

**STANDARD CONDITIONS OF SERVICE  
PORT OF NAPIER LIMITED (the Operator)**

Port of Napier Limited operates and provides Services to Users at the Port pursuant to these conditions and not otherwise.

By accepting the Services each User is entering into a contract with the Operator on the terms set out below (the **Use of Port Contract**).

**No Representative of the Operator has authority to waive or vary all or any part of the Use of Port Contract.**

For the avoidance of doubt, until the Operator either expressly accepts the terms of the Application for Trading Account Form completed by the User or otherwise acknowledges the relationship in writing with the User, no contract shall arise between the parties.

**PART A – DEFINITIONS AND INTERPRETATION  
DEFINITIONS**

Agent	means any person acting as shipping agent, cargo agent or forwarder or other intermediary.
Ancillary Equipment	includes clip-on refrigerator units, refrigerator towers, trailers and chassis equipment.
Cargo	means goods, merchandise or other property of every type, including Containers.
Cargo Services	means the Services set out in Part B of Schedule 1.
Claim	means any demand, dispute, suit, proceeding or cause of action or asserted liability or loss.
Container	means any container, tank, flat or pallet or like article used to consolidate goods for carriage, including any Ancillary Equipment.
Dangerous Cargo	means goods defined as such in the IMDG Code (as in force from time to time) or any other similar, equivalent or applicable laws or regulations relating to dangerous cargo.
General Services	means the Services set out in Part A of Schedule 1.
Harbour Master	means the appointed Harbour Master of the Port (or, in his absence, any Deputy or Assistant Harbour Master).
Loss	includes all loss, liability, damage, cost, expense or injury of every nature, including any loss by demurrage or delay and including all consequential loss.

Owner	means the person who is the substantive user of the Services. Without limiting the foregoing, Owner will include the owner, lessee, charterer (of any description), operator or manager of any Ship, a shipper (or if the context requires an owner of Cargo), a stevedore or a combination of any two or more of those parties.
Tariff Schedule	means the Operator's Tariff Schedule of fees and charges in force at the date of provision of the service by the Operator.
Operator	means Port of Napier Limited and includes, where the context requires, its Representatives.
Port	Means all the Port of Napier sites, including all lands, depots (on and off port), waters, wharves, channels and anchorages forming the Port.
Regulations	means all statutes, laws, ordinances, regulations by-laws, rules and statutory instruments and operating procedures applicable to the Operator and the operations and business of the Port.
Representative	means, in respect of any person, the related bodies corporate of that person and the directors, officers, employees, agents, consultants, advisors and subcontractors of that person or any of its related bodies corporate;
Services	means the whole of the services and facilities provided (or to be provided) by the Operator to the User in or about the Port (which may include the General Services and the Cargo Services).
Ship	means any ship, boat, vessel, lighter, barge or other craft in respect of which the Operator provides, or is to provide, Services under this Use of Port Contract.
UKSTC	means the <i>United Kingdom Standard Conditions for Towage and Other Services (Revised 1986)</i> .
User	means any customer of the Operator to whom the Operator provides (or is to provide) Services under this Use of Port Contract and such term will include, as relevant, any Agent or Owner (or any Representative of either).

## INTERPRETATION

1. In this Use of Port Contract, where the context requires:
  - a. any reference to any person includes a company or firm (and vice versa);
  - b. any reference to the singular includes the plural (and vice versa);
  - c. any reference to one gender includes the other gender;
  - d. headings are for convenience only;

- e. references to \$ are references to New Zealand dollars and all amounts payable under this agreement are payable in New Zealand dollars;
  - f. any reference to a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, jointly and severally; and
  - g. any reference to "including" will be without limitation as to its effect.
2. Where the "User" comprises some (or all) of an Agent, an Owner and their respective Representatives, the following principles will apply:
- a. references to the "User" shall be taken to be to each such person or to all such persons collectively;
  - b. where an Agent has entered into the Use of Port Contract on behalf of an Owner, the Agent will be taken, by doing so, to have:
    - (i) agreed, on its own behalf, to comply with this Use of Port Contract (as "User"); and
    - (ii) represented that it has authority to enter into this Use of Port Contract on behalf of the Owner and to have bound the Owner to (and agreed to procure that the Owner will) comply with this Use of Port Contract as "User";
  - c. each of the Owner and the Agent (where an Agent has entered into this Use of Port Contract on behalf of an Owner) will ensure that their Representatives comply with the provisions of this Use of Port Contract as if they were party to it (as "User"); and
  - d. the liability of all persons comprised within the User will be joint and several.

## **PART B – GENERAL TERMS**

The following terms apply to the provision of any Services:

### ***Right to Use the Port***

- 1. The Operator will provide such Services to the User as may be specifically agreed between the User and the Operator in writing from time to time.
- 2. The Services will be provided subject to:
  - a. this Use of Port Contract;
  - b. the Application for Trading Account Form completed by the User and accepted by the Operator;
  - c. to the extent to which the User is required to be on the Port, any Individual or Company Safety Protocols as notified on the Port's website or as provided to the User from time to time;

- d. to the extent to which the User is required to be on the Port, the separate Licence to Operate provided to the User by the Operator;
- e. any lease or licence of premises occupied by the User (available on request); and
- f. the Operator's privacy policy (available on the Operator's website).

collectively, the **Use of Port Terms**.

- 3. Any right conferred upon the User by the Use of Port Terms to receive Services or to occupy or enter onto any section of the Port (excluding any right conferred by any lease or licence of premises occupied by the User) may (notwithstanding any other provision of the Use of Port Terms) be terminated by either party on 30 days' written notice to the other party.
- 4. Where there is a breach of the Use of Port Terms by the User, the Operator may at the Operator's discretion:
  - a. give written notice to the User requiring the User to remedy such breach within a time period set out in that notice (**Remedy Period**);
  - b. suspend the rights of the User for the duration of the Remedy Period; and
  - c. if the breach is not remedied to the satisfaction of the Operator within the Remedy Period, terminate the User's right to receive Services or to occupy or enter onto any section of the Port with immediate effect.
- 5. In connection with clauses 3 and 4 above,
  - a. if the rights of the User are suspended, the User must cease all operations for the period of suspension;
  - b. if the User's relationship with the Operator is terminated, the User must vacate the Port (subject to the Operator's right to retain possession of any property of the User pursuant to any lien or charge the Operator may have over it and to the survival of any obligation to pay amounts to the Operator (each of which shall become immediately due and payable)); and
  - c. if any dispute arises in connection with the operation of these provisions, the rights of the User may be suspended until such dispute is resolved.

### ***General Rules relating to Shipping at the Port***

- 6. The User undertakes to:
  - a. provide to the Operator, at least 24 hours before the arrival of the Ship, particulars of the movements of the Ship and its cargo, including Dangerous Cargo, valuable goods and goods requiring special care;
  - b. promptly comply with all directions given from time to time by the Harbour Master and will, if ordered by the Harbour Master and/or the Operator at their absolute

discretion move any Ship to or from any berth to another or to anchorage or as the Harbour Master or Operator may direct;

- c. remove any Cargo, Container, or equipment or other property as directed by the Operator. If the User fails to do so, the Operator will be entitled to arrange removal and storage thereof, at the User's sole risk and cost. Further, the Operator will have a lien on such Cargo, Container, or equipment or other property and any related documents for all sums whatsoever due at any time to the Operator from the User and for costs of recovering the same, and the Operator will have a right to sell the same by public auction or private treaty without notice to the User and at the User's expense and without liability towards the User;
  - d. comply with its health and safety obligations arising under the Health and Safety at Work Act 2015 and associated regulations; and
  - e. comply with all directions given by any authorised person under the Maritime Transport Act 1994 or the Resource Management Act 1991 or any other statutory provision regulating activity and operations in the Port.
7. Nothing contained in, or implied by, this Use of Port Contract will affect the User's absolute responsibility for the safe navigation and proper management of the Ship including stowage, trim and stability and all berthing, unberthing, mooring and unmooring operations and the User will indemnify and keep indemnified the Operator from and against Claims howsoever arising relating to the navigation and management of the Ship.

### ***Miscellaneous***

8. If any part of this Use of Port Contract is held to be invalid or unenforceable, such part will be excised from and deemed not to form part of this Use of Port Contract but the remainder of this Use of Port Contract will remain in full force and effect.
9. The Operator may, at its sole discretion, subcontract the whole or part of any Services provided under this Use of Port Contract without notice to the User. Any subcontractor (and its employees) will have the benefit of the whole of this Use of Port Contract and the Operator enters into this Use of Port Contract on its own behalf and for the benefit of any such subcontractor or employees, and subject to clause 11 and to the extent required to give effect to these provisions, each such subcontractor or employee will be deemed to be a party to this Use of Port Contract and entitled to enforce this Use of Port Contract under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.
10. This agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this agreement.
11. These Use of Port Terms may be varied by the Operator from time to time by the Operator altering them, and posting them on its website ([www.napierport.co.nz](http://www.napierport.co.nz)). Such variations will be deemed effective and accepted by the User 30 days after the alterations are posted irrespective of whether notice of such alterations is actually received, except for variations regarding Port safety or Port security, which shall be deemed effective and accepted by the User immediately.

## **PART C - GENERAL SERVICES**

If the Services include General Services, the following additional terms will apply:

1. The Operator may agree to provide any of the General Services in respect of Ships and shipping and Cargo suitable for the Port and in accordance with the Tariff Schedule.
2. Where the Operator provides tugs, towage, lineboat, or similar Services whether pursuant to Schedule 1 or otherwise, such Services will be subject to UKSTC and notwithstanding any other provision of this Use of Port Contract, any liability arising out of the provision of such Services will be determined in accordance with UKSTC and not otherwise. A copy of UKSTC is available on request.
3. Working hours will accord with the operating procedures set by the Operator. Subject to this, the Operator will provide the General Services required by the User continuously seven days per week.
4. Where the User hires equipment from the Operator, the User will promptly return the equipment so hired to the Operator in the same order and condition as when hired from the Operator, fair wear and tear excepted.
5. The User undertakes to pay to the Operator all amounts due for charges for General Services in accordance with the Tariff Schedule or as may be agreed and to pay all wharfage, tonnage rates, shed rent, hire of equipment charges, the Operator's charges, telephone, communications, lighting, water, electrical services, and other charges for the provision of Services to the User and shall incur such overdue charges as are set out in the Tariff Schedule.

## **PART D - CARGO SERVICES**

If the Services include Cargo Services, the following additional terms shall apply:

1. The Operator may agree to provide any of the Cargo Services in respect of Ships and shipping and Cargo in a manner which it considers is appropriate for the operation of the Port and in accordance with the Tariff Schedule.
2. The User will accept or deliver Containers or Cargo to the limit of the capacity of the available handling equipment as notified by the Operator to the User.
3. Working hours will accord with the operating procedures set by the Operator. Subject to this, and the Operator making available necessary facilities, the Operator will work Ships continuously seven days per week, excluding public holidays.
4. All bills of lading, waybills or any other documents of title (whether paper or electronic) or contracts of carriage signed by or on behalf of the User, or under which the User is liable, must include a clause conferring the benefit of all defences and limits of liability contained therein on the Operator, which benefit is hereby accepted.
5. Where the Operator carries out cargo services for the User and bills of lading, waybills or delivery orders or other documents of title or any receipt or transport document (whether in

paper or electronic form) are presented to the Operator in order to obtain delivery of Containers or Cargo, the Operator is entitled to assume that the person presenting such a document is the person lawfully entitled to take delivery and to deliver the Containers or Cargo to that person. The User will indemnify the Operator for any Claim which may arise or result from the Operator delivering Cargo or Containers against any bill of lading, waybill, delivery order or any other document of title or any receipt or transport document presented in order to obtain delivery.

6. The User undertakes to pay to the Operator on demand all amounts due for charges for Cargo Services in accordance with the Tariff Schedule or as may be agreed. Such charges will be due and shall incur such overdue charges as are set out in the Tariff Schedule.
7. The Operator reserves the right to take such steps as it sees fit to preserve Ships and safeguard the proper and effective operation of the Port.
8. The User warrants that:
  - a. all particulars it provides relating to Cargo are accurate;
  - b. all Cargo is properly packed and labeled and, if received already in Containers, is properly stowed and secured therein;
  - c. all Containers are fit for their intended purpose;
  - d. all Cargo (including Dangerous Cargo) complies with all regulations and requirements of all applicable authorities;
  - e. it will not provide a Container where the Container's gross weight exceeds the maximum appropriate gross weight or is loaded with an incorrect center of gravity; and
  - f. it will not provide an incorrect declaration or misdeclaration of the true nature or contents of any Dangerous Cargo.
9. The Operator:
  - a. may at any time refuse to accept or deal with Cargo if to do so would, in the opinion of the Operator, cause difficulty to the Operator's operations in general, or risk of damage to the Cargo, or other cargo or property belonging to the Operator or a third party, or risk of injury to any person;
  - b. if any User fails to remove any Cargo from the wharves within an allotted time, is entitled to remove, warehouse or otherwise deal with the containers and cargo, at the risk and expense of the User; and
  - c. may, if a User brings Dangerous Cargo onto the Port without the appropriate notifications, destroy or remove the goods, without compensation to the User, and at the sole cost of the User.

## **PART E – TARIFF, PAYMENT FOR SERVICES AND PROVISION OF INFORMATION**

1. Unless otherwise agreed in writing, the charges for Services provided will be those contained in the Tariff Schedule in force at the time of actual provision of the Service. The User acknowledges that the Tariff Schedule is available on request.
2. Unless otherwise agreed in writing prior to provision of the Services requested, the terms of payment for such Services will be in full within seven days of the Operator's invoice. If any amounts payable by the User under this agreement are not paid by the due date, the Operator may charge interest to the User at the rate 6% in excess of the base lending rate charged by the Operator's bankers from time to time calculated on the unpaid daily amount from the due date until the date of actual payment.
3. The Operator reserves the right to pass any account onto debt collection agencies where all costs (including collection costs, legal costs on a solicitor/own client basis) will be at the cost of the User following a written warning to the User.
4. In addition to any liens that the Operator may have by operation of law or statute, the Operator will have a general lien over the Cargo, Containers and any documents relating thereto of the User for sums due by the User to the Operator. The Operator will be entitled to sell any property subject to this lien at the User's expense by public auction or private treaty, upon such notice to the User as may be required by law (and otherwise after the expiration of one month's notice) and without any liability to the Operator, to the maximum extent permitted by law. Nothing in this clause is intended to or will prejudice any other rights and remedies the Operator may have.
5. Nothing in the Use of Port Terms is intended to, or will, exclude or limit any lien on any Cargo, Containers, or other goods the Operator may have at common law or under statute.
6. The Operator is entitled to retain possession of or prohibit from leaving its wharves, any Ship until all sums which are then overdue to the Operator in respect of:
  - a. such Ship;
  - b. any other Ship (**Sister Ship**) beneficially owned by or on charter by demise to the same User; or
  - c. any Cargo or Containers of a User carried or to be carried on a Ship beneficially owned by or on charter by demise to that User, or on a Sister Ship,

have been paid in full.

Nothing in this clause is intended to, or will, exclude or limit any common law, maritime, or statutory lien or charge the Operator may have against any Ship or the Operator's right to invoke the in-rem jurisdiction of the High Court under sections 4 and 5 of the Admiralty Act 1973 against any Ship or Sister Ship.

7. The Operator is entitled to prohibit the Cargo or Containers of a User entering or leaving the Port until all sums which are then overdue to the Operator in respect of the User have been paid in full.

8. The User acknowledges that personal information provided or obtained in support of any account will be held by the Operator and will be used for the following purposes or as otherwise provided in the Operator's privacy policy (available on the Operator's website):
  - a. to determine the eligibility and terms for the provision of credit to the User;
  - b. supplying the User with goods and/or services (including information relating thereto);
  - c. managing and administering the applicable account(s), including enforcing debts and other legal obligations owing to the Operator by the User; anddisclosure to third parties (including credit reporters) for any of the purposes set out in (a) and (c) above and a directly related purpose.

## **PART F - LIABILITY**

### ***Liability of User***

The following terms apply to the provision of any Services:

1. The User will indemnify the Operator against (and will hold the Operator harmless from) any Loss or Claim arising from the use of the Port by it, including any Loss or Claim arising from:
  - a. any breach of the Use of Port Terms;
  - b. any Claim relating to the hire of equipment to the User, provided that any such Claim has not arisen as a result of a want of reasonable care by the Operator to maintain such equipment in a safe and reasonable condition (the burden of proof of any failure to exercise such reasonable care being upon the User);
  - c. any loss of or damage to any property of the Operator (including any quays, wharves or berths, sheds, buildings or other installations, lights, markers, beacons or navigational aids or buoys, lines, moorings or bollards or plant, equipment and machinery);
  - d. any other infringement of rights (other than contractual rights);
  - e. any pollution incident, including all costs or expenses incurred by the Operator or directed by the Harbour Master or any other statutory authority in the cleaning-up or removal of any pollution or reasonably incurred by the Operator in anticipation of any pollution arising from any User's Ship;
  - f. the raising, removal, destruction or rendering harmless (in whole or in part) of any Ship which is sunk, wrecked, stranded, or abandoned (including anything that is or has been on board such Ship);
  - g. the making safe of any hazard to navigation arising from the presence of any User's Ship in the Port; and

- h. the removal, destruction, or rendering harmless of any Cargo, including of any Dangerous Cargo brought onto the Port without the appropriate notifications.
- i. any leak, spill or contamination incident of any Cargo, including of any Dangerous Cargo brought onto the Port, including all costs or expenses incurred by the Operator in the cleaning-up or removal of any leak, spill or contamination incident.

### ***Liability of Operator and Related Persons***

- 2. The User undertakes that it will not make any Claim against any party other than the Operator arising directly or indirectly from Services provided under the Use of Port Terms and shall indemnify and hold any other party other than the Operator harmless from and against any such claim. This provision is made for the benefit of any person against whom a claim may be made by the User (except for the Operator) pursuant to the Contract and Commercial Law Act 2017.
- 3. The Operator will not be liable or responsible to the User for any Claim or Loss arising other than as a result of the gross negligence or willful default of the Operator. As a further limitation, the Operator will not be liable or responsible to the User, in any event, for any Claim or Loss arising directly or indirectly as a result of:
  - a. insufficient depth of water;
  - b. inability to provide a safe berth or anchorage;
  - c. provision of information to User (including relating to weather, sea or tidal conditions, keel depths, dredging, advisory services, notice(s) to mariners and/or warnings as to navigation);
  - d. actual or forecasted weather, sea or tidal conditions;
  - e. condition of the Operator's quay, wharves, berths or the approaches to them;
  - f. condition of (or absence of) any lights, markers, beacons or other navigational aids or the inadequacy of any buoys, moorings lines or bollards;
  - g. intentional or unintentional act or omission by another port User;
  - h. interruption to the supply of electricity, gas or water to the Operator;
  - i. epidemics and pandemics;
  - j. strikes, riots, civil commotions, lockouts, stoppages or restraints of labour, whether or not involving the employees of the Operator;
  - k. war, civil war, hostilities or the acts of terrorists, insurgents or similar disturbances;
  - l. adverse or unusual conditions of sea or weather, earthquakes, flood or fire;
  - m. acts, orders, regulations, or requirements of any lawful authority or any person purporting to act on behalf of any such authority;

- n. any cause that the Operator could not prevent or avoid by the exercise of reasonable diligence; or
  - o. any stowaways and/or unauthorised persons (“Stowaways”) found on a Ship 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.
4. If, notwithstanding the provisions, above, the Operator is liable to the User, the Operator's liability in respect of Loss arising from one event or an interconnected series of events will be limited to:
- a. except in respect of loss referenced in clause b below, the lowest of:
    - (i) the written down-market value of any lost or damaged property;
    - (ii) the reasonable cost to repair that damaged property; and
    - (iii) \$2,000,000; and
  - b. where the Loss in question relates to a type of property set out in the first column of the table in Schedule 2, the per item and maximum aggregate liability caps set out in the second and third column of the table in Schedule 2.
5. Notice of any Claim by the User against the Operator for any Loss must be given in writing to the Operator within 30 days of the Loss, or within 30 days of when the Loss was or should have been ascertained by the User, whichever is the earlier, otherwise the Operator will be discharged from all liability for the Loss to which the Claim relates.
6. The Operator will be discharged from all liability and from any Claims the User has or might otherwise have against the Operator arising directly or indirectly from Services provided under the Use of Port Terms, unless proceedings are commenced by the User and served upon the Operator within one year of the User's cause of action against the Operator arising.
7. Notwithstanding the provisions set out above, where the Operator provides pilotage services pursuant to Part C, nothing contained in the Use of Port Terms will operate so as to affect any statutory limitation of liability or immunity that the pilot or the Operator may have, and in no event will the Operator be under any liability to the User for any negligent act or omission in the provision of pilotage services by the Operator or for any loss suffered or incurred by the User howsoever arising out of or in connection with the pilotage.

### ***User Environmental Provisions***

8. The User undertakes to the Operator that it will not do or omit to do anything, or use materials, substances or processes in a way which:
- a. breaches or is likely to breach any restriction, duty or obligation under the Resource Management Act 1991 and/or the Maritime Transport Act 1994 and/or any

replacement legislation (including environmental standards, plans, regulations and other delegated legislation prepared under those Acts);

- b. is likely to result in an infringement notice, abatement notice and/or an enforcement order under the Resource Management Act 1991; and/or
  - c. is likely to result in proceedings in relation to an offence or offences under the Resource Management Act 1991 and/or the Maritime Transport Act 1994.
9. Any time the User becomes aware that it is in breach, or is likely to be in breach, of the undertaking set out in clause 8 above, the User agrees to immediately notify the Operator and follow all directions to avoid, remedy or mitigate any such breach or likely breach and its effects.
10. The User warrants to the Operator that it will comply with the Operator's Noise Management Plan with respect to noise as notified on the Operator's website or as provided to the User from time to time.

## **SCHEDULE 1 SPECIFIC SERVICES**

### **PART A: GENERAL SERVICES**

General Services that the Operator may provide in accordance with Part C may include (but will not be limited to):

- Tugs, towage and mooring services
- Electricity, gas, telephone and water.
- Pilotage.
- Emergency services (including fire fighting and pollution and environment controls).
- Cranes, gantries, ladders, gangways, barges, lighters and like equipment.
- Hire of equipment.
- Watchmen, security services, gatekeepers and guards.
- Cleaning, painting and waste disposal.
- Navigational aids.
- Port security.
- CCTV surveillance.

### **PART B: CARGO SERVICES**

Cargo Services that the Operator may provide in accordance with Part D of the Use of Port Contract may include (but will not be limited to):

- Loading and discharging of Containers and Cargo.
- Lashing and unlashings of Containers and Cargo.
- Removal and replacement of Ship's hatch covers.
- Handling heavy lifts, Ship's stores, passenger and crew baggage and breakbulk or other non-Containerised Cargo
- Consolidation and deconsolidation, and reception, stowage and delivery of LCL Cargo.
- Handling refrigerated Containers.
- Services in respect of Customs examination of Containerised Cargoes.
- Cleaning Containers.
- Repairing of Containers.
- Storing Containers.
- Pre Tripping of Refrigerated Containers.
- Provision of out-turn reports or summaries for Services provided.
- Preparation of Ship's stowage plans.
- Receiving and delivery of Cargo.
- Marshalling of Cargo.
- Monitoring/plugging/unplugging of refrigerated Containers.
- Storage of Cargo.
- Container door stops and inspections.
- Warehousing of Cargo.
- Transportation of Cargo.
- Stevedoring.

- Cargo consolidation.
- Quayside crane operation.
- EDI messaging.

**SCHEDULE 2  
LIABILITY**

PRODUCT	ITEMS	MAXIMUM AGGREGATE LIABILITY	
Containers	Refrigerated containers	\$25,000	\$250,000
	Insulated containers	\$15,000	
	Other 20 ft containers	\$6,000	
	Other 40 ft containers	\$8,000	
Ancillary Equipment	Container clip-on units	\$10,000	\$100,000
	Tower units	\$25,000	
	Generator	\$20,000	
Cargo	Cargo in closed or sealed container	\$50,000	\$250,000
	Other cargo	\$1,500 per tonne or part thereof	
Ships (inclusive of their Equipment)			\$15,000,000
Cranes	The lesser of the reasonable cost to repair or market value of any container crane		\$2,000,000 per crane