

# Terms of Entry (“ToE”)

THESE ARE THE TERMS AND CONDITIONS UPON WHICH PORTS OF AUCKLAND LIMITED (“POAL”) AGREES TO ALLOW YOU (“ENTRANT”) ACCESS TO ITS PREMISES

The Terms of Entry apply to external organisations (referred to as the Entrant) entering the Ports of Auckland, and Persons under the Entrant’s Control. The Entrant must agree to the ToE and provide POAL with a signed acceptance, prior to the Entrant or Persons under the Entrant’s Control entering the Port of Auckland.

This Terms of Entry supersedes any previous Terms of Entry.

In signing the Terms of Entry, the Entrant acknowledges that it has read, understood and agreed to these terms and conditions, and the signatory is authorised to sign on behalf of the Entrant.

SIGNED on behalf of: \_\_\_\_\_ (Entrant’s company name)

\_\_\_\_\_  
(Signature)

Dated:

Name:

Position:

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## 1 Definitions

1.1. In these ToE, unless the context otherwise requires:

**"Designated Common Access Routes"** means routes designated by POAL, and amended from time to time, for the purposes of accessing any Work Areas. Routes are shown on the Plan in Appendix B.

**"Notifiable Event"** means the death of a person, or a Notifiable Incident, or a Notifiable Injury or Illness.

**"Notifiable Incident"** means an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to:

- a) an escape, a spillage, or a leakage of a substance;
- b) an implosion, explosion, or fire;
- c) an escape of gas or steam;
- d) an escape of a pressurised substance;
- e) an electric shock;
- f) the fall or release from a height of any plant, substance or thing;
- g) the collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with regulations;
- h) the collapse or partial collapse of a structure;
- i) the inrush of water, mud, or gas in workings in an underground excavation or tunnel;
- j) the interruption of the main system of ventilation in an underground excavation or tunnel; or
- k) any other incident declared by regulations to be a notifiable incident.

**"Notifiable Injury or Illness"** means:

- a) any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):
  - i. the amputation of any part of his or her body;
  - ii. a serious head injury;
  - iii. a serious eye injury;
  - iv. a serious burn;
  - v. the separation of his or her skin from an underlying tissue (such as de-gloving or scalping);
  - vi. a spinal injury;
  - vii. the loss of a bodily function; or
  - viii. serious lacerations;
- b) an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment;
- c) an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance;

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- d) any serious infection (including occupational zoonoses) to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work:
- i. with micro-organisms;
  - ii. that involves providing treatment or care to a person;
  - iii. that involves contact with human blood or bodily substances;
  - iv. that involves handling or contact with animals, animal hides, animal skins, animal wool or hair, animal carcasses, or animal waste products; or
  - v. that involves handling or contact with fish or marine animals; or
- e) any other injury or illness declared by regulations to be a notifiable injury or illness.

**"Persons under the Entrant's Control"** includes all servants, employees, agents, contractors, suppliers, vendors, customers and other invitees of the Entrant. Persons under the Entrant's Control' is deemed to still be a Person under the Entrant's control, unless the POAL has been notified in writing;

**"Port Infrastructure"** means all structures, services, plant and facilities on the Premises, including but not limited to, pavements, wharves, buildings, fences, gates, signage, lighting, storm water systems, masts and equipment.

**"Port Operations"** means all customary commercial uses carried on in an international seaport (including the Ports of Auckland) at any time in accordance with prevailing practices and trends for the time being, whether involving the use of light or heavy machinery, equipment, vehicles, vessels or otherwise.

**"Port Regulations"** means any rules or regulations issued by POAL governing the day to day activities in, and control and management of, the Premises as from time to time varied or replaced by POAL;

**"Premises"** means the premises owned and/or operated and/or controlled by POAL.

**"Safe Working Load"** is the maximum load that may be applied to the Port Infrastructure, as advised or provided by POAL from time to time.

**"Work Area"** means the area(s) of the Premises assigned, designated, leased or licensed by POAL to the Entrant (whether exclusively or non-exclusively) for the purposes of undertaking any Port Operations or maintenance of Port Infrastructure.

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## 2 No Rights or Entitlement

- 2.1 Entry/access to the Premises is entirely discretionary for POAL. Nothing in these ToE gives any rights or entitlement to the Entrant, or any other person or entity.
- 2.2 Notwithstanding any other provision in these ToE, POAL may refuse entry and access to the Premises including the Work Area, to the Entrant, any person or entity associated with the Entrant, and/or any Person under the Entrant's Control at any time, in its sole discretion, whether temporarily or permanently, and without providing any notice or giving any reason whatsoever.

## 3 Entrant's Obligations

### 3.1 The Entrant shall:

- a) ensure all Persons under the Entrant's Control are familiar with the summary ToE (See Appendix A), are compliant with the terms and conditions of the ToE, and any breach of this ToE by any Persons under the Entrant's Control will be deemed to be a breach of this ToE by the Entrant.
- b) unless otherwise agreed in writing between POAL and the Entrant, take out and maintain insurance policies for a minimum of \$20 million to cover, as far as may be legally possible, the matters and indemnities included in clauses 4 and 5, and all usual commercial and industrial risks, including, without limitation, public liability and motor vehicle third party liability insurance, and provide current evidence of such insurance policies if so requested by POAL;
- c) be liable and pay for any loss or damage caused by the Entrant or a Person under the Entrant's Control and, without limitation, shall at POAL's first request, remove any of the Entrant's vehicles, plant, machinery, equipment, and any other effects from the Premises, and make good any loss or damage, if any, to the Premises caused by the removal of the vehicles, plant, machinery, equipment or other effects, or otherwise caused by the actions of the Entrant or Persons under the Entrant's Control;
- d) notify POAL immediately (or as soon as reasonably practicable) of any loss or damage to POAL property or Port Infrastructure caused by the Entrant or Persons under the Entrant's Control;
- e) ensure that it and Persons under the Entrant's Control only enter the Premises via an approved entry point, following entry and exit instructions, policies and procedures and only use the Designated Common Access Routes to access Work Areas;
- f) only perform work and activities within the Work Area and must ensure that it does not, and that Persons under the Entrant's Control do not, enter or use any Work Areas which have been assigned to other parties, unless it has been approved by that party and POAL to do so;
- g) keep to, and ensure that Persons under the Entrant's Control keep to, Designated Common Access Routes to access the Work Area. If an existing Designated Common Access Route does not enable the Entrant or Persons under the Entrant's Control to access the Work Area, the Entrant shall ask POAL to assign a route to allow access;
- h) ensure that the Work Area is suitable for the safe performance of the operations and activities of the Entrant and any Persons under the Entrant's Control. If the Entrant believes that the Work Area is not suitable, the Entrant shall promptly provide to POAL in writing the reasons for this belief;
- i) ensure that all the equipment, vehicle and machinery of the Entrant or a Person under the Entrant's Control has all necessary, and shall keep current all necessary, Warrants or Certificates of Fitness and any other relevant certificates or permits establishing the equipment, vehicle and machinery are fit for purpose, and meets safety requirements; and, to the extent that it is relevant, ensure that such equipment, vehicle and machinery meet the standards set out in the current POAL Environmental Policy;

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- j) ensure that all workers of the Entrant and of any Persons under the Entrant's Control are, and will remain, suitably qualified, trained and competent – this includes ensuring that all users and operators of any equipment, vehicle and machinery must:
    - i. have completed all reasonably necessary training and certification to use and operate any equipment, vehicle and machinery, which they will or could be using or operating while they are at the Premises; and
    - ii. have been assessed and confirmed to be skilled and competent by a suitably skilled and experienced person, or be under the close supervision of a skilled and competent person at all times until they are assessed and confirmed to be skilled and competent by a suitably skilled and experienced person.
  - k) ensure all certificates or permits required for work and activities to be carried out in the Work Area, including, but not limited to, hot works, confined spaces (except in relation to working in ship holds), crane lifts (for shore based cranes, but not ship mounted cranes), and bunkering (for shore based bunkering, but not ship based bunkering), are obtained prior to the start of that work and kept current thereafter;
  - l) comply with, and ensure compliance by Persons under the Entrant's Control with, the provisions of the Resource Management Act 1991, any operative regional or district plan applicable to POAL, any direction from POAL in respect of POAL's obligations under the Resource Management Act and district/regional plans; and with POAL's Environmental Management Plan, including in relation to Stormwater Discharge Resource Consent;
  - m) comply with, and ensure compliance by Persons under the Entrant's Control with, the provisions of the Health and Safety at Work Act 2015, Building Act 2004, Hazardous Substances and New Organisms Act 1996, Customs and Excise Act 1996 / Customs and Excise Act 2018, Maritime Transport Act 1994, Maritime Security Act 2004 and any other applicable legislation, including subsequent legislation, relating to the operations and activities of the Entrant and/or the Persons under the Entrant's Control in the Work Area and/or the Premises, including any regulations, codes or subsequent guidance issued under any such legislation; and any Site Specific Safety Plans which relate to the Work Area and/or Premises ;
  - n) comply with, and ensure compliance by Persons under the Entrant's Control with, all lawful requirements of any regulatory, legal or enforcement authority including, without limitation, the Auckland Council, the Ministry for Primary Industries, Maritime New Zealand, WorkSafe New Zealand and the New Zealand Customs Service, relating to the Work Area and/or the Premises;
  - o) comply with, and ensure compliance by Persons under the Entrant's Control with, the Port Regulations, traffic rules, and all POAL directions and instructions, signs and notifications, and other operational, health and safety, security and environmental processes, procedures, measures, plans and requirements issued by POAL from time to time relating to the Premises, the Work Area, any amenities or other POAL facilities, and with any special instructions given to the Entrant by POAL;
  - p) comply with, and ensure compliance by Persons under the Entrant's Control with, all applicable POAL policies which may be introduced or amended by POAL from time to time, including but not limited to the POAL Health and Safety Policy, the POAL drug and alcohol policy, and the POAL Environment Policy;
  - q) comply with, and ensure compliance by Persons under the Entrant's Control with, the terms and conditions of any approvals, consents or rights granted to the Entrant or POAL, including but not limited to, the approval to dig/excavate;
  - r) comply with, and ensure compliance by Persons under the Entrant's Control with, all POAL induction requirements and processes – this expressly includes ensuring that all workers of the Entrant and the Persons under the Entrant's Control have all completed the induction and training programmes that cover all standard operating procedures (SOPs) or safe work method statements (SWMS) for the particular work and activity which they will or could undertake while they are on the Premises;
  - s) comply with, and ensure compliance by Persons under the Entrant's Control with, all wharf load limits in order to prevent overloading of or damage to the Work Area or to any other part of the Premises. Any plant, equipment, machinery and placed or stacked cargo must not exceed the specified Safe Working Load at any time, and the Entrant must not operate any plant, equipment, machinery, nor place or stack cargo unless it is aware of, and it complies with, the Safe Working Load. If the limit for a particular area is not clear, the Entrant or Persons under the Entrant's Control shall consult with POAL to determine the limit;
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- t) notify POAL immediately of any accidents, incidents, hazards or risks, including near misses or potential hazards or risks, occurring in the Work Area and/or Premises, that expose any worker, whether the worker is a Person under the Entrant's Control or not, to a serious risk to health and safety;
  - u) notify WorkSafe of any Notifiable Events, as defined in the Health and Safety at Work Act 2015, in accordance with the requirements of that legislation, as soon as possible. The Entrant shall also refer all regulatory documents that are received in relation to the Notifiable Events to POAL as soon as possible;
  - v) ensure investigation of any Notifiable Events occurring in the Work Area and/or Premises, and promptly identify steps which can be taken to eliminate or minimise the risk of such an event occurring again. The Entrant shall provide POAL with any related reports and Investigation outcomes as part of this process;
  - w) consult, co-operate and co-ordinate activities with POAL and other users of the Premises on health and safety-related matters;
  - x) behave in a proper and professional manner, with minimum interference and without damage, nuisance, or disturbance to any person;
  - y) for the purposes of the Health and Safety at Work Act 2015, ensure, so far as is reasonably practicable, the health and safety for all Persons under the Entrant's Control when the same are in the Work Area and/or Premises, and all other persons whose health and safety may be put at risk from work carried out as part of the Entrant's operations;
  - z) permit POAL, on reasonable notice, to inspect and review the Entrant's operations or activities, and its records and information relating to the Entrant's operations or activities, for the purpose of assessing the Entrant's compliance with all relevant matters listed in clause 3.1(d) to (y) inclusive.

### 3.2 The Entrant shall not:

- a) do or permit to be done in the Work Area and/or Premises anything which in the sole opinion of POAL may become a nuisance, hazard, disturbance or obstruction whether to POAL or to other users of the Premises or the owner or occupier of any adjoining land or Work Area;
- b) do or permit to be done in the Work Area and/or Premises anything which in the sole opinion of POAL may cause damage to the Work Area and/or Premises and / or Port Infrastructure or any property owned or controlled by POAL or by other users of the Premises, including but not limited to cargo;
- c) obstruct or interfere with any of the entrances or other areas of the Premises, do or permit to be done anything on the Premises which may cause any insurances effected by the Entrant or POAL to be rendered void or voidable or (except with POAL's prior written approval) render the premiums payable on any such insurances liable to increase;
- d) interfere with any Port Operations.

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## 4 Entrant's Acknowledgements

- 4.1. The Entrant acknowledges that it has control and/or influence of the Work Area (being a workplace as defined in the Health and Safety at Work Act 2015). As such, the Entrant and POAL agree that POAL does not have the practical ability to directly influence or control activities undertaken by the Entrant in the Work Area, and that the Entrant has the sole practical ability to influence and control activities carried out in the Work Area to ensure, so far as is reasonably practicable, the health and safety of workers. The Entrant acknowledges that it has the specialist knowledge in relation to potential hazards and risks, and potential ways of eliminating such hazards or risks, which may be present in the Work Area.
- 4.2 The Entrant acknowledges that it does not have the sole right to use the Designated Common Access Routes assigned to the Entrant and that other parties will be using such routes.
- 4.3 The Entrant acknowledges that it shall be liable for the cost of remediation or repair to the Premises and/or Port Infrastructure as a result of any damage caused by or contributed to by the Entrant, including where the damage is due to overloading, mechanical damage, and/or environmental damage. Further, POAL shall have no liability to the Entrant as a result of any such damage.

## 5 Indemnity

- 5.1 Notwithstanding anything to the contrary, the Entrant shall indemnify POAL and keep POAL indemnified from and against any action, claim, demand, loss, damage, cost, expense or liability which POAL may suffer or incur, or for which POAL may become liable in respect of or arising from any failure by the Entrant or a Person under the Entrant's Control to comply with any obligation imposed on the Entrant under these ToE or by law, to the extent to which such action, claim, demand, loss, damage, cost, expense or liability is caused or contributed to by the Entrant or a Person under the Entrant's Control, in so far that such indemnity is permitted by law.
- 5.1a In addition, the Entrant shall also be liable to POAL (including liability which the Entrant has for Persons under the Entrant's Control) for any loss of profit, consequential or indirect loss if such loss is caused or contributed to by the Entrant or a Person under the Entrant's Control.
- 5.2 For the avoidance of doubt, the Entrant must promptly do all things reasonably necessary:
- a) To claim on its insurance policy if a claim arises; and
  - b) To ensure that the proceeds of the insurance claim are paid by the insurer directly to POAL (but only to the extent that the proceeds are for the Entrant's liability to POAL).

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## 6 Liability

### 6.1 The Entrant:

- a) acknowledges and accepts that the Entrant or any Persons under the Entrant's Control entering the Work Area and/or Premises do so with obligations under the Health and Safety at Work Act 2015;
- b) shall ensure that the obligations, responsibilities, limitations and exclusions contained in these ToE are drawn to the attention of, adhered to and accepted by any Persons under the Entrant's Control entering the Work Area and/or Premises (refer to the summary ToE in Appendix A);
- c) for the avoidance of doubt, shall indemnify POAL against any claims brought against POAL by such Persons under the Entrant's Control , except to the extent that such claim arises from POAL's negligence.

### 6.2 POAL, its servants, agents or employees shall only be liable to the Entrant or any Persons under the Entrant's Control for:

- a) any loss or damage to any vehicles, machinery, equipment, or other property of the Entrant or any Persons under the Entrant's Control in or on the Work Area and/or Premises;
- b) any other loss, damage or liability incurred by Entrant or any Persons under the Entrant's Control in the Work Area and/or Premises.

When such loss or damage arises as a result of the negligence or willful default of POAL, its servants, agents or employees.

## 7 General

7.1 POAL may, in its sole discretion, amend these ToE should legislation or other operating requirements change, without consultation with the Entrant. Any amendments to the ToE will be communicated to the Entrant in writing by POAL.

7.2 If there is any inconsistency between these ToE and any other contract entered into between POAL and the Entrant, including any Lease or Licence, the terms of these ToE will prevail over the other contract(s) to the extent of any conflict. However, in reflection of the overriding importance of compliance with the Health and Safety at Work Act 2015 and any subsequent regulations, POAL and the Entrant acknowledge that the document which imposes the more onerous health and safety obligations on the Entrant will prevail, to the extent of any conflict.

7.3 These ToE are governed by New Zealand law. The Entrant submits irrevocably to the jurisdiction of the New Zealand Courts.

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## Appendix A: Terms of Entry (“ToE”) Summary

All Entrants and Persons under the Entrant’s Control are subject to and must be aware of the Terms of Entry (“ToE”).

The Ports of Auckland (“POAL”) Premises and the nature of work and activities undertaken at the Premises, may expose any person (including employees, contractors and visitors) to a range of potential risks including, but not limited to: heavy machinery, high voltage, water hazards, chemicals, heights and falling edges.

Any person entering the Premises must conduct themselves and their activities in a safe manner, be aware of the risks, comply with any POAL policies, procedures and instructions relating to safety, and do everything possible to ensure their own safety and the safety of other persons.

All persons entering the POAL Premises must:

- Enter the POAL Premises via an approved entry point, and follow the entry and exit instructions, policies and procedures;
- Complete a safety induction training relevant to the area of the port in which the work will take place;
- Be accompanied by a staff member or security officer at all times (unless full induction training is completed, and authority is given to work on site);
- Follow all security and safety practices, instructions, policies and procedures;
- Adhere to the POAL Health and Safety Policy and its associated sub-policies and procedures;
- Submit, if requested, to random and other types of drug and alcohol testing;
- Follow all policies and protocols as outlined in the Environmental Policy and procedures;
- Follow all reasonable instructions by a Safety and Wellness Specialist, Shift Manager, Supervisor, Manager or POAL staff member;
- Take responsibility for their own safety and the safety of other persons;
- Only enter areas of the Premises that they are authorised to access;
- Notify a POAL Manager or Supervisor if any hazards and incidents (including near miss) are identified;
- Notify a POAL Manager or Supervisor of any damage to cargo or POAL property;
- Adhere to all applicable legislation and regulations;
- Permit POAL to inspect and review the Entrant’s operations, activities and records;
- ensure all equipment, vehicle and machinery have all necessary warrants and certificates;
- ensure that all workers are suitably qualified, trained and competent, including where they are using or operating any equipment, vehicle and machinery;
- Behave in a proper and professional manner, without interference and without damage, nuisance, or disturbance;
- Not interfere with any Port Operations.

Entry/access to Ports of Auckland Premises is discretionary. The Ports of Auckland may refuse entry to any person or entity, and the failure to comply with the Terms of Entry may result in any authorisation to enter for a person or an entity being revoked by POAL at any time, with or without notice, whether temporarily or permanently.

**Disclaimer:** This summary is not intended to replace, limit or modify any clauses in the Terms of Entry.

## Appendix B - Designated Common Access Routes

