

# Standard Conditions for Provision of Services

October 2024

## 1. PARTIES

1.1 PORT OF AUCKLAND LIMITED of Auckland.

1.2 The USER as defined. See clause 2.

## 2. DEFINITIONS

In these Standard Conditions for Provision of Services, unless the context requires otherwise:

"Authority to Work Agreement" means the agreement entered into by the User or its representative and POAL as a condition of being granted an access permit to enter the Port.

"Cargo" means any goods, merchandise or other property whatsoever whether or not within a container (but including the Container when Cargo is contained in such Container) in respect of which POAL provides or is requested to provide services hereunder.

"CCLA" means the Contract and Commercial Law Act 2017.

"Conditions" means these Standard Conditions for Provision of Services.

"Consignee" means a person, firm or company to whom any goods are consigned.

"Container" means any article of transport equipment (including, for the avoidance of doubt, lift van, moveable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation.

"Dangerous Cargo" means dangerous, hazardous, toxic or noxious goods or cargo as defined from time to time in the International Maritime Dangerous Goods Code (IMDG) and/or the Hazardous Substances and New Organisms Act 1996 (HSNO) and/or the Maritime Transport Act 1994 and/or any other relevant New Zealand legislation.

"Maritime Rules" means the statutory instruments (or secondary legislation) made by the Ministry of Transport under the Maritime Transport Act 1994 in relation to maritime and marine protection rules.

"Master" means any person (except a pilot) having command or charge of any ship.

"Operating Procedures" means the applicable POAL Operational Procedures (available on the POAL website).

"POAL" means Port of Auckland Limited.

"POAL Dangerous Goods Code of Practice" means the POAL Dangerous Goods Code of Practice (available on the POAL website).

"Policies" means the applicable POAL policies (available on the POAL website and as updated from time to time).

"Port" means the wharves at Auckland, including all their associated depots, terminals and facilities, owned or operated by POAL.

"Price Schedule" means the POAL Price Schedule of charges in force at the date of provision of the Services by POAL.

"Services" means the services set out in clause 4 of these Conditions and such other services or goods as POAL may agree to provide to a User from time to time.

"Subcontractor" means direct or indirect contractors and their respective employees and agents.

"Unit" for the purpose of the liability table in clause 8 means unit as defined in section 247 of the CCLA, as accepted by POAL for the provision of any services, regardless of whether the services include a contract for carriage to which Subpart 1 of Part 5 of the CCLA applies or not.

"User" means any person for whom POAL provides or is to provide services hereunder or who requests POAL to provide services or any person who is or who appears on reasonable grounds to be an agent, employee, Subcontractor or a representative of any one or more of the foregoing, and the obligations and liabilities under these conditions of all or any of such persons, if there be more than one, will be joint and several. Without limiting the generality of the foregoing User will include the owner, lessee, charterer, operator or manager of any vessel (or if the context requires, an owner of Cargo), a road or rail carrier, a shipper, Consignee, or any other party interested in the Cargo, stevedore or a combination of any two or more of those parties.

"UKSC" means the United Kingdom Standard Conditions for Towage and Other Services (Revised 1986) as amended from time to time.

"VGM" means a verified gross mass declaration in accordance with rule 24B.4 of the Maritime Rules.

### **3. SERVICE ON CONDITIONS**

3.1 POAL owns and operates wharves, premises, plant, equipment and related systems in the greater Auckland region.

3.2 The User wishes to use the Services.

3.3 POAL will provide such Services to the User as may be specifically agreed between the User and the Operator in writing from time to time, subject to:

3.3.1 These Conditions (except as otherwise agreed in writing);

3.3.2 To the extent to which the User is required to be on POAL's site(s), the Authority to Work Agreement;

3.3.3 Any lease or licence of premises occupied by the User; and

3.3.4 All applicable Operational Procedures and Policies.

#### 4. SERVICES TO BE PROVIDED BY POAL

- 4.1 POAL may provide a berth for the User's vessel on a date convenient to the User's sailing schedules, but POAL reserves the right not to provide berthage at its discretion. POAL will be under no liability for the consequences (direct or indirect), if any, if for any reason POAL does not provide berthage as requested by the User.
- 4.2 Berthage will be subject to the absolute right of POAL to require a vessel berthed at any wharf to be moved or relocated to another berth in the Port, or to vacate the allocated berth and to moor in the stream or harbour as directed and any such requirement will be carried out by the Master.
- 4.3 Where POAL provides tug, towage, lineboat or similar services, such services will be subject to the UKSC save that:
  - 4.3.1 clauses 9 (a) and (b) of the UKSC (relating to choice of law and jurisdiction) shall be deleted and replaced by clauses 10.4, 10.5 and 10.5 of these Conditions; and
  - 4.3.2 the expression "whilst towing" as defined in the UKSC shall cover the period commencing on the earlier of the time at which the tug receives orders direct from the User's vessel regarding towage, the time at which the tug is physically located in a position to carry out such orders or the time stipulated in the definition of that expression in the UKSC.
- 4.4 For the avoidance of doubt, references in the UKSC to "Tugowner" and "Hirer" are, respectively, references to POAL and the User under these Conditions.
- 4.5 The User is deemed to be familiar with UKSC, however POAL will make the UKSC available to the User on request.
- 4.6 POAL will provide services and related systems for the loading, discharging, or restowing of vessels, for the handling and transport of Cargo and Containers on and between the wharf and the marshalling area (including, without limitation, the delivery to road or rail vehicles and transshipment), facilities for the transport, storage and packing of Cargo and Containers, and all other services referred to in the Price Schedule provided for in clause 5.

#### 5. PRICE SCHEDULE

- 5.1 Unless otherwise agreed in writing, the charges for Services provided will be those contained in POAL's Price Schedule of charges in force at the time of actual provision of the service. The User acknowledges that particulars of such Price Schedule are available upon request and online at <https://www.poal.co.nz/>, and may be amended by POAL from time to time.

## 6. PAYMENT FOR SERVICES

- 6.1 Unless otherwise agreed in writing, prior to the provision of Services requested, all Services must be paid for in full prior to the time of departure of the vessel from the Port to which Services have been provided or, where Services have not been provided in relation to a vessel, within 7 days of the date of POAL's invoice.
- 6.2 If the User has been granted credit pursuant to a POAL approved credit customer agreement, the User will pay invoices no later than the 20th day of the month following the month in which the invoice was issued.
- 6.3 If any amounts payable by the User under these Conditions, any approved credit customer agreement, or any other credit arrangement, are not paid by the due date, the User will pay to POAL, by way of liquidated damages, interest at the rate of 3% per month on the amount outstanding calculated from the due date until payment is made in full, provided that the total interest charged shall not exceed 18% per annum.
- 6.4 The User shall indemnify POAL on a full indemnity basis for all legal fees and costs incurred by POAL in connection with the recovery of any amounts owing by the User under or in relation to the provision of Services under these Conditions, any approved credit customer agreement or any other credit arrangement.
- 6.5 Where an agent has been appointed exclusively as the User's local agent in relation to procuring services from POAL, the agent is directly liable to POAL for payment of all invoices, costs and charges relating to the provision of POAL Services procured by the agent on behalf of the User. In the event that the agent fails to make full payment to POAL of any sums owing in respect of POAL Services by the due date, the User agrees and undertakes to make full payment to POAL within seven days of POAL's written demand and otherwise to indemnify POAL against any losses, costs or charges incurred by POAL as a consequence of the agent's failure to make any such payment.
- 6.6 Payments received by POAL may be accepted and applied by POAL in respect of any indebtedness of the User, and POAL shall not be bound by any conditions or qualifications purporting to attach to such payments.
- 6.7 The User acknowledges that POAL has the absolute right to cancel any credit approved customer agreement or any other credit arrangement at any time and without notice, and to require payment for any Services rendered by POAL, if POAL, in its sole discretion, thinks fit to do so.
- 6.8 If POAL at any time deems the creditworthiness of the User to be unsatisfactory, it may require security for payment and may suspend the provision of Services pending the provision of sufficient security. All costs and expenses incurred by POAL as a result of such suspension and any recommencement shall be payable by the User on demand.
- 6.9 The User shall pay goods and services tax and all other taxes and duties assessed or levied in connection with the supply of Services (other than income tax) that may be

payable by POAL in respect of the provision of Services to the User at the same time as payment for such Services is due.

- 6.10 The User acknowledges that the personal information provided or obtained in support of any customer account will be held by POAL and will be used for the following purposes:
- 6.10.1 To determine eligibility and terms for the provision of credit to the User;
  - 6.10.2 Supplying the User with Services (including information relating thereto);
  - 6.10.3 Enforcing debts and other legal obligations owing to POAL by the User; and
  - 6.10.4 Disclosure to third parties (including credit agencies) associated with any preceding purposes.
- 6.11 POAL reserves the right to pass any account to debt collection agencies at the cost of the User following a written warning of the same.
- 6.12 The User will ensure that sufficient information is provided to POAL to enable accurate and timely invoicing, including but not limited to vessel, Cargo details, consignee and shipper details and Cargo movements and Cargo particulars and commodity details. This information must be provided to POAL prior to, or within 24 hours after vessel departure, or other timeframe as mutually agreed.
- 6.13 The User which instructs POAL to provide Services shall be responsible for payment of all invoices and charges unless POAL agrees otherwise in writing. Where by prior agreement with the User POAL agrees to special invoicing arrangements, including but not limited to on-charging to other persons and/or split invoicing, any request for re-invoicing must be communicated to POAL prior to vessel sailing. Where re-invoicing is requested due to late, incorrect or insufficient communications of a request by the User, an administration fee will be applied up to 30 days following original invoice date after which re-charges and other alterations will not be undertaken by POAL, and it shall be the responsibility of the User to pay all charges.
- 6.14 In the case of a dispute or query in respect of an invoiced amount, the User must contact POAL within 30 days of the date of the invoice which gave rise to the dispute.
- 6.15 In addition to and expressly without waiving or limiting any liens or rights of retention that POAL may have by operation of law or statute, POAL shall have a general lien over the Cargo and Containers and all property of the User for sums due by the User to POAL. POAL will be entitled to sell any property subject to the lien after the expiration of one month's notice to the User without liability to POAL and without prejudice to any other rights and remedies POAL may have. If on sale the goods or proceeds fail to cover the amount due and the costs incurred then POAL shall be entitled to recover the deficit from the User out of all Cargo and Containers presented to POAL by the User in the future. POAL shall be entitled to retain possession of and prohibit from leaving its wharves any vessel until payment of all charges in respect of such Cargo or vessel, or any previous Cargo or vessel owned by the same person has been paid. For the purposes of this



clause, Cargo or vessels owned by a receiver of the owner or an associated person of the owner (as defined in Section OD8(3) of the Income Tax Act 2004) shall be deemed to be owned by the User. As between POAL and the persons liable to pay charges POAL's lien and right to detain goods or vessels at law or hereunder shall apply notwithstanding that such goods may have left or never have been in POAL's possession.

## **7. OBLIGATIONS AS TO CARGO**

- 7.1 The User will ensure that all Cargo and Containers presented to POAL are properly packed and labelled, that a VGM is provided for Containers, that Cargo and Containers are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity or VGM, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and Operating Procedures usually employed by POAL and comply with all applicable laws, orders, regulations, other requirements of the New Zealand Government and all other local or governmental authorities whatsoever, and all requirements of any bills of lading applicable to any Cargo and Containers presented to POAL.
- 7.2 The User will comply with: (a) any policies, rules and directions made from time to time by POAL in respect of the handling of Dangerous Cargo; (b) any statutes, regulations, rules or other legal requirements that may be in force whether prescribed by the New Zealand Government or any international agency or institution; (c) rules, requirements or procedures set by owners of Cargo as appropriate; and (d) all such procedures and rules as are good operating practice.
- 7.3 The User will comply with the documentation and procedures in respect of all operations as required from time to time by POAL, including without limitation the Operational Procedures and POAL Dangerous Goods Code of Practice, particularly in regards to Reefer Cargo, Dangerous Cargo, out of gauge Cargo (as those terms are defined in the POAL Dangerous Goods Code of Practice), or other Cargo requiring special care.
- 7.4 Without limiting clause 7.3, the User will further provide a confirmed uplift plan in relation to any IMDG Class 6 or Class 8 Dangerous Cargo to POAL no later than 24 hours prior to discharge.
- 7.5 If any User fails to remove any Containers or Cargo from the wharves or terminal within the time allotted for free storage as detailed in POAL's applicable Price Schedule then POAL may at its sole and unfettered discretion, remove, warehouse or otherwise deal with such Containers and Cargo at the entire risk and expense of the User.
- 7.6 The User will indemnify POAL, its servants, agents and Subcontractors to the fullest extent allowed by law, against any liability, loss or damage (including any legal costs on a full indemnity basis) incurred by POAL as a result of the User's breach of any of the statutes, regulations, rules, or procedures, or its failure to comply with any of its obligations, set out in clauses 7.1 to 7.5 above.
- 7.7 The User shall indemnify POAL against any liability for duty, goods and services tax or other sales tax, penalties or other charges in respect of the Cargo and/or Containers and

against all costs and expenses (including any legal costs on a full indemnity basis) incurred in connection with any such liability or claim.

- 7.8 POAL shall be entitled to release the User's Cargo to any person holding a delivery order or an electronic data interchange pin code or a release in any other customary form entitling it to uplift the User's Cargo. POAL shall not be responsible for verifying such delivery order or pin code or release and POAL will not be liable for any loss to the User in the event that the delivery order or pin code or release is subsequently shown to be incorrect, unauthorised or fraudulent. The User will indemnify POAL for any claim arising or resulting from POAL releasing the User's Cargo in accordance with this provision (including legal costs on a full indemnity basis).
- 7.9 POAL reserves the right to take such steps as it sees fit to preserve Ships and safeguard the proper and effective operation of the Port, including but not limited to the following:
- 7.9.1 POAL may refuse to accept or deal with Cargo if to do so would, in the opinion of POAL, cause difficulty to its operations in general, or risk of damage to the Cargo, or other cargo or property belonging to POAL or a third party, or risk of injury to any person.
- 7.9.2 If a User brings Dangerous Cargo onto the port without the appropriate notifications, POAL may destroy or remove the goods, without compensation to the User, and at the sole cost of the User.

## 8. LIABILITY REGIME

### 8.1 Liabilities of POAL

Subject to the provisions of clause 8.2 (Maximum Liabilities of POAL), 8.4 (exclusions of liability) and 8.7 (notification of claims), POAL shall only be liable for physical loss or physical damage or injury caused directly by the negligence of POAL (the proof of which negligence shall be on the claimant) to:

8.1.1 The User's vessel and/or equipment of the vessel;

8.1.2 Containers;

8.1.3 Cargo; and/or

8.1.4 Ancillary equipment (not part of the User's vessel's equipment) (including clip-on refrigeration units, generators, trailers and chassis, road or rail vehicles) owned by the User or any other persons.

To the maximum extent permitted by law, POAL shall not be liable to the User or any other person howsoever arising except in the circumstances specified in this clause 8.1. All other liability (whether arising in contract, tort (including negligence), statute or otherwise) to the User or any other person, however caused, is excluded to the maximum extent permitted by applicable law.

## 8.2 Maximum Liabilities of POAL

Liability Table			
Loss/Damage	Maximum Liability	Maximum Aggregate Liability	Excess
User's Vessels & Vessel's Equipment	Lesser of reasonable cost of repair, or market value, or \$200,000	\$200,000	\$1,000
Containers*	Lesser of reasonable cost of repair, or market value, or (i) Refrigerated \$7,500 (ii) Other \$1,000	\$100,000	\$300
Cargo*	\$2,000 per Unit	\$50,000 (subject to clause 8.8.1)	\$300 (subject to clause 8.8.1)
Ancillary equipment (cl 8.1.4)	Lesser of reasonable cost of repair or market value or \$7,000	\$40,000	\$300

\* Note that where Containers are being carried under a contract of carriage within the scope of Subpart 1 of Part 5 of the CCLA, the definition of Cargo includes the Container and the limitation of liability applicable to Cargo will apply (not the separate limitation for the Container).

8.2.1 The maximum liability of POAL, its employees, agents and Subcontractors to the User or any person claiming through the User ("Maximum Liability") is set out in the liability table above, subject to the aggregate liability caps set out in clauses 8.2.2 and 8.2.3.

8.2.2 The maximum aggregate liability of POAL, its employees, agents and Subcontractors of all claims for loss or damage by any claimant or claimants made, arising out of any one event or series of events ("Maximum Aggregate Liability") is set out in the liability table above.

8.2.3 Without limiting the above limitations of liability, in no circumstances whatsoever shall the liability of POAL, its employees, agents or Subcontractors, howsoever arising, including, without limitation, the negligence of POAL, its employees, agents or Subcontractors, in respect of any one event or series of related events, exceed a maximum overall limit of NZ \$2,000,000.



8.2.4 The excess for any claim shall be in accordance with the liability table set out above. The excess amount will be deducted from the amount payable by POAL for any loss or damage and shall not be payable by POAL.

8.2.5 All amounts of loss and damage referred to in this clause 8.2 including those referred to in the liability table are in New Zealand Dollars and are GST inclusive.

### 8.3 User's Liability

The User will be liable for loss or damage howsoever caused to POAL by the User, its employees, agents or Subcontractors. The User will indemnify POAL against any loss or damage (including but not limited to quays, wharves or berths, cranes, sheds, buildings or other installations, lights, markers, beacons or navigational aids or buoys, lines, moorings or bollards or plant, equipment and machinery).

### 8.4 Exclusions of Liability

Notwithstanding clauses 8.1 and 8.2, to the greatest extent permitted by law, POAL, its employees, agents and/or Subcontractors excludes all liability for the following:

8.4.1 Where liability might otherwise be attributable to POAL but New Zealand law excludes POAL's liability, or imposes liability on another party or parties;

8.4.2 Without limiting clause 8.4.1, where pilotage services are provided by POAL (in which case pilots shall cease to be the employees of POAL and shall be engaged as agents of the owner of the vessel and shall be under the control of the Master of the vessel) such services will include any services or advice provided by a pilot while on board the vessel to be piloted, from on board the pilot launch or any other vessel involved in the pilotage or from on shore or any other place;

8.4.3 Where any exclusion in UKSC applies;

8.4.4 For death or personal injury to any person;

8.4.5 Where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the User to comply with any of these conditions;

8.4.6 For any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of POAL, its employees, agents or Subcontractors;

8.4.7 To pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure by POAL or any person whether or not an agent, employee or Subcontractor of POAL to properly and adequately secure any Cargo or Container on any rail or road vehicle, or on any other form of transport;

- 8.4.8 For any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any failure to inspect Containers, any failure to note or to report damage thereto, (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any Container and POAL undertakes no responsibility to inspect Containers for damage or to report any damage to the User;
- 8.4.9 For indirect, special or consequential loss or damage (including without limitation, loss of use of assets or cost of temporary replacement, loss of profits or loss of business opportunities) howsoever caused including, without limitation, the negligence of POAL, its employees, agents or Subcontractors; and
- 8.4.10 or any loss arising directly or indirectly as a result of any stowaways and/or unauthorised persons ("Stowaways") found on a vessel while berthed at the Port and/or after departure from the Port, or for any associated charges, fines, penalties or costs of repatriation of any Stowaways
- 8.5 In addition to and without limiting the other limits and exclusions of liability under this agreement, POAL and its employees, agents and Subcontractors shall be entitled to rely on any limitation of liability available under New Zealand law and POAL, its employees, agents and Subcontractors shall not be liable in any event in excess of those limits.
- 8.6 User indemnifies POAL where liability excluded or liability is in excess of limits:
- To the extent permitted under applicable laws, the User hereby holds POAL, its employees, agents and Subcontractors free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and court expenses), damages, compensation or other monies whatsoever ("the Amount") in respect of all loss, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent that the liability of POAL, its employees, agents and Subcontractors for the Amount has been excluded under clause 8.4 or any other clause hereof and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability, or Overall Limit on Liability under clause 8.2.
- 8.7 Notification of claims and time bar
- 8.7.1 For loss of or damage to Cargo, POAL will be liable only if notice in writing of any loss or damage is given to POAL by the User within 10 days after the delivery of the Cargo or the date when the Cargo should have been delivered to the consignee.
- 8.7.2 For all other loss, damage, expense, accident or injury POAL will be liable only if notice in writing is given to POAL by the User within 30 days after the date when the loss, damage, expense, accident or injury occurred.
- 8.7.3 If no such notice is given within the above periods any claim will be deemed waived and absolutely barred.

- 8.7.4 POAL shall be discharged from all liability unless proceedings are filed on POAL:
- (a) in the case of damage to Cargo, within twelve months after the date of delivery of the Cargo or the date when the Cargo should have been delivered to the consignee (upon which date the carriage shall be deemed to have been completed for the purposes of this contract); and
  - (b) in the case of all other loss, damage, expense, accident or injury, within twelve months after the loss, damage, expense, accident or injury occurred.

8.8 Benefit of bills of lading and establishment of bills of lading:

8.8.1 Without prejudice in any manner to the provisions and limitations contained in this agreement, the User will incorporate in its bills of lading or other contracts of carriage to be issued on Cargo carried or to be carried on any of the User's vessels a clause to the effect that POAL, its employees, agents and Subcontractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein and POAL for itself, its employees, agents and Subcontractors hereby accepts such benefit. In the event of a claim related to a third party's assets, Users should apply their own bill of lading limitations against the owner of the Cargo, and then only subsequently seek recovery of the limited amount against POAL.

8.8.2 Where any Cargo or container is received by POAL prior to the establishment of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage will apply in all respects (and in particular as set out in sub-clause 8.8.1 above) and will bind all persons interested in the Cargo or container as though such bill of lading or contract of carriage had then been established.

8.9 Where the Services include a contract for carriage to which Subpart 1 of Part 5 of the CCLA applies, then the parties agree that this is a contract for carriage on "declared terms" (with those declared terms being these Standard Conditions).

## 9. USER WARRANTIES

9.1 User responsible for safe management and operation:

9.1.1 Nothing in these conditions contained or implied will affect the User's responsibility for the safe navigation and proper management of the vessel including, without prejudice to the generality of the foregoing, her stowage, trim and stability and the operations of berthing, mooring, unmooring and unberthing. The User warrants that the vessel is and remains in all respects seaworthy.

9.1.2 The User shall comply with all statutory and or local/governmental laws, regulations and rules which may at the time be in force. Without limiting the aforesaid, the User warrants to POAL that it will at all times comply with the Maritime Transport Act 1994 and rules and regulations thereunder.

9.1.3 The User warrants to POAL that it will at all times comply with its duties and obligations under the Health and Safety at Work Act 2015 and that it will not do or

omit to do anything which breaches or is likely to breach any duty or obligation under the Health and Safety at Work Act 2015 or which is likely to result in enforcement proceedings under the Health and Safety at Work Act 2015.

- 9.1.4 Where the User requires access to Port, it shall enter into and maintain an Authority to Work Agreement with POAL, and the User acknowledges its duties and obligations under the Authority to Work Agreement.
- 9.1.5 The User undertakes and warrants to POAL that it will comply fully with all directions, requirements and instructions notified to it by POAL in respect of health and safety or in respect of any duties or obligations of any person under the Health and Safety at Work Act 2015. The User acknowledges that this may include consultation to identify health and safety risks, as well as producing, on demand, evidence that it is satisfying its obligations under the Health and Safety at Work Act 2015.
- 9.1.6 The User undertakes and warrants to POAL that it will comply fully with its duties and obligations under the Maritime Security Act 2004.
- 9.1.7 The User will ensure that its agents, Subcontractors and employees are aware of these conditions and will abide by them.
- 9.1.8 The User will ensure that all Subcontractors employed by it will comply with all obligations under the Health and Safety at Work Act 2015, cooperate with POAL and comply with the safety precautions required by POAL at all times.
- 9.1.9 If at any time the User becomes aware that it or its agents, Subcontractors and employees is in breach, or is likely to be in breach, of any duty or obligation referred to in this clause 9.1, the User agrees to immediately notify POAL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach. The User also undertakes to notify POAL immediately should it become aware of any notifiable event as that term is defined in the Health and Safety at Work Act 2015.

## 9.2 User environmental warranties

- 9.2.1 The User warrants to POAL that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation under the Resource Management Act 1991 and/or the Maritime Transport Act 1994 or which is likely to result in the issue of an abatement order or enforcement proceedings under the Resource Management Act 1991.
- 9.2.2 Any time the User becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in this clause 9.2, the User agrees to immediately notify POAL and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 9.2.3 The User will ensure that its employees, agents and Subcontractors are aware of these conditions and will abide by them.

9.2.4 The User warrants to POAL that it will comply with all other relevant standards, by-laws, local authority and other rules, regulations and statutes including but not limited to regulations and statutes relating to sound environmental practice, with respect to noise, and the handling of Dangerous Cargo.

9.3 The User acknowledges that the provisions of clauses 9.1 and 9.2 do not require POAL to supervise, check, or issue directions to the User and that the User is solely responsible for ensuring that the relevant laws are complied with.

9.4 To the extent permitted under applicable laws the User agrees to indemnify POAL from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against POAL which arise out of or in connection with the failure of the User, its agents, Subcontractors or employees to comply with the provisions of clauses 9.1 and 9.2.

## 10. GENERAL

10.1 POAL may subcontract any of its Services under this agreement.

10.2 The User will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of POAL or any of its agents or Subcontractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee or employees. All such negotiations will be exclusively conducted by POAL.

10.3 These conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand and the parties hereto submit themselves to the exclusive jurisdiction of the New Zealand Courts.

10.4 Any dispute concerning the interpretation or operation of these conditions will be referred:

10.4.1 In the case of any dispute in which an amount by way of costs, charges, expenses, damages or other monetary compensation, amounting to NZ \$50,000 (GST inclusive) or less, is claimed by either party, to the arbitration of a single arbitrator who will be chosen by the agreement of the parties or failing such agreement by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand. The arbitration will otherwise be conducted in New Zealand and in all respects in accordance with the Arbitration Act 1996; and

10.4.2 In the case of all other disputes, whether involving a claim for any monetary sum or otherwise, to the decision of the courts of New Zealand in Auckland.

10.5 Nothing in clauses 10.3 or 10.4 shall prejudice or restrict POAL's right to apply for injunctive relief or interim measures, to arrest the User's vessel, or to proceed against the User's vessel "in rem" in any jurisdiction.



- 10.6 Neither party shall disclose the terms of their dealings with each other under these conditions to any other person or entity other than a party's representatives on the same confidential basis, or as may otherwise be required by law. In the event a party reasonably believes it is required by law to disclose any confidential information, prior to any proposed disclosure, that party shall allow and reasonably assist the other party in taking any action to lawfully prevent or limit any such disclosure.
- 10.7 All notices under these conditions may be given by personal delivery or by ordinary mail or by email:
- 10.7.1 To: POAL at Auckland;
- Port of Auckland Building  
Sunderland Street, Mechanics Bay, Auckland 1010  
PO Box 1281, Shortland Street, Auckland 1140, New Zealand  
Attention: Manager Commercial Relationships  
Email: CustomerServiceC@poal.co.nz
- 10.7.2 To: the User at any of the User's last known places of business whether in New Zealand or elsewhere, or at the address of the User's last known agent in New Zealand; or to the User's last known email address.
- 10.8 All notices or communications shall be deemed to have been duly given or made:
- 10.8.1 three days after being deposited in the mail; or
- 10.8.2 when delivered by hand; or
- 10.8.3 if sent by email, on the date and time the notice is sent (as shown in a confirmation of the email generated by the sender's electronic system that indicates that the notice was sent to the email address of the recipient,
- provided however that if any notice is given after 5pm, or on a day which is not a Business Day, then that notice shall be deemed to be given at 9.00am on the next Business Day.
- 10.9 The User represents and warrants that it is acquiring the Services provided by POAL under these conditions solely for the purposes of a business and POAL and the User agree that nothing in the Consumer Guarantees Act 1993 or in sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 shall apply to the provision of such Services to the User.

## 11. FORCE MAJEURE

POAL will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance or provision or non-provision of any Services, arising out of or contributed to by one or more of Act of God, storm, flood, earthquake, fire or explosion, failure of electrical supply, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour or whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, epidemic, war, civil war, hostilities, acts of terrorists, breakdown of or

accident or failure of any crane or plant or machinery or equipment or other facility from any cause whatsoever, improper or insufficient or erroneous marking or addressing of any Cargo or Container, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of POAL.

## **12. VARIATION OF TERMS**

The terms of these Standard Conditions of Provision of Services may be varied by POAL from time to time. Such variations will be deemed effective and accepted by the User 30 days after posting of the varied terms on POAL's website and will apply to any Services provided after such time.

## **13. PRIVACY OF CONTRACT**

For the purpose of section 12 of the CCLA all provisions in these Conditions providing for exemption from liability for, or indemnities in favour of, POAL or its employees, agents or Subcontractors are intended to be for the benefit of and enforceable by the employees, agents and Subcontractors of POAL.