

Terms of Entry (“ToE”)

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

1.0 DEFINITIONS

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

“Persons under the Entrant's control” includes all servants, employees, agents, contractors, suppliers, customers and other invitees of the Entrant;

“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 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.

2.0 LIMITATIONS ON ENTRANT’S RIGHTS

2.1 Notwithstanding any provision in these ToE, POAL may refuse entry to the Premises to the Entrant and/or any Person under the Entrant’s control at any time, in its sole discretion, without providing any notice or giving any reason whatsoever.

3.0 ENTRANT’S OBLIGATIONS

3.1 The Entrant shall:

- (a) take out and maintain insurance policies for a minimum of \$10 million to cover as far as may be legally possible the indemnities included in clause 4, and usual commercial and industrial risks, including, without limitation, public liability insurance, and provide evidence of such insurances if so requested by POAL;
- (b) be liable and pay for any loss or damage caused by the Entrant or a Person under the Entrant’s control whilst on the Premises 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 damage, if any, to the Premises caused by such removal or otherwise by the actions of the Entrant or Persons under the Entrant’s control;

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- (c) notify POAL immediately (or as soon as reasonably practicable) of any damage to POAL property caused by the Entrant or Persons under the Entrant's control;
 - (d) 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 Environment Policy and Environmental Management Plan relating to Stormwater Discharge Resource Consent;
 - (e) comply with, and ensure compliance by Persons under the Entrant's control with, the provisions of the Health and Safety in Employment Act 1992, Building Act 1991, Hazardous Substances and New Organisms Act 1996, Customs and Excise Act 1996, Maritime Transport Act 1994, Maritime Security Act 2004 and any other applicable legislation, including subsequent legislation, relating to the operations of the Entrant on the Premises, including any regulations, codes or subsequent guidance issued under any such legislation; and the POAL Health & Safety Policy and Environment Policy;
 - (f) comply with, and ensure compliance by Persons under the Entrant's control, with all lawful requirements of any authority including, without limitation, the Auckland Council, the Ministry of Agriculture and Forestry, Maritime New Zealand and the New Zealand Customs Service, relating to the Premises;
 - (g) comply with, and ensure compliance by Persons under the Entrant's control with, the Port Regulations and all other policies, procedures and security measures issued by POAL from time to time relating to the Premises, any amenities or other POAL facilities and with any special instructions given to the Entrant by POAL;
 - (h) permit POAL, on reasonable notice, to inspect and review the Entrant's on wharf operations, and its records and information relating to the Entrant's on wharf operations, for the purpose of assessing the Entrant's compliance with all relevant matters listed in clause 3.1 (d) to (g) inclusive;
 - (i) behave in a proper and professional manner, with minimum interference and without damage, nuisance, or disturbance to any person;
 - (j) adhere to the POAL Health & Safety Policy;
 - (k) give to POAL prompt written notice of any accident occurring on the Premises;
 - (l) for the purposes of the Health and Safety in Employment Act 1992, to the extent permitted by law be solely responsible for the health and safety for all the persons under the Entrant's control when the same are on the Premises;
 - (m) ensure that all the equipment and machinery of the Entrant or the Person under the Entrant's control, whilst on the Premises, has all necessary, and shall keep current all necessary, Warrants or Certificates of Fitness and any other relevant certificates or permits establishing the equipment is fit for

purpose; and, to the extent that it is relevant, ensure that such equipment and machinery meet the standards set out in the current POAL Environmental Policy.

- 3.2 The Entrant shall not:
- (a) do or permit to be done on the Premises anything which in the sole opinion of POAL may become a nuisance, disturbance or obstruction or cause damage whether to POAL or to other users of the Premises or the owner or occupier of any adjoining land.
 - (b) 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;
 - (c) interfere with any Port Operations;

4.0 INDEMNITY

- 4.1 The Entrant shall indemnify POAL and keep POAL indemnified from and against any action, claim, demand, direct 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 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.
- 4.1A In addition, the Entrant shall also be liable to POAL (including any liability the Entrant has for Persons under the Entrant's control) for any loss of profit, consequential or indirect loss if such loss is caused by the Entrant's wilful default.
- 4.2 Despite clauses 4.1 and 4.1A (Indemnity) or anything else in these ToE the aggregate amount of the Entrant's liability to POAL however caused (including, without limitation, recklessness or negligence) is limited to:
- (i) Where the Entrant is required to be insured under these ToE, an amount equal to the lesser of:
 - A. *The amount received by the Entrant for a claim made under the insurance policy; or*
 - B. *\$10,000,000.*
 - (ii) In all other cases, \$200,000

4.3 For the avoidance of doubt, the Entrant must do all things reasonably necessary:

- (i) To claim on its insurance policy if a claim arises; and
- (ii) 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).

5.0 LIABILITY POAL

5.1 The Entrant:

- (a) acknowledges and accepts that the Entrant or any Persons under the Entrant's control entering the Premises do so at their own risk;
- (b) shall procure that the limitations and exclusions contained in this Licence are drawn to the attention of and accepted by any Persons under the Entrant's control entering the Premises; and
- (c) for the avoidance of doubt, shall indemnify POAL against any claims brought against POAL by such Persons under the Entrant's control in accordance with the terms of clause 4.

5.2 POAL, its servants, agents or subcontractors shall only be responsible for or liable to the Entrant or any Persons under the Entrant's control for:

- (a) any loss, damage, theft, cost or expense caused by, or sustained in any way to, any vehicles, machinery, equipment, or other property of the Entrant or any Persons under the Entrant's Control in or on the Premises;
- (b) death or injury to any person or;
- (c) any other direct or indirect loss, damage, cost, expense or liability (including, without limitation, consequential losses and loss of profits) incurred by Entrant or any Persons under the Entrant's control as a consequence of any accident or incident occurring on the Premises;

when such loss arises as a result of the negligence or wilful default of POAL, its servants, agents or subcontractors.

6.0 GENERAL

6.1 POAL may amend these ToE should legislation or other operating requirements change, such that in the sole discretion of POAL an amendment is required.

6.2 If there is any inconsistency between these ToE and a specific contract entered into between POAL and the Entrant, the terms of the

specific contract will prevail over these ToE to the extent of any conflict.

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