

PARTIES

Port of Newcastle Operations Pty Limited (ABN 13 165 332 990) as trustee for the **Port of Newcastle Unit Trust** (ABN 97 539 122 070) of Level 4, 251 Wharf Road, Newcastle NSW 2300 (**PON**)

and

Transport Operator named in the Vehicle Booking Form (**Transport Operator**)

RECITALS

1. This Contract applies to the entry of Vehicles to the Terminal and to the use by Vehicles of the Facilities and Services provided by PON.

TERMS

1 Definitions and interpretation

1.1 Definitions

In this Contract:

- a) **Access Period** means, with respect to the Vehicle, the period commencing from the earliest time at which the Vehicle enters the Terminal and expires when the Vehicle departs the Terminal.
- b) **Authority** means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department or commission, public authority, Minister, statutory corporation or instrumentality.
- c) **Approvals** means:
 - I. Environmental Protection Licence 13181 granted pursuant to the *Protection of Environment Operations Act 1997* (NSW);
 - II. Development Application 293-08-00 granted pursuant to *Environmental Planning and Assessment Act 1979* (NSW);
 - III. Operational Environmental Management Plan applicable to Mayfield No.4 Berth and DA 293-08, a copy of which is available at <https://www.portofnewcastle.com.au/>;
 - IV. Mayfield Concept Approval MP09_0096 a copy of which is available at <https://www.portofnewcastle.com.au/>; and
 - V. any such other approvals as notified by PON from time to time, as updated or amended.
- d) **Business Day** means any day other than:
 - I. a Saturday, Sunday or public holiday in Newcastle; or
- II. 27, 28, 29, 30 or 31 December.
- e) **Cargo** means the container or other such cargo that is itemised in the Vehicle Booking Form and Slot Confirmation.
- f) **Claim** includes any claim, allegation, demand, remedy, cause of action, suit, right, proceeding, order or judgment.
- g) **Confidential Information** means information revealed by or on behalf of a Disclosing Party to a Receiving Party that:
 - I. is by its nature confidential;
 - II. is marked or designated as confidential at the time of its disclosure; or
 - III. the Receiving Party knows or ought to know is confidential.
- h) **Contamination** means the presence in the Environment at a level above background levels of any substance which is potentially harmful to human health and comfort, detrimental to the well-being of flora or fauna and/or detrimental to the beneficial uses of the Environment, irrespective of whether the quantity of the substance does or does not exceed statutory or industry criteria applicable to commercial or industrial land or waterways use.
- i) **Contract** means these Terms, the Vehicle Booking Form and all documents referred to within either of them.
- j) **Customs Act** means the *Customs Act 1901* (Cth).
- k) **Default Rate** means the rate of 5% per annum above the interest rate at the applicable time charged by the Commonwealth Bank of Australia on unsecured overdrafts in excess of \$100,000.
- l) **Disclosing Party** means a party who directly or indirectly discloses its Confidential Information to a Receiving Party.
- m) **Early Arrival Fee** means a fee levied pursuant to clause 3c) and as set out in the Schedule of Service Charges.
- n) **Environment** means the physical factors of the surroundings of human and non-human life forms, including land, soil, plants, habitat, waters, atmosphere, climate, sound, odours, tastes, biodiversity and the social and aesthetic values of landscape.
- o) **Environmental Hazard** means a state of danger to human health or the Environment, whether imminent or otherwise, resulting from the location, storage,

handling or release of any substance having toxic, corrosive, flammable, explosive, infectious, irritant or otherwise dangerous or damaging characteristics.

p) **Existing Operations** means all infrastructure, assets and improvements on or about the Port and operations undertaken by or on behalf of PON.

q) **Facilities** means the land, buildings, berths, wharves, jetties, buoys, dolphins, lay-down areas and any associated plant and equipment and other infrastructure or equipment of any kind that is owned, vested in, managed, leased, controlled or operated by PON to which the Vehicle is given access or use of in connection with the Vehicle's visit to the Terminal.

r) **Fees** means:

- I. those PAMA Act charges and other fees, rates, levies and charges set out in the Schedule of Service Charges, which are expressed in that Schedule to be payable by the Transport Vessel; and
- II. any additional amounts required to be paid by the Transport Operator to PON under the Contract.

s) **Force Majeure Event** means an event or situation, including their effects, to the extent they are beyond the reasonable control of PON and are not caused or contributed to by PON or any of its Personnel, including (without limitation):

- I. war, invasion, act of foreign enemy, act of terrorism, hostilities (whether war be declared or not), civil war, rebellion, revolution, blockade, insurrection or military or usurped power, martial law or civil commotion, riot or disorder;
- II. confiscation or restriction by order of any Authority;
- III. mass sickness or illness declared to be a 'pandemic' or 'epidemic' by the Commonwealth of Australia or the World Health Organisation;
- IV. volcanic eruption;
- V. embargo, strike or other industrial action;
- VI. earthquake, fire, flood, cyclone, hurricane or other heavy rain or strong wind conditions; and
- VII. environmental or ecological events including stranded marine wildlife or other disturbances to biodiversity and environment

t) **Heavy Vehicle National Laws** means the *Heavy Vehicle (Adoption of National Law) Act 2013*, the *Heavy Vehicle (Adoption of National Law)*

Regulation 2013 as amended from time to time and all relevant legislation pertaining to Heavy Vehicle National Law or chain of responsibility requirements.

u) **Late Arrival Fee** means a fee levied pursuant to clause 3c) and as set out in the Schedule of Service Charges.

v) **Law** includes all Acts, ordinances, regulations, by-laws, orders, awards, proclamations, approvals, authority requirements and associated fees and charges applicable to this Contract.

w) **Liability** includes all liabilities, losses, damages, costs, charges and expenses however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise including where arising under any Claim.

x) **Liability** includes all liabilities, losses, damages, costs, charges and expenses however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise including where arising under any Claim.

y) **Loss** means:

- I. all damages, Claims, fees, losses, liabilities, costs, charges, outgoings, payments and expenses, including legal fees on an indemnity basis and disbursements and costs of investigation, litigation, settlement, judgment and interest; and
- II. to the fullest extent permitted by Law, fines and penalties.

z) **Modern Slavery** means any act that constitutes an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking or other slavery-like exploitation as prohibited or defined as a modern slavery offence under any Modern Slavery Law.

aa) **Modern Slavery Law** means the *Modern Slavery Act 2018* (Cth) and similar Laws in other jurisdictions.

bb) **MTOFSA** means the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth).

cc) **NMT Terminal Rules** means the Newcastle Multipurpose Terminal: Terminal Rules and Information published and updated from time-to-time on PON's website at <https://www.portofnewcastle.com.au/landside/port-access/open-access/>.

- dd) **No-Show Fee** means a fee levied pursuant to clause 3c) and as set out in the Schedule of Service Charges.
- ee) **One Stop** means the vehicle scheduling and communications system currently known as "One Stop" hosted by 1-Stop Connections Pty Ltd (or any future vehicle scheduling/communications system which may replace One Stop).
- ff) **PAMA** means the *Ports and Maritime Administration Act 1995* (NSW).
- gg) **Permitted Use** means (as applicable to the Vehicle) to enter the Terminal and load or unload cargo and depart the Terminal.
- hh) **Personnel** means, in relation to:
- I. PON, its officers, employees, agents and contractors (excluding the Transport Operator); or
 - II. the Transport Operator, its officers, employees, agents and contractors and persons for whom the Transport Operator is otherwise responsible or vicariously liable in relation to PON, including crew and other personnel engaged by or performing duties for the Transport Operator.
- ii) **Policies and Procedures** means all applicable PON policies and procedures which are either:
- I. issued to the Transport Operator as part of the Vehicle Booking Form,
 - II. notified to the Transport Operator or
 - III. published on PON's website at <https://www.portofnewcastle.com.au/>.
- jj) **Pollution Incident** has the meaning given to it in the *Protection of the Environment Operations Act 1997* (NSW).
- kk) **Port** means the Port of Newcastle, including all land and water within its boundaries (as delineated in the *Ports and Maritime Administration Regulation 2012* (NSW)) and adjacent land under management or control of PON.
- ll) **Port Rules** means the rules (including NMT Terminal Rules) established by PON or PANSW from time to time governing access to and use of the Port and, in the case of rules established by PON, as posted on PON's website at <https://www.portofnewcastle.com.au/> from time to time.
- mm) **Regulatory Requirement** means:
- I. any Law;
 - II. certificates, licences, consents, permits, approvals and requirements of or issued by any Authority;
 - III. the Port Rules; and
 - IV. directions of any Authority.
- nn) **Schedule of Service Charges** mean, as relevant, the schedule of PON's rates, levies, charges or other fees from time to time and which are posted on:
- I. PON's website at <https://www.portofnewcastle.com.au/>; or
 - II. notified to the Transport Operator via One Stop.
- oo) **Services** means, as relevant,:
- I. any services that are provided by or arranged by PON pursuant to the Contract, including:
 - II. vehicle booking system services;
 - III. container verification services;
 - IV. container inspection, washing, maintenance and repair services;
 - V. the Services described in the Vehicle Booking Form; or
 - VI. all services that are reasonably necessary or incidental to them.
- pp) **Slot Confirmation** means a written notification from PON or One Stop that the Vehicle has been scheduled to enter the Terminal, as may be amended pursuant to this agreement.
- qq) **Stevedore** means a party licensed by PON to undertake stevedore operations at the Port.
- rr) **Superintendent** means the person identified as such by notice to the Transport Operator or any replacement notified to the Transport Operator by PON, or as listed in One Stop as the Superintendent.
- ss) **Terminal** means the Newcastle Multipurpose Terminal located at the Port, or such other terminal identified in the Vehicle Booking Form .
- tt) **Transport Activities** means all acts, conduct and omissions of the Transport Operator or its Personnel arising from or in connection with the Contract, the Vehicle's visit to the Terminal or the use of any Facilities or Services by the Transport Operator or its Personnel.

- uu) **User** means any user or occupier of or visitor to any Existing Operations.
- vv) **Vehicle** means the vehicle particularised in the Vehicle Booking Form (or if the relevant vehicle enters the Terminal and has not been particularised in a Vehicle Booking Form, that vehicle).
- ww) **Vehicle Booking Form** means the "Vehicle Booking Form" available on One Stop as amended from time to time, and which is required to be completed and submitted by every Transport Operator desiring to enter and use the Terminal on each proposed visit to the Terminal by the Vehicle, which sets out, amongst other things, the Vehicle and Cargo the subject of the booking.
- xx) **WHS Laws** means the *Work Health and Safety Act 2011 (NSW)* and *Work Health and Safety Regulation 2017 (NSW)* as amended and updated, and the Heavy Vehicle National Law.

1.2 Interpretation

In this Contract:

- a) a reference to any document includes all variations to or replacements of it;
- b) the singular includes the plural and vice versa;
- c) a reference to a person includes its executors, administrators, successors, substitutes and assigns;
- d) a reference to time is to time in Newcastle
- e) if a period is specified, it is to be calculated exclusive of the day on which the relevant notice is given or event occurs;
- f) if the day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day (as appropriate);
- g) if a word or phrase is defined in this Contract, its other grammatical forms have corresponding meanings;
- h) general words are not limited by the use of the words 'including' or 'includes';
- i) headings do not form part of and are not to be used in interpreting this Contract;
- j) a reference to 'dollar' or '\$' is to Australian dollars;
- k) measurements must be in the legal units of measurement of Australia;
- l) all communications between the parties must be in

English; and

- m) unless stated otherwise in this Contract, PON and the Superintendent may exercise their discretions and rights under this Contract in their absolute discretion.

1.3 Ambiguity of discrepancy

- a) To the extent of any inconsistency between the provisions of any Contract documents, such inconsistency must be resolved by applying the documents in the following order of precedence:
 - I. these Terms;
 - II. the Port Rules; and
 - III. the Vehicle Booking Form.

2 Contract

This Contract is formed on the earlier of the Transport Operator lodging a Vehicle Booking Form, accepting these Terms, or accessing the Terminal.

If the Transport Operator does not agree to be bound by the terms of this Contract, the Vehicle must not enter the Terminal.

3 Vehicle Booking and Reveal and Delivery of Cargo

- a) As soon as practicable and in any event not later than midday on the Business Day before entering the Terminal, the Transport Operator must complete and submit to PON (and / or its agent) via One Stop, a Vehicle Booking Form and must not proceed to enter the Terminal unless the Transport Operator has:
 - I. received a Slot Confirmation (and then only enter in accordance with such scheduling); and
 - II. if requested by PON, provided evidence to PON that the insurances held in respect of the Vehicle satisfy the requirements of clause 16.
- b) Unless otherwise agreed between PON and the Transport Operator all cargo is to be received and delivered on Business Days.
- c) The Vehicle must not seek to enter the Terminal outside the scheduled times set out in the Slot Confirmation. Subject always to clause 7a) Where the Vehicle arrives:
 - I. at the Terminal prior to the slot time specified in the Slot Confirmation, the Transport Operator will be charged an Early Arrival Fee;
 - II. arrives at the Terminal after the end of the time specified in the Slot Confirmation, the Transport Operator will be charged a Late

Arrival Fee; and

- III. fails to arrive at the Terminal on the Business Day set out in the Slot Confirmation, the Transport Operator will be charged a No-Show Fee.

4 Fees, Invoicing and Payment

4.1 Fees

- a) The Transport Operator must pay all Fees invoiced by or on behalf of PON to the Transport Operator.
- b) PON may vary the Fees provided that it has provided at least 10 Business Days' notice before the variation is proposed to take effect. The Fees will be published on PON's website and/or made available via One Stop.

4.2 GST

- a) Unless expressly stated otherwise, all Fees are exclusive of GST. If GST is payable on any supply made by PON under the Contract, then unless the consideration for that supply is expressly stated to be inclusive of GST, the Transport Operator will pay to PON an additional amount equal to the GST payable on the supply. The additional amount must be paid at the same time as the first part of any consideration is provided for that supply.
- b) PON (or its agent) will issue a tax invoice in respect of any taxable supply it makes under the Contract.
- c) Words and expressions used in this clause which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning in this clause as in the GST Act.

4.3 PAMA Charges

- a) To the extent that a Fee is expressed in the Schedule of Service Charges to be a fee or charge fixed by PON under Part 5 of the PAMA (**PAMA Charges**), for the avoidance of any doubt, those PAMA Charges are so fixed by PON under Part 5 of the PAMA and the Contract does not displace such determinations for the purposes of section 67 of the PAMA.

4.4 Payment

- a) All Fees are payable to PON or its agent within 7 days of the date of PON's invoice.
- b) The Transport Operator will make payment of any Fees invoices without set-off or deduction.
- c) If any amounts payable by the Transport Operator

are not paid by the due date, the Transport Operator must pay PON (or its agent), by liquidated damages, interest accruing daily on the Default Rate on the amount on the amount outstanding calculated daily from the due date until payment is made in full. Such amounts are a debt due and payable to PON.

4.5 Credit Arrangements

- a) If the Transport Operator has been granted credit pursuant to any approved credit agreement issued by PON (or its agent) from time to time, then payment by the Transport Operator may be made in accordance with the terms of credit established under that credit agreement.

5 Primary obligations

5.1 Transport Operator's obligations

The Transport Operator and its Personnel must:

- a) comply with:
- I. the Port Rules;
 - II. all directions given by PON in connection with the Vehicle's visit to the Terminal;
 - III. all direction given by any relevant Authority or officer, or any Stevedore who may have operational control of part of the Terminal at the time of access;
 - IV. all operational, work health and safety and environmental policies and procedures of PON (including without limitation the Port Rules) that are advised to the Transport Operator or published on PON's website from time to time; and
 - V. best industry practice in the conduct of the Vehicle's activities in the Terminal.
- b) ensure that they do not:
- I. cause any damage, loss or destruction to any Facilities or Services or anything else within the Terminal; or
 - II. make any alterations or additions (including installation of any fixed plant or equipment) to any Facilities or Services.
- c) as soon as practicable after becoming aware of any:
- I. damage, loss or destruction to any Facilities or Services;
 - II. injury to or death of any person at, or in the vicinity of, any Facilities or during the course of the provision of any Services; or

III. circumstances likely to cause any such damage, loss, destruction, injury or death,

the Transport Operator must notify PON of such damage, loss, destruction, injury, death or circumstances.

- d) Within 72 hours after the Transport Operator gives notice in accordance with clause 5.1c) the Transport Operator must lodge a detailed written report with PON in respect of the event or other circumstance referred to in clause 5.1c)**Error! Reference source not found.**
- e) ensure that the Facilities and Services used by the Vehicle are used in such a manner to maintain their good condition and state of repair (having regard to their age and general condition) and the Transport Operator must ensure that any Facilities or Services used are left in a good, clean and operational condition after use.
- f) ensure that all transport activities and work carried out in the Terminal are carried out:
 - I. by Personnel who are fit for work and possess the appropriate training, experience and qualifications to do the work; and
 - II. with a high degree of skill, competence and professionalism at all times.
- g) The Transport Operator acknowledges and agrees that it is responsible for the acts and omissions of its Personnel in respect of the Vehicle's visit to the Terminal.
- h) not obstruct or cause any interference to PON, PANSW or anyone else lawfully using the Terminal.
- i) ensure that any Vehicles that access the Terminal are roadworthy, registered, insured and in good working order.

5.2 PON's obligations

PON will grant the Vehicle access to the Terminal and to use the Facilities and Services for the Permitted Use and subject always to the terms of this Contract.

Nothing in this Contract will create any licence, tenancy, estate or proprietary interest of any kind for the Transport Operator in or over any Facilities or Services, the Port or the Terminal.

6 Access to Terminal

- a) The Transport Operator must not use the Terminal or any Facilities or Services for any purposes during the Access Period other than for the Permitted Use.
- b) If the Transport Operator has failed to pay any Fees payable to PON when due in respect of any prior

access to or use of the Terminal or any Facilities or Services, PON may withhold or withdraw access for the Vehicle or Transport Operator to the Terminal and any Facilities or Services until such outstanding monies have been paid to PON in full.

7 Availability, suitability and withdrawal of Facilities and Services

- a) Notwithstanding any other provision of the Contract or receipt of a Slot Confirmation, entry to the Terminal and allocation of Facilities or Services by PON as requested by the Transport Operator will always be subject to availability of those Facilities and Services (as determined by PON in its absolute discretion).
- b) If:
 - I. PON considers it necessary to do so to ensure safety, security, Port operational efficiency or compliance with any Regulatory Requirements or with relevant industry standards;
 - II. the Transport Operator has failed to comply with the Terms of the Contract; or
 - III. the relevant cargo is not able to be loaded or unloaded,then PON may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any access or usage rights to the Terminal or any Facilities or Services that have been granted in respect of the Vehicle, including directing the Vehicle to leave the Terminal.
- c) If PON exercises any of its rights under clause 6, nothing will relieve the Transport Operator from liability to pay any Fees or any other amount payable by the Transport Operator arising from the Vehicle's visit to the Terminal already accrued or incurred and nothing will entitle the Transport Operator to any compensation for any Claim, Liability, damage, demurrage, delay or inconvenience suffered.
- d) The Transport Operator acknowledges that PON has made no representation and gives no warranty concerning the adequacy or suitability of the Terminal or any Facility or Service for the Vehicle or the use intended by the Transport Operator. Any details, information or guidance provided by PON or its Personnel regarding the capability, capacity or specifications of any Facilities or Services are provided for general guidance only and PON does not assume any duty of care to the Transport Operator to consider or review such details, information or guidance

for accuracy or suitability for the specific requirements of the Vehicle or the Transport Operator.

8 Environment, Pollution and Contamination

- a) The Transport Operator must ensure that it and its Personnel do not cause any Pollution Incident, Environmental Hazard or Contamination of any kind arising from the Transport Activities (**Environmental Incident**).
- b) The Transport Operator must as soon as possible after the Transport Operator or its Personnel becomes aware of any Environmental Incident, give PON notice of the occurrence of such Environmental Incident (followed by written notice given to PON not later than 24 hours after the initial notification to PON).
- c) Promptly and in any event not later than 48 hours after the Transport Operator or any of its Personnel receives any notices or legal proceedings in respect of any Environmental Incident, including notices or proceedings issued by any Authority, the Transport Operator must give written notice to PON of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings. The Transport Operator and its Personnel must comply with any and all statutory notices referred to in this clause and the Transport Operator is liable for any costs of compliance with such statutory notices.
- d) The Transport Operator must, at its expense, clean-up and otherwise address or rectify any Environmental Incident and the cause of the Environmental Incident caused or contributed to by the Transport Operator, including in accordance with any direction issued by PON or any Authority and within the timeframe specified in the direction.
- e) PON may, at its absolute discretion and at the Transport Operator's cost, engage an environmental auditor in respect of an Environmental Incident.
- f) If the Transport Operator fails to clean-up and otherwise address or rectify any Environmental Incident or the cause of the Environmental Incident, including in accordance with any direction or notice issued by PON or any Authority within the timeframe specified in the direction or notice, PON may at its absolute discretion take such actions or steps as it considers necessary to clean-up or address or rectify the Environmental Incident or the cause of the Environmental Incident. All costs and

expenses incurred by PON under this clause must be paid for by the Transport Operator on demand by PON as a debt due and payable to PON within 7 days of the date of PON's invoice.

- g) The Transport Operator and their Personnel must comply with all Approvals that apply to the Terminal from time to time.

9 Biosecurity

The Transport Operator must ensure that it and its Personnel comply with:

- a) the requirements of the *Biosecurity Act 2015* (Cth) and other biosecurity requirements in respect of the Vehicle's visit to the Terminal, including the reporting of biosecurity incidents; and
- b) any directions provided by PON or any other Authority regarding the management or discharge of ballast water, waste, garbage or pollution, in-water cleaning or any biosecurity or biofouling incident.

10 Dangerous Cargo

- a) The Transport Operator must provide PON notice in the Vehicle Booking Form, or prior to access to the Terminal, of the details and nature of the Known Dangerous Cargo.
- b) The Transport Operator must ensure that any Known Dangerous Cargo and its container or outside covering is appropriately marked as required by any applicable Laws and indicating that it requires special care by any person or Stevedore who moves or handles it.

11 Rectification of Damage

Without limiting the indemnity provided by the Transport Operator under this Contract, if any Facilities or Services are not left in the condition and state of repair required by clause 5.1e), PON may:

- a) direct the Transport Operator, at the cost of the Transport Operator, to return the Facility or Service to the condition required under clause 5.1e) and to provide evidence (via an independent report or other means) that it has returned the Facility or Service to the condition required under clause 5.1e)**Error! Reference source not found.**; and/or
- b) carry out any work necessary to restore the Facilities or Services to the condition required under clause 5.1e), and all costs and expenses incurred by PON in respect of such work (including PON internal costs) must be paid for by the

Transport Operator on demand by PON as a debt due and payable to PON within 7 days of the date of PON's invoice.

12 Representations and warranties

12.1 General

The Transport Operator warrants and repeats on each day of the term of this Contract that:

- c) it has full power and authority to execute and perform this Contract in accordance with its terms;
- d) the Transport Operator :
 - I. will at all times:
 - A. be suitably qualified, skilled and experienced; and
 - B. perform this Contract:
 - aa. exercising the highest level of skill, care and diligence;
 - bb. in accordance with its terms and all PON directions and relevant Laws; and
- e) all relevant Transport Operator Personnel will be suitably qualified, trained, licensed, skilled and experienced;
- f) it is not aware of any actual or threatened Claim or circumstance that could prohibit or hinder its performance of this Contract;
- g) it and its Personnel will at all times comply with all Policies and Procedures and PON directions;
- h) it is aware that maximising work health and safety and ensuring the Transport Operator's and PON's compliance with the WHS Laws is of utmost importance to PON;
- i) it is aware that a breach of applicable WHS Laws means that the Transport Operator may be prohibited from working on future PON assets and/or projects.

13 WHS and inductions

13.1 General

The Transport Operator must, and must ensure that all of its Personnel, at all times comply with all PON directions and applicable Laws and Australian Standards relevant to work health and safety, including the Heavy Vehicle National Laws.

The parties acknowledge that the Transport Operator is or may be an invitee of a Stevedore and must comply with any directions, obligations and arrangements in place with such Stevedore when under their direction or control, and may have concurrent duties under this

Contract and under any arrangement with a Stevedore.

13.2 Inductions

- a) All Transport Operator Personnel who access the Terminal must hold a current PON access induction card.
- b) All inductions required by this clause 13.2 must be arranged by the Transport Operator by following the link on PON website at <https://www.portofnewcastle.com.au/> or by emailing PON at inductions@portofnewcastle.com.au and providing all necessary documentation.

13.3 Legal obligations

In performing this Contract, the Transport Operator must:

- a) comply with its obligations under the WHS Laws as a person conducting a business or undertaking;
- b) conduct all relevant risk assessments and put in place measures to, so far as is reasonably practicable, eliminate or minimise risks to work, health and safety arising from such performance;
- c) ensure that, if a Law requires that:
 - I. the Transport Operator consult, cooperate and coordinate its activities with other duty holders who may have obligations in relation to the Terminal or Existing Operations, it does so;
 - II. a person:
 - A. be authorised or licensed to carry out a particular activity, that person is so authorised or licensed and complies with all conditions of such authorisation or licence; or
 - B. has prescribed qualifications or experience or, if not, is supervised by a person who has prescribed qualifications or experience, that person has the required qualifications or experience or is so supervised; or
 - III. a workplace, plant, substance or design, or work or class of work, be authorised or licensed, that thing is so authorised or licensed;
- d) not direct or allow a person to carry out a particular activity unless such person satisfies clause 13.3c);
- e) without limiting the Transport Operator's obligations under this Contract or at Law, provide the Superintendent with:
 - I. all information and documentation directed by the Superintendent to enable PON to comply

with its obligations under the WHS Laws; and

- II. copies of all:
 - A. notices and communications issued to the Transport Operator by a regulator or to a subcontractor by a health and safety representative of the Transport Operator; and
 - B. notices, communications and undertakings given by the Transport Operator or a subcontractor to a regulator,in connection with or related to this Contract:
 - C. within 3 days after such direction, receipt or submission (as the case may be); or
 - D. immediately in the case of a notifiable incident;
- f) if directed by the Superintendent or required by a WHS Law, produce evidence of all approvals, authorisations, licences, prescribed qualifications and experience, or any other information relevant to work, health and safety, to the satisfaction of the Superintendent before the Transport Operator or any of its Personnel commence supplying Goods and/or performing Services;
- g) ensure that, before the Transport Operator or anyone on its behalf accesses the Terminal, the:
 - I. Transport Operator and its Personnel complete all inductions required by PON; and
 - II. Transport Operator:
 - A. prepares a work, health and safety plan that addresses safe work method procedures and work, health and safety requirements relating to the performance of the Services; and
 - B. provides the following documents to the Superintendent and keeps a copy of them at the Terminal at all times:
 - aa) risk assessment / safe work method statement;
 - bb) work, health and safety plan; and
 - cc) all other documents outlining the safe use of any Good or provision of any Service;
- h) where it is to provide inductions to any of its Personnel, ensure that such inductions comply with all relevant Laws and Australian Standards; and
- i) instruct, train, provide information to and

supervise all Personnel delivering Goods or performing Services to ensure that they at all times:

- I. follow safe work practices and procedures; and
- II. take reasonable care of their health and safety and that of anyone who may be affected by anything they do or fail to do in connection with this Contract.

13.4 Transport Operator's liability

The Transport Operator must not do anything which puts or could put PON or the Transport Operator in breach of any WHS Law and acknowledges and agrees that:

- a) a breach of this clause 13 will constitute a material breach of this Contract; and
- b) its compliance with this clause 13 does not:
 - I. relieve it of its responsibilities to PON under this Contract or at Law; or
 - II. constitute verification or acceptance by PON of the adequacy of the Transport Operator's systems or documentation.

13.5 Removal of Personnel

PON may direct the Transport Operator to remove any Transport Operator Personnel from the Terminal who, in PON's reasonable opinion:

- a) are incompetent, negligent or guilty of misconduct or otherwise acting in breach of this Contract; or
- b) fail to comply with a direction of PON or the Superintendent or a relevant Law,

and the Transport Operator must immediately comply with such direction.

14 Security

- a) The Transport Operator must comply with, and must ensure that its Personnel are aware of and comply with the security requirements of the Port, including the MTOFSA and the Customs Act;
- b) the Transport Operator acknowledges that the Port is a 'security regulated port' within the meaning of the MTOFSA and that security measures required by the MTOFSA may be audited by PON and various Authorities, including the Department of Home Affairs and their appointees;
- c) the Transport Operator acknowledges that financial penalties apply for breaches of the MTOFSA and the Customs Act;
- d) the Transport Operator acknowledges that it is an

offence under the MTOFSA for an unauthorised person, vessel or vehicle to enter or remain in a Maritime Security Zone;

- e) the Transport Operator acknowledges that the Port is an appointed port within the meaning of section 15 of the Customs Act and that compliance with the requirements of the Customs Act may be audited by PON and its Personnel and the Department of Home Affairs and its Personnel;
- f) the Transport Operator must comply with, and ensure that its Personnel understand and comply with, PON's security requirements; and
- g) the Transport Operator acknowledges that it is an offence under the Customs Act for a person to be in a 'waterfront area' of a port (as defined in section 20 of the Customs Act) and to fail to produce identification to an officer of Customs in accordance with the requirements of that Act.
- h) PON may notify the Transport Operator of additional security requirements from time to time, which PON will provide reasonable notice of such requirements.

15 Subcontracting and Assignment

- a) Neither party may assign a right or interest under or in connection with this Contract without the prior written consent of the other party, such consent not to be unreasonably withheld.

16 Insurance

Unless otherwise agreed in writing, the Transport Operator must, before accessing the Terminal:

- a) effect and maintain the following insurances with reputable insurers:
 - I. public liability insurance:
 - A. for \$50 million per claim;
 - B. with PON named as an interested party; and
 - C. from the date on which this Contract is formed under clause 2 and for a further 7 years;
 - II. workers compensation insurance as required by Law; and
 - III. compulsory third party and comprehensive motor vehicle insurance:
 - A. in respect of all motor vehicles used in performing this Contract;
 - B. for \$30 million per claim; and
 - C. from the date on which this Contract is formed under clause 2 and for a further 7

years; and

IV. if the performance of this Contract involves the use of watercraft or a marine platform or the construction or repair of a marine asset:

- A. marine liability insurance in the joint names of the parties; and
- B. ship repairer's liability insurance and/or protection indemnity insurance,

that:

- C. adequately covers all marine works; and
- D. is for \$20 million per claim;

- b) ensure that all subcontractors have insurances equivalent to those required by clause 16a) to the extent relevant to the subcontractor's work; and
- c) provide the Superintendent with certificates of currency satisfactory to the Superintendent proving that all insurances required by this clause 16 are current.

17 Termination

On termination of the Contract or expiry of the Contract:

- a) nothing will release or discharge the Transport Operator from liability to PON in relation to anything occurring prior to the termination or expiry (including any breach of the Contract);
- b) nothing will release or discharge the Transport Operator from liability for any Fees or other amount payable to PON by the Transport Operator in relation to anything occurring prior to the termination or expiry;
- c) none of the warranties, indemnities nor any other provision of the Contract merges on completion of the Contract; and
- d) the indemnities and releases in this Contract are continuing obligations and remain in full force and effect following the expiry or termination of the Contract.

18 Indemnities

The Transport Operator must indemnify PON from and against all Losses it suffers or incurs in connection with or arising out of any:

- a) loss of (including loss of use of) or damage to real or personal property (including plant, equipment, cargo or other property) to the extent caused or contributed to by the Transport Operator or any of its Personnel;
- b) illness, injury to or death of any person to the

extent caused or contributed to by the Transport Operator or any of its Personnel;

- c) non-compliance by the Transport Operator or any of its Personnel with any Law;
- d) wilful, unlawful or negligent act or omission by the Transport Operator or any of its Personnel;
- e) breach by or default of the Transport Operator or any of its Personnel of this Contract; or
- f) any Pollution Incident, Environmental Hazard or Contamination caused by the Vehicle, The Transport Operator or any of its Personnel or arising from the Vehicle's use of any Facilities or Services at the Terminal.

19 Limit of Liability

- a) Without limiting the remainder of this clause, to the extent that any rights or warranties cannot be excluded or limited as a matter of Law, the Liability of PON to the Transport Operator or its Personnel for any failure to provide, or default in providing any Facility or Service in accordance with this Contract must be strictly limited to either of the following remedies as elected by the applicable Released Party:
 - I. the re-supply of equivalent Facilities or Services; or
 - II. the payment by PON of the costs necessary to have the Facilities or Services supplied again.
- b) Notwithstanding any other provision of the Contract, under no circumstances will PON be liable for, or responsible to the Transport Operator, its Personnel or any other person for, any Claim or Liability arising from or in connection with:
 - III. the availability of, or inability of, the Vehicle to enter or use the Terminal;
 - IV. the availability of, or inability of the Vehicle to use, any Facilities or Services;
 - V. the failure to perform or delay in providing any Facilities or Services;
 - VI. for any demurrage, delay or other costs of transportation of any kind; or
 - VII. any Consequential Loss,howsoever caused or contributed to including, without limitation, the negligence of a PON.

20 Liability

The parties agree that, to the fullest extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all

rights, obligations and liabilities under or arising out of this Contract.

21 Modern Slavery, Fraud and Corruption Prevention

- a) The Transport Operator must:
 - I. not engage in Modern Slavery or do anything that would be an offence under the Modern Slavery Law;
 - II. comply with all applicable Modern Slavery Laws and PON's policies concerning Modern Slavery;
 - III. keep sufficient records to enable PON to verify the source of supply of goods and/or services provided by the Transport Operator;
 - IV. upon request, provide the Superintendent with reasonable access to its records and premises for the purposes of assessing the Transport Operator's compliance with the Modern Slavery Laws;
 - V. report to the Superintendent any actual or suspected instance of Modern Slavery in the supply chain of any Good and/or Service; and
 - VI. cooperate with PON (to the extent required by PON) to facilitate training of its Personnel on compliance with Modern Slavery Laws.
- b) The Transport Operator must immediately notify PON of any corrupt activity or suspected corrupt activity of which the Transport Operator becomes aware by written notice to:
 - I. PON's Chief Executive Officer or Executive Manager; or
 - II. Integrity Counts Hotline (pon@integritycounts.ca or 1800 263 215), in accordance with PON's whistleblower policy.

22 Disputes

- a) If a dispute or difference arises between the parties in respect of any fact, matter or circumstance arising out of or in connection with this Contract, or either party's conduct before the Contract (**Dispute**), the Dispute must be determined in accordance with this clause 22.
- b) Where such Dispute arises, either party may give notice in writing (**Notice of Dispute**) to the other party specifying:
 - I. the Dispute;
 - II. particulars of the party's reasons for being dissatisfied; and

- III. the position which the party believes is correct.
- c) The representatives of PON and the Transport Operator must, within 5 Business Days of serving a Notice of Dispute, meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- d) Whether or not negotiations have taken place under clause 22c), if the Dispute is not resolved within 10 Business Days after the service of a Notice of Dispute, the Dispute must be referred to senior executives of each party (as nominated by each party) who must:
- I. meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
 - II. if they cannot resolve the Dispute, use reasonable endeavours to agree upon a procedure to resolve the Dispute.
- e) If the senior executives of each party have not resolved the Dispute or agreed on an alternative process for resolving the Dispute within 25 Business Days after a notice is given under clause 22b), either party may commence court proceedings in respect of the Dispute.
- f) Despite the existence of a Dispute, each party must continue to perform its obligations under this Contract.
- g) This clause will not prevent either party from seeking urgent injunctive or interlocutory relief.

23 Notices

- a) A notice, approval, consent or other communication under or in connection with this Contract is only effective if it is:
- I. in writing and in English;
 - II. signed by a person duly authorised by the sender;
 - III. addressed to the party to whom it is to be given at the relevant address in the Purchase Order;
 - IV. marked to the attention of the recipient's representative; and
 - V. either left at the recipient's address or sent to it by mail or email.
- b) Where a notice, approval, consent or other communication is:
- I. left at the recipient's address, it is taken to have been received when it is left provided it is left in the presence of a representative of the

recipient; or

II. sent by:

A. mail, it is taken to have been received:

- aa) if sent within Australia, 4 Business Days after posting; or
- bb) to or from a place outside of Australia, 10 Business Days after posting; or

B. email, the *Electronics Transactions Act 2000 (NSW)* will apply to determine when it is received,

except that if, as a result of this clause 23b), a notice, approval, consent or communication will be taken to have been received on a day that is not a Business Day or after 5:00pm on a Business Day, it will be taken to be received at 9:00am on the next Business Day.

- c) Each party must promptly notify the other in writing of any change of the notifying party's address.

24 General

24.1 Contra Proferentum

No rule of construction applies to the disadvantage of a party on the basis that it put forward this Contract or any part of it.

24.2 PON may act

If the Transport Operator fails to perform an obligation it is obliged to perform under this Contract, PON may, on no less than 2 Business Days' prior notice in writing to the Transport Operator, either itself or by a third party, perform the relevant obligation and all costs incurred by PON in doing so will be due and payable to PON by the Transport Operator.

24.3 Entire Agreement

This Contract constitutes the entire agreement between the parties in respect of its subject matter and all prior discussions, negotiations and correspondence that are not incorporated into this Contract are expressly excluded.

24.4 Governing Law

This Contract is subject to, and is to be construed in accordance with, the laws of New South Wales.

24.5 Indemnities

- a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives the termination, completion or expiration of this Contract.

- b) It is not necessary for PON to incur any expense before enforcing a right of indemnity conferred on it by this Contract.
- c) The Transport Operator must pay PON any sum claimed by PON pursuant to an indemnity on demand from PON and without any deduction or set-off.

24.6 Survival

This clause 24 and clauses 1, 2, 13.4, 14, 16 (as it relates to the public liability and motor vehicle insurance policy), 17, 18, 19, 20, 22, 23, 24 and 25 survive the expiry or earlier termination of this Contract.

24.7 Variation

The Contract cannot be varied unless a variation to the Contract is agreed to in writing by the parties or made by PON pursuant to this clause.

PON may vary these by placing the varied terms on its website not later than 10 Business Days before the variation is proposed to take effect.

24.8 Force Majeure

Despite anything to the contrary contained elsewhere in this Contract, PON will not be in breach of any obligations it may have to the extent that PON's ability to comply was interfered with, obstructed, delayed or prevented by a Force Majeure Event.

25 PON's capacity

The Transport Operator acknowledges and agrees that:

- a) PON enters this Contract in its capacity as trustee for the Port of Newcastle Unit Trust (**Trust**);
- b) all Loss arising under or in connection with this Contract or any Law may only be enforced against PON to the extent to which PON:
 - I. is entitled to be indemnified in respect of that loss out of the property of the Trust; and
 - II. can be satisfied out of the property of the Trust;
- c) neither the Transport Operator, any of its Personnel nor anyone else on the Transport Operator's behalf may:
 - I. claim from or commence proceedings against PON in respect of any Loss in any capacity other than as trustee of the Trust
 - II. enforce or seek to enforce any judgment in respect of any Loss against any property of PON other than property held by PON as trustee of the Trust

- III. take any steps to procure or support the appointment of a liquidator, administrator or other similar officeholder to PON on the basis of a Loss under or arising out of this Contract, or prove in any liquidation, administration or arrangement of or affecting PON; o
- IV. in respect of any Loss under or arising out of this Contract, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of PON, other than property which is held by it in its capacity as trustee of the Trust;
- d) no attorney, agent or other person appointed in accordance with this Contract has authority to act on behalf of PON in a way which exposes PON to any personal liability
- e) this clause 25 applies despite any other provision of this Contract and extends to all Loss of PON in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract; an
- f) PON is not obliged to do or refrain from doing anything under or pursuant to this Contract unless its liability is limited in the manner set out in clauses 25a) – e).