authorised by the Company to sign pursuant to section 126 of the <i>Corporations Act 2001</i> (Cth)	Position held by authorised person	Date

# Terms and Conditions for use of and access to Port of Brisbane Common User Facilities

These terms and conditions form part of an agreement between the Company and the Hirer when a Vessel of the Hirer accesses, uses or occupies the Common User Facilities at the Port of Brisbane (**Agreement**).

## 1. Application of the Agreement

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- a) The Hirer and the Company agree to be bound by this Agreement without limitation or qualification.
- b) If the Hirer does not agree to be bound by this Agreement, the Hirer must not allow any Vessel or Personnel of the Hirer to access, use or occupy the Common User Facilities at the Port of Brisbane.
- c) This Agreement is to be read together with the Common User Facilities Charges and the Booking Form, which must be completed by the Hirer and accepted by the Company in accordance with clause 6 below.

## 2. Definitions and interpretation

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- a) Capitalised terms in this Agreement have the meaning given in Schedule 1.
- b) The rules for interpretation of this Agreement are set out in clause 29 below.

## 3. Joint and several obligations of the Hirer

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Where the Hirer comprises two or more entities, each of those entities will be jointly and several liable for all obligations imposed on the Hirer under this Agreement.

## 4. Authority of an agent

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- a) Any shipping agent or other agent represents and warrants to the Company that it is the shipping agent or other agent on behalf of the Hirer or cargo interest for all relevant purposes in relation to the access, use or occupation of the Common User Facilities at the Port of Brisbane under this Agreement.
- b) The Hirer or cargo interest represents and warrants to the Company that it has expressly authorised the shipping agent or other agent to act as its agent for all relevant purposes in relation to the access, use or occupation of the Common User Facilities at the Port of Brisbane under this Agreement.
- c) In the event that this Agreement is signed by the shipping agent on behalf of the Hirer or other agent on behalf of cargo interest, it is deemed that the shipping agent or other agent has express authority to bind the Hirer or the cargo interest to the terms of this Agreement without limitation or qualification.

## **5. Access Period**

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This Agreement operates during the Access Period.

## **6. Booking the Common User Facilities**

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- a) The Hirer must apply to use the Common User Facilities at least 14 calendar days prior to a Vessel's intended date of use by submitting to the Company, in accordance with clause 25 below, a completed Booking Form for a Vessel.
- b) Within 48 hours of receipt of the completed Booking Form the Company will advise the Hirer if the booking has been accepted.
- c) The Hirer or its shipping agent will advise the Company if there are any changes to the ETA of the Vessel.
- d) The Hirer or its appointed agents must advise the Company of the Vessel's final ETA no later than 48 hours prior to the Vessel's ETA, failing which the Company may cancel the booking at its discretion.

## **7. Use of the Common User Facilities**

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### **7.1 Permitted Use**

- a) Subject to the terms and conditions of this Agreement, the Hirer agrees to use the Common User Facilities and the Company grants the use of the Common User Facilities for the duration of the Access Period.
- b) Without limiting clause 7.1(a):
  - (i) the Hirer will only use the Common User Facilities for the Permitted Use; and
  - (ii) the Hirer will not use the Common User Facilities for the Other Use.

### **7.2 No guarantees, no exclusive use and no rights of priority**

The Hirer agrees that:

- a) the Company may, for any reasonable reason, at its absolute discretion, refuse to permit a Vessel to berth at the Common User Facilities;
- b) the Company provides no guarantee that a Vessel will be permitted to berth at the Common User Facilities;
- c) a Vessel will be permitted to berth at the Common User Facilities and the Hirer will be granted access to use the Common User Facilities on the dates and times determined by the Company in its discretion in accordance with the dictates of port operations and usage and as notified to the Hirer;
- d) the Hirer is not granted any exclusive use of the Common User Facilities;
- e) the Company may allow access to the Common User Facilities at all times by any other person for any purpose, including, without limitation, access by employees, officers, agents or contractors of the Company. The Company will require such persons to operate in accordance with any relevant work health and safety standards applicable to the Common User Facilities;

- f) subject to subclause (g) below, berthing of Vessels at the Common User Facilities will generally be determined by the order of arrival of Vessels at the Port of Brisbane pilot station;
- g) the Company may change the priority of the users berthing at the Common User Facilities for any reasonable purpose at its absolute discretion, including, without limitation, due to the nature of the cargo held by any relevant Vessel, the estimated time that any Vessel may be at the Common User Facilities, the nature of any Vessel at any surrounding berths, or the weather conditions from time to time; and
- h) the Company's decision in relation to priority of berthing of Vessels at the Common User Facilities is final and cannot be disputed.

### **7.3 Change of the Common User Facilities**

- a) Subject to subclause (b) below, the Company may at any time change the Common User Facilities by providing alternative Common User Facilities to be used by the Hirer by giving reasonable notice to the Hirer.
- b) The Company will only change the Common User Facilities if the alternative Common User Facilities have substantially the same features (relevant to the Hirer's proposed use) as the Common User Facilities originally proposed for use by the Hirer.

### **7.4 Information from the Hirer**

The Hirer will promptly provide the Company with all information reasonably desirable or necessary to enable the efficient use of the Common User Facilities and co-ordination with other users, including, without limitation, any changes to the ETA or ETD in the Particulars, and full details of any item or substance on the Vessel or which will be handled at the Common User Facilities of a hazardous, noxious, toxic or dangerous nature, including but not limited to cargoes required to be declared under the International Maritime Dangerous Goods Code.

### **7.5 Suitability**

Subject to the Hirer's rights under Law, the Hirer agrees that the Company has made no representation and gives no warranty concerning:

- a) access to, or the adequacy or the specifications of the Common User Facilities for the Vessel or the use intended by the Hirer;
- b) the Utility Services that may be available at the Common User Facilities; or
- c) the stevedoring or other services that may be available at the Common User Facilities.

### **7.6 Directions of the Company**

The Hirer and its Personnel must promptly comply with all reasonable directions given by the Company and its agents, employees, or contractors in connection with this Agreement or the access, occupation or use of the Common User Facilities by the Hirer or its Personnel.

### **7.7 Other directions**

The Hirer and its Personnel's right to access, occupy or use the Common User Facilities for the Permitted Use is subject to the discretion and directions of the Harbour Master and any Authorised Officer. Without limitation, such directions may specify the Common User Facilities to be accessed and operational requirements pursuant to which that access is granted, including, for example, in relation to mooring arrangements and control arrangements.

## 7.8 **Mooring of the Vessel**

Further to clause 7.7 above, the Hirer acknowledges and warrants that the master of the Vessel must ensure that the Vessel:

- a) is appropriately secured to the relevant Common User Facilities, following consultation with or receipt of any directions received from the Harbour Master and any Authorised Officer; and
- b) that any mooring is tended to at regular intervals to prevent movement of the Vessel in all weather conditions, in accordance with best practice.

## 8. **Impact on other users**

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The Hirer, its Personnel and any stevedore must:

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

## 9. **Payment of charges by Hirer**

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### 9.1 **Common User Facilities Charges**

The Hirer must pay the Company the applicable Common User Facilities Charges by the due date payable as per the invoice issued by the Company.

### 9.2 **Charges for Utility Services**

The Hirer will pay the Company, or any relevant Utility Service provider, a charge for any Utility Services used by the Hirer at the Common User Facilities at the rate applicable as set out in the Common User Facilities Charges.

### 9.3 **Documentation to be provided by Hirer**

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

### 9.4 **Interest on overdue payments**

If the Hirer does not pay any invoice by the due date, without limiting the other rights of the Company, the Company may charge interest to the Hirer on all amounts outstanding after the due date as per the invoice issued by the Company, at a rate of 1% per month, until the amount owed is paid. Any such interest will be payable by the Hirer on demand, as a liquidated debt.

## 9.5 Disputed invoices

- a) If at any time the Company can demonstrate that an invoice previously sent to the Hirer was incorrectly calculated, or based on incorrect information, the Company may calculate and send to the Hirer an amended invoice and this clause will apply to that amended invoice. The parties will make such reimbursements or additional payments as are necessary to ensure that payment is made by the Hirer of the correct amount due.
- b) Subject to subclause a), if the Hirer disputes an invoice, then the Hirer must still pay the invoiced amount in full and without any set-off, deduction or counter-claim. Any such dispute must be determined in accordance with the dispute resolution procedure referred to in clause 26 of this Agreement.
- c) If an amount paid by the Hirer to the Company under this Agreement is determined or agreed by the parties not to have been properly owed to the Company, such amount and any interest paid must be repaid by the Company within 14 days after such determination or agreement.

## 10. Security Deposit

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- 10.1 The Hirer acknowledges the Company's right, by provision of written notice, to require the Hirer to provide a Security Deposit to the Company as security for a liability or debt incurred, or that may be incurred, pursuant to s281F of the *Transport Infrastructure Act 1994* (Qld).
- 10.2 The amount of the Security Deposit that is reasonable will be determined by the Company having regard to the liability or potential liability of the Hirer under this clause.
- 10.3 The Company will be entitled to draw down on the Security Deposit and retain and apply the proceeds to such extent as the Company considers (acting reasonably) will meet the liability or indebtedness of the Hirer if the liability or debt is unpaid after becoming due.
- 10.4 The Company must return the Security Deposit to the Hirer if this Agreement has been terminated and:
  - a) the Hirer has performed all of the obligations required to be performed under this Agreement or such obligations have been waived by Company; and
  - b) any and all disputes between the parties arising out of or in connection with this Agreement have been fully and finally resolved.

## 11. Limitation of liability

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### 11.1 Release of Company

- a) Subject to subclause b) below:
  - (i) the Hirer (and its Personnel, stevedore, any passengers and cargo interest) will use the Port of Brisbane and the Common User Facilities, at their own risk; and
  - (ii) the Released Party will not be liable to the Hirer, and the Hirer (and its Personnel and stevedores) releases to the extent permitted by law the Released Party in relation to any Claim or Loss arising out of or in connection with, directly or indirectly, the access, occupation or use of the Port of Brisbane and the Common User Facilities, by the Hirer (and its Personnel, stevedore, passengers and cargo interest), or otherwise arising out of this Agreement, including without limitation:

- (A) any Claim or Loss to any vessel (including the Vessel), plant, equipment or any other property or thing;
  - (B) any Claim or Loss arising from injury or damage done or suffered to any person (including but not limited to the Hirer's Personnel, stevedore, any passengers or cargo interest), including death; or
  - (C) any Claim or Loss arising from environmental damage, pollution or contamination caused by the Vessel, the Hirer or any of the Hirer's Personnel, stevedore, passengers, or cargo interest arising from the Vessel's use of the Common User Facilities or the Port of Brisbane.
- b) The releases contained in subclause a) above will be reduced proportionately to the extent that any Loss is directly caused by the negligence or wilful misconduct of the Company.
- c) Without limiting this clause 11, to the extent that any rights or warranties cannot be excluded or limited as a matter of law the liability of the Company (or any other Released Party) to the Hirer or its Personnel for any failure to provide, or default in providing any services in accordance with this Agreement is limited to either of the following, at the Company's election:
- (i) the cost of supplying of the services that were to be provided under this Agreement; or
  - (ii) the payment by the Released Party of the costs necessary to have the relevant services supplied again at a future date.

#### 11.2 Indemnity by Hirer

- a) Subject to subclause c) below, the Hirer indemnifies and will keep each of the Released Parties indemnified from and against all Claims and Loss that may be brought by any person (including the Hirer's Personnel, stevedore, passengers or cargo interest) against, or incurred by the Released Party, directly or indirectly, in relation to or arising from the access, occupation or use by the Hirer (or its Personnel, stevedore, passengers or cargo interest) of the Common User Facilities, or under or in connection with this Agreement, including without limitation:
- (i) any Claim or Loss to any vessel (including the Vessel), plant, equipment or any other property or thing; or
  - (ii) any Claim or Loss arising from injury or damage done or suffered to any person, (including the Hirer's Personnel, stevedore, passengers or cargo interest) including death; or
  - (iii) any Claim or Loss arising from environmental damage, pollution or contamination caused by the Vessel, the Hirer or any of the Hirer's Personnel, stevedore, passengers or cargo interest, or arising from the Vessel's use of the Common User Facilities or the Port of Brisbane; or
  - (iv) any breach of or default under this Agreement by the Hirer or its Personnel and stevedore.
- b) The Hirer acknowledges that Non-Company Equipment may be used at the Common User Facilities.

- c) Without limiting paragraph a) above, the Hirer, its Personnel and stevedore indemnifies and will keep indemnified the Released Party from and against all Claims and Loss that may be brought by any person against, or incurred by the Released Party, directly or indirectly in relation to or arising from the use of the Non-Company Equipment by or on behalf of the Hirer, its Personnel, stevedore, any passengers or cargo interest, or resulting from any damage to or destruction of the Non-Company Equipment or any part of the Non-Company Equipment caused directly or indirectly by the acts or omissions of the Hirer, its Personnel, stevedore, any passengers or cargo interest.
- d) The indemnities in subclauses a) and (c) above will be reduced proportionately to the extent the relevant Claim or Loss is caused by the negligence or wilful misconduct of the Company.

### 11.3 Further limitations

Notwithstanding any other provision of this Agreement, under no circumstances will a Released Party be liable for, or responsible to the Hirer, its Personnel, stevedore, any passenger, cargo interest or any other person for any claim or liability arising from or in connection with:

- a) the availability of, or inability of, the Vessel to access or use the Port of Brisbane or the Common User Facilities;
- b) the failure to perform or delay in providing any services;
- c) for any demurrage, delay or other costs of transportation of any kind; or
- d) any Consequential Loss,

howsoever caused or contributed to including, without limitation, the negligence of a Released Party.

## 12. Damage to the Common User Facilities

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### 12.1 General obligations of Hirer

The Hirer, its Personnel, stevedore or cargo interest must not cause or contribute to any damage (including but not limited to any environmental damage, contamination or pollution) at, or in the vicinity of the Common User Facilities and the Port of Brisbane.

### 12.2 Repair and remediation

- a) The Hirer is liable to the Company for any damage to the Common User Facilities or its surrounds arising from use, access or occupation of the Common User Facilities by the Hirer or its Personnel.
- b) The Hirer must pay to the Company any costs incurred by the Company in that regard (as a debt due), within 7 days of receipt of an invoice from the Company for those costs.
- c) Without limitation, this clause will apply to any damage to the environment in or around the Common User Facilities or the Port of Brisbane resulting from or relating to damage, contamination or pollution caused by the Vessel or by any materials or liquids from the Vessel.

### 12.3 Condition of the Common User Facilities

The Hirer, its Personnel and stevedore must leave the Common User Facilities clean of all waste and rubbish and in the same condition as it was in prior to use by the Hirer.

#### 12.4 No improvements

- a) The Hirer, its Personnel and stevedore must not construct any improvements or alterations to the Common User Facilities without the prior written consent of the Company. If any improvements are made to the Common User Facilities by the Hirer, its Personnel or stevedore, the Hirer must remove those improvements upon request by the Company and make good all damage arising from the improvements or the removal of the improvements.
- b) If the Hirer does not remove improvements or make good any damage as referred to in subclause a) above, the Company may remove those improvements or repair that damage and the Hirer will pay to the Company any costs incurred by the Company in that regard as a debt due within 7 days of receipt of an invoice from the Company for those costs.

#### 12.5 Hirer's equipment

- a) The Hirer, its Personnel and any stevedore must not leave equipment at the Common User Facilities without obtaining a written approval from the Company.
- b) If the Hirer, its Personnel and any stevedore leaves equipment at the Common User Facilities the equipment shall be entirely at the Hirer's risk and the Hirer hereby releases the Company from any claim in relation to loss or damage to the equipment.

### 13. Notification of damage or injury

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13.1 As soon as practical after the Hirer, its Personnel or any stevedore becomes aware of any:

- a) damage to the Port of Brisbane or the Common User Facilities;
  - b) injury to any person at, or in the vicinity of, the Port of Brisbane or the Common User Facilities; or
  - c) circumstances likely to cause any such damage or injury,
- the Hirer, its Personnel or any stevedore must notify the Company of such damage, injury or circumstance.

13.2 The Hirer, its Personnel or any stevedore must provide any other information requested by the Company in respect of the accident, event or other circumstance referred to in clause 13.1 above.

### 14. Insurance

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#### 14.1 Protection and indemnity (P&I) insurance

- a) With respect to each Vessel that enters the Port of Brisbane, the Hirer warrants that the Vessel, for the duration of the Access Period, is entered with a P&I Club for:
  - (i) P&I liabilities cover (including but not limited to cover for pollution / oil spill liabilities and passenger liabilities); and
  - (ii) Hull and machinery liabilities cover;

on the terms commonly provided by the 'International Group of Protection and Indemnity Clubs' for a vessel of a type which is the same or substantially similar to the Vessel type and for:

- (A) in the case of P&I liabilities cover, an amount that is the greater of (i) the maximum amount that is reasonably available to the Vessel or to a vessel of a type which is the same or substantially similar to the Vessel type, or (ii) the amount calculated in accordance with the *Convention on Limitation of Liability for Maritime Claims* updated by the 1996 Protocol as implemented in Australia (but, in the case of (i) and (ii), an amount that is not less than \$50 million for any single event; and
  - (B) in the case of hull and machineries liabilities cover, an amount that is equal to or in excess of the reasonable market value of the Vessel.
- b) If requested to do so by the Company with respect to a Vessel, any entity comprised in the Hirer must promptly provide to the Company a copy of any insurance certificate that is required under this Agreement or as may be required to be held on board the Vessel pursuant to any Laws.
  - c) The Company may, at its absolute discretion, refuse the Vessel access to the Port of Brisbane or direct the Vessel to leave the Port of Brisbane if it is not satisfied with the adequacy of the policies of insurance held by the Hirer.

#### 14.2 Other Insurance

The Hirer warrants that any of its Personnel and any stevedore have appropriate insurance with a reputable insurance company in relation to the following:

- a) Workers compensation or similar compulsory insurance as required by any Laws;
- b) Third party property damage cover for any damage at the Common User Facilities; and
- c) Third party liability cover for an amount not less than \$50 million for any losses arising from the use the Common User Facilities.

### 15. Security and safety

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#### 15.1 Security at Common User Facilities

The Hirer must comply with and must ensure that its Personnel, stevedore, passengers and cargo interest comply with:

- a) all relevant Laws and Port Requirements relating to security at the Port of Brisbane and the Common User Facilities; and
- b) any direction given by or on behalf of the Company, including but not limited to any direction given under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) the *Transport Infrastructure Act 1994* (Qld) or the *Transport Infrastructure (Ports) Regulation 2016* (Qld).

#### 15.2 Safety at the Common User Facilities

- a) The Hirer acknowledges that work health and safety on, or in any way related to, a Vessel during the Access Period is the Hirer's responsibility.
- b) The Hirer must ensure that it and its Personnel maintain a safe environment at the Common User Facilities at all times.
- c) The Hirer and its Personnel must at all times ensure that it complies with all relevant Laws and Port Requirements relating to work, health and safety.

- d) The Hirer and its Personnel must ensure that the Common User Facilities is fit for its intended purpose prior to undertaking any activities at the Common User Facilities.
- e) Without limiting the Hirer's obligations under subclause 15.2, the Hirer must undertake an appropriate and fulsome risk assessment and prepare appropriate safety plans having regard to the intended use of the Common User Facilities and foreseeable shore-side risks (**Safety Plan**).
- f) The Safety Plan must include a consideration of, and risk mitigation strategies in respect of shore-side risks including but not limited to:
  - (i) mooring and letting go of vessels;
  - (ii) stevedoring operations;
  - (iii) receiving and delivery of cargo;
  - (iv) appropriate numbers of suitably qualified and competent personnel to perform the activities intended to be carried out at the Common User Facilities;
  - (v) site access (including for contractors, invitees and agents);
  - (vi) stores to vessels; and
  - (vii) evacuation plans.
- g) The Hirer must, on request, provide a copy of its safety management system (**SMS**) prepared in accordance with their SMS to the Company.
- h) The Company reserves the right refuse or withdraw permission for the use, access or occupation by the Hirer of the Common User Facilities if, in the Company's opinion, the SMS or the Safety Plan is deficient or if a copy is not provided to the Company on request.

## **16. Compliance with Laws and Port Requirements**

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### **16.1 General**

The Hirer, its Personnel, any stevedore and cargo interest must comply with all Laws and Port Requirements relating to the use of the Common User Facilities or the Port of Brisbane and obtain any relevant approvals required under any Laws or Port Requirements, including but not limited to any Laws or Port Requirements, or directions otherwise issued or administered by Maritime Safety Queensland.

### **16.2 Environmental compliance**

- a) The Hirer, its Personnel, stevedore, passengers and cargo interest must comply with all Laws and Port Requirements related to environmental compliance, including, but not limited to, the *Environmental Protection Act 1994* (Qld) and the *Environmental Protection Regulation 2019* (Qld).
- b) Without limiting paragraph a) above:
  - (i) The Hirer, prior to using the Common User Facilities, must carry out an environmental risk assessment to identify all potential risks to the environment posed by their operations at the Common User Facilities. The risk assessment must identify all appropriate controls that will be implemented in order to minimise risk to the environment.

- (ii) Upon request, the Hirer must provide the Company a copy of the environmental risk assessment and any audits or reviews relevant to the implementation of the nominated controls.
- (iii) The Hirer, when undertaking Mineral and bulk material handling (as defined under the *Environmental Protection Regulation 2019 (Qld)*), must obtain an Environmental Authority from the Queensland Department of Environment, Tourism, Science and Innovation. A copy of the Environmental Authority must be provided to the Company on request. The Company will hold a copy of submitted documentation on file. If any documentation is amended, a copy of the new permit should be submitted to the Company
- (iv) The Hirer, where undertaking Mineral and bulk material handling, must comply with all Conditions of their Environmental Authority for Mineral and bulk material handling.
- (v) If the Hirer is aware of a breach of any conditions of their Environmental Authority for Mineral and bulk material handling, the Hirer must inform both the Company and the Department of Environment, Tourism, Science and Innovation as soon as practical after becoming aware of the breach.
- (vi) On request, the Hirer must provide the Company any reviews or audits relevant to the Environment Authority for Mineral and bulk material handling.

### 16.3 Biosecurity compliance

- a) The Hirer, its Personnel, stevedore, passengers and cargo interest must comply with all Laws and Port Requirements related to biosecurity, including, but not limited to, the *Biosecurity Act 2015 (Cth)*, the *Biosecurity Regulation 2016 (Cth)* and the *Biosecurity (First Point of Entry – Port of Brisbane) Determination 2019*.
- b) Without limiting paragraph a) above:
  - (i) In accordance with the *Biosecurity Regulation 2016 (Cth)*, the Hirer must have in place the following:
    - (A) procedures, infrastructure and equipment to ensure that an immediate response to a biosecurity incident or suspected risk is made by the Hirer; and
    - (B) procedures for managing waste goods subject to biosecurity control.
  - (ii) the Hirer is to review the guidance material issued from time to time by the Department of Agriculture, Fisheries and Forestry to ensure that appropriate documentation and controls are in place prior to commencing operations.
- c) The Hirer may take into account the First Point of Entry Biosecurity Incident Response Kits provided by the Company at each Common User Facilities for the Hirer's use in the event of a biosecurity incident. The Hirer must inform the Company immediately upon becoming aware of:
  - (i) any breach by the Hirer of any relevant biosecurity legislation, including, without limitation, the *Biosecurity Act 2015 (Cth)* or the *Biosecurity Regulation 2016 (Cth)*; and
  - (ii) any biosecurity incident or suspected risk.

## **17. Security of Critical Infrastructure Laws**

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- a) The Hirer acknowledges that due to the nature of the business that the Company operates, the Company must comply with the Security of Critical Infrastructure Laws.
- b) The Hirer must:
  - (i) not do anything (or cause anything to be done) that may put the Company in breach of its obligations under the Security of Critical Infrastructure Laws; and
  - (ii) notify the Company in writing as soon as practicable after it becomes aware of any actual or potential circumstance that may put the Company in breach of the Security of Critical Infrastructure Laws. Such notice must set out full details of the circumstances concerning the actual or potential breach to the best of the Hirer's knowledge and must include a written statement made by a suitable authorised officer of the Hirer to this effect.
- c) The Company may, from time to time, notify the Hirer of a particular requirement of the Security of Critical Infrastructure Laws that may impact the performance of services and the Hirer must use its reasonable endeavours to comply with any such requirement.
- d) The Hirer must provide the Company with all information reasonably requested by the Company in connection with the Hirer's compliance with this clause 17.

## **18. Passengers**

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### **18.1 General**

- a) The Hirer acknowledges that the health and safety of its passengers is the Hirer's responsibility at all times.
- b) The Hirer must at all times ensure that it complies with all relevant Laws and Port Requirements relating to its passengers.
- c) The Hirer must ensure that the Common User Facilities is fit for its intended purpose of use by its passengers.

### **18.2 Passenger compliance with operations manuals**

- a) The Hirer must ensure that its passengers comply with the Common User Facilities Rules; and
- b) The Company may refuse or withdraw permission for the use, access or occupation by the Hirer or any of its passengers of the Common User Facilities if, in the Company's opinion, there is a breach of clause 18(a) above.

## **19. The Hirer's Personnel**

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- a) The Hirer must ensure that all of its Personnel and any stevedore are reputable and have sufficient experience to properly undertake their duties at the Common User Facilities.
- b) The Hirer must ensure that all of its Personnel and any stevedore operate under any conditions of use advised to the Hirer, its Personnel and stevedore by the Company.

## **20. Productivity of the Vessel and the Hirer's Personnel**

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- a) The Hirer, its Personnel and any stevedore must comply with the productivity requirements relating to the access, occupation or use of the Common User Facilities as agreed between the Company and Hirer, or as set out in the applicable Common User Facilities Rules; and
- b) The Company may refuse or withdraw permission for the use, access or occupation by the Hirer, its Personnel and any stevedore of the Common User Facilities if in the Company's opinion, there is a breach of clause 20(a) above.

## **21. Withdrawal of permission to access, occupy or use**

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### **21.1 Breach by Hirer**

The Company may refuse or withdraw permission for the use, access or occupation by the Hirer of the Common User Facilities at any time by written notice given to the Hirer if the Hirer is in material breach of this Agreement.

### **21.2 Force Majeure**

- a) The Company may refuse or withdraw permission for the use, access or occupation by the Hirer of the Common User Facilities at any time if it considers that an Event of Force Majeure is such that it will prevent the Company from providing the Common User Facilities for use by the Hirer within the time period originally contemplated by the parties.
- b) If the Company is prevented or delayed in providing use of the Common User Facilities by an Event of Force Majeure then for so long as that situation continues the Company is excused from providing use of the Common User Facilities to the extent that it is so prevented or delayed.
- c) The Hirer will have no Claim against the Company for any loss which may be suffered by the Hirer as a result of any delay.

### **21.3 Unreasonable delay in Time of Arrival**

The Company may refuse or withdraw permission for the use, access or occupation by the Hirer of the Common User Facilities at any time by written notice given to the Hirer if the Hirer has not arrived within a reasonable time after the ETA.

### **21.4 Company not liable**

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

## **22. Privacy**

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- 22.1 To the extent the Hirer and the shipping agent provides the Company with personal information to perform its obligations under this Agreement or as required by law, the Company will collect, hold, use and disclose personal information for the purposes set out in its Privacy Policy.

## 23. GST

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### 23.1 Definitions

a) In this clause:

- (i) **GST** means the goods and services tax imposed by the GST Law together with any related interest, penalties, fines or other charge.
- (ii) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
- (iii) **GST Law** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

b) Words defined in this clause which are not otherwise defined in this Agreement will have the meaning given in the GST Law.

### 23.2 GST to be added to amounts payable

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

### 23.3 Timing of payment of GST amount

The GST Amount is payable on the earlier of:

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

### 23.4 GST for reimbursements

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

## 24. Assignment and subcontracting

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### 24.1 Company may assign

The Company may assign or novate all or part of its rights or obligations under this Agreement to any person who operates or maintains the Common User Facilities.

### 24.2 Subcontracting by Company

The Company may subcontract any of its obligations under this Agreement.

### 24.3 No assignment by Hirer

The Hirer may not assign or novate any of its rights or obligations under this Agreement without the prior written consent of the Company.

## **25. Notices to Company**

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All notices and other communications, including the completed Booking Form, to the Company in relation to this Agreement must be in writing and sent by mail with postage prepaid, by personal delivery or by email as follows:

**Name:** Port of Brisbane Pty Ltd

**Address:** Port Office, 3 Port Central Avenue, Port of Brisbane QLD 4178

**Attention:** Manager – Port Operations

**Email:** port.ops@portbris.com.au

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

## **26. Dispute resolution**

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If a dispute or difference between the Company and the Hirer, its Personnel, shipping agent or any stevedore arises out of or in connection with this Agreement or the use of the Common User Facilities, is to be dealt with in accordance with the procedure set out in the Voluntary Access Undertaking.

## **27. General**

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### **27.1 Consents or approvals**

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

### **27.2 Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating in any way to the subject matter of this Agreement and supersedes all prior representations and agreements made by the parties.

### **27.3 Proper law and jurisdiction**

This Agreement is governed by and will be construed in accordance with the Laws of Queensland. The parties agree to submit to the non-exclusive jurisdiction of the Courts of Queensland to determine any disputes under this Agreement.

### **27.4 Variations and waivers to be in writing**

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

### **27.5 Execution by some parties only**

Where the Hirer may be constituted by more than one party, the failure by one or more of those parties to execute this Agreement does not relieve any of the other parties who

constitute the Hirer of any of their obligations, and those other parties will be bound by this Agreement.

#### 27.6 **Severance**

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

#### 27.7 **Precedence of Laws**

Noting in this Agreement has the effect of limiting, lessening or fettering any Laws, including but not limited to the Port Lessor's, Port Lessee's or Port Manager's rights under the *Transport Infrastructure Act 1994* (Qld).

### 28. **Headlease**

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The Hirer acknowledges and confirms that:

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

### 29. **Interpretation**

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

- a) the singular includes the plural and conversely;
- b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- c) a reference to a person, Company, trust, partnership, unincorporated body or other entity includes any of them;
- d) a reference to an agreement or document (including, without limitation, a reference to Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document;
- e) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- f) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- g) a reference to any government department or similar includes a modification of such a government department or successor of such a government department;

- h) a reference to **dollars** and \$ is to Australian currency:
- i) the meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions: and
- j) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of them.

**1 Definitions**

The following definitions apply unless the context requires otherwise.

**Access Period** means the time commences from when a Vessel enters the Port of Brisbane and expires when a Vessel departs the Port of Brisbane.

**Authorised Officer** means any person appointed as an authorised officer for the port authority or Port Lessor pursuant to s282K of the *Transport Infrastructure Act 1994* (Qld).

**Booking Form** means the Booking Form for a Vessel, set out at the beginning of this Agreement.

**Bulk Materials** means as defined under the *Environmental Protection Regulation 2019* (Qld).

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

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

**Common User Facilities** means one of the following facilities, as agreed between the parties:

- (a) Port North Common User Berth 1;
- (b) Pinkenba Common User Port Facility;
- (c) General Purpose Wharf and Terminal;
- (d) Fisherman Island Grain Berth / Multi-User Terminal;
- (e) Brisbane Crew Change Berth;
- (f) Brisbane International Cruise Terminal (Lay up only; non-cruise ship); and
- (g) Fisherman Island Bulk Berth No. 2.

**Common User Facilities Charges** means the fees or charges specified in the document with the title "Schedule of Port Tariffs" published on the Company's Website, and as updated from time to time, or any fees or charges as notified by the Company on application, which is deemed to form part of this Agreement.

**Common User Facilities Rules** means the operations manual or document containing rules for the each of the Common User Facilities, copies of which are available on the Company's Website, or at the request from the Company, as amended from time to time by the Company.

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

**Consequential Loss** includes any:

- (a) indirect or consequential loss or damage;
- (b) loss of revenue or loss of profits;
- (c) loss of use of the Vessel; or
- (d) loss of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, adverse publicity or damage to credit rating.

**Environmental Authority** has the same meaning as in the *Environmental Protection Act 1994* (Qld).

**ETA** means Estimated Date/Time of Arrival.

**ETD** means Estimated Date/Time of Departure.

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

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

**First Point of Entry Biosecurity Incident Response Kits** means the kits located at each of the Common User Facilities, containing the following:

- (a) general spill kit, including broom, shovel, buckets and absorbent litter;
- (b) disinfectant;
- (c) commercial insect knockdown spray; and
- (d) tarpaulins.

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

**Harbour Master** means a Regional Harbour Master appointed by Maritime Safety Queensland under the *Transport Operations (Marine Safety) Act 1994* (Qld).

**Hirer** means each of the owner, charterer, master or operator of a Vessel that enters the Port of Brisbane.

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

**Headlease** means the leases between Brisbane Port Holdings Pty Limited ACN 124 048 522 (as lessor) and QPH Property Co Pty Limited ACN 147 319 999 as trustee for QPH Property Trust ABN 37 014 309 893 (as lessee); and the subleases between QPH Property Co Pty Limited ACN 147 319 999 as trustee for QPH Property Trust ABN 37 014 309 893 (as lessor) and Port of Brisbane Pty Limited ACN 143 384 749 (as lessee) over land including the Common User Facilities.

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

**Non-Company Equipment** means ship loaders and associated gantry equipment, shore cranes and associated equipment and cargo that is at the Common User Facilities but not owned by the Company.

**Other Use** means Cargoes that require pre-assembly or are held for delivery following discharge are required to be stored clear of the Common User Facilities in a designated lease or common user storage area as agreed in writing by the Company.

**Particulars** means the Particulars noted in the Booking Form.

**Permitted Use** means the berthing of the Vessel and, where relevant:

- (a) the transit, receipt, delivery, loading, unloading storage and stevedoring of cargo;
- (b) the embarking and disembarking of passengers;
- (c) bunkering;
- (d) ship repair and maintenance; and
- (e) Crew change.

**Personnel** means any employee, officer, agent, consultant, contractor, representative, invitee or licensee engaged or used by the Hirer, including

- (a) any shipping agent engaged or used by the Hirer in relation to the Vessel;
- (b) any stevedore engaged or used by the Hirer in relation to the Vessel; and
- (c) all crew and other personnel engaged or used by the Hirer in relation to the Vessel;

**Port of Brisbane** means the geographic area designated as the Port of Brisbane as defined by the *Transport Infrastructure (Ports) Regulation 2016* (Qld) as amended from time to time.

**Port Lessor** means the Port Lessor as defined under the *Transport Infrastructure Act 1994* (Qld).

**Port Lessee** means the Port Lessee as defined under the *Transport Infrastructure Act 1994* (Qld).

**Port Manager** means the Port Manager as defined under the *Transport Infrastructure Act 1994* (Qld).

**Port Requirements** means any policies, rules, regulations or notices relating to the use of the Common User Facilities or the Port of Brisbane, enacted or published from time to time by any Government Authority, by the Company, or by any other entity with any control or authority in relation to all or part of the Common User Facilities or the Port of Brisbane, including but not limited to the Common User Facilities Rules, and procedures enacted or published by the Harbour Master.

**Privacy Policy** means the means the document of that name published on the Company's Website, as amended from time to time by the Company.

**Released Party** means each of:

- (a) the Company;

- (b) Brisbane Port Holdings Pty Ltd ACN 124 048 522, QPH Property Co Pty Limited ACN 147 319 999 as trustee for QPH Property Trust ABN 37 014 309 893 and the Security Trustee;
- (c) any related entity of the Company; and
- (d) any employee, representative, officer, agent or contractor of the Company or any related entity of the Company.

**Security Deposit** means:

- (a) a cash deposit;
- (b) a bank guarantee from a financial institution acceptable to the Company at its sole discretion; or
- (c) such other form of security as the Company is willing to accept at its sole discretion.

**Security of Critical Infrastructure Laws** means the *Security of Critical Infrastructure Act 2018* (Cth) including any accompanying regulations, directions, rules and ancillary legislation, as amended or replaced from time to time.

**Security Trustee** means ANZ Fiduciary Services Pty Ltd ABN 91 100 709 493 (or any replacement entity acting as the security trustee for all or substantially all of the Company's corporate financing arrangements from time to time).

**Terms and Conditions** means these Common User Facilities Terms and Conditions.

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

**Vessel** means any commercial cargo vessel, non-cargo working vessel, naval vessel, trainee vessel, vessel on lay-up, expedition vessel or passenger vessel booked by the Hirer under this Agreement.

**Voluntary Access Undertaking** means the document of that name, available on the Company's Website, as updated from time to time, or at the request from the Company.

**Website** means [www.portbris.com.au](http://www.portbris.com.au), or any other website used by the Company as its primary website from time to time.