

CONTRACT FORMATION SECTION (Part One)

1. As soon as the Vessel enters the waters of the Geraldton Port ("**Port**"), the Ship will be bound by a contract with the Mid West Ports Authority ("**MWPA**") with respect to the Vessel's visit to the Port. The contract shall contain the details in the Application for Berth, the DUKC Transit Parameters, the Loading Plan, Ship Deballast, Condition Survey requirements, the MWPA's Standard Ship Terms incorporating the MWPA's Rates and Charges and the MWPA's Port Standards and Procedures ("**Terms**"). For the purposes of this Application For Berth, the word "**Ship**" shall have the meaning given to it in the MWPA's Standard Ship Terms.
2. Copies of the Terms including the MWPA's Rates and Charges and relevant Port Standards and Procedures may be obtained from information posted on the MWPA's website at www.midwestports.com.au
3. The Agent is responsible for checking the Terms, the Rates and Charges and the Port Standards and Procedures from time to time to ascertain whether or not additions or variations have been made.
4. The Principal Agent named below:
 - (a) warrants that it has the Ship's authority to submit this Application for Berth and bind the Ship to the Terms;
 - (b) acknowledges that this Application For Berth will not be accepted and binding on MWPA until it is completed in full to the satisfaction of the Harbour Master.
 - (c) undertakes to pay all of the fees and charges incurred in connection with or on account of the Vessel during its visit to the Port to the MWPA;
 - (d) acknowledges that by submitting this Application for Berth electronically or by any other means (with or without any signature) it will be deemed to have executed this Application for Berth and accepted its terms;
 - (e) undertakes to advise the Ship for whom it is acting of the Terms;
 - (f) undertakes to promptly notify the MWPA of any material variations of any information provided in this Application For Berth; and
5. If labour is booked and the ship subsequently fails the Condition Survey then the Agent undertakes to pay all of the fees and charges incurred in connection with the labour booked.
6. The Australian Maritime Safety Authority (AMSA) has included mooring lines as part of its Marine Orders relating to substandard ships. This means that if a vessel has defective lines, AMSA now has the power to declare the vessel substandard and order the lines to be replaced

I acknowledge that by signing the berth application I have read and agree to the conditions above.

STANDARD SHIP TERMS

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these Terms and Conditions:

"Act" means the *Port Authorities Act 1999* and all regulations made under that Act from time to time.

"Application for Berth" means the MWPA's standard form headed "*Application for Berth*" as amended from time to time.

"Contract" means the contract between the MWPA and the Ship that is formed as soon as the Vessel enters the Port following lodgement of an Application for Berth.

"Ship" the Vessel's Operator and the Vessel's Master.

"Ship's Agent" means the Vessel agent (if any) specified in the Application for Berth or, if no agent is specified in the Application for Berth, the Vessel agent (if any) who lodged the Application for Berth.

"Ship's Associates" means the Vessel's master and crew, employees of the Ship, the Ship's Agent, other agents of the Ship, the Ship's contractors and any agents or contractors engaged by any of the Ship's Agents to carry out work or provide services in the Port in connection with the Vessel or its cargo or crew.

"MWPA" means the Mid West Ports Authority, being a body corporate established under the Act.

"Facilities" means the land, buildings, berths, wharfs, jetties, lay down areas and any associated plant and equipment and other infrastructure of any kind that is owned, vested in, managed, leased or otherwise controlled by the MWPA to which the Ship or the Ship's Associates are given access to or use of by the MWPA in connection with the Vessel's visit to the Port.

"Fees and Charges" means the rates and charges set out in the Schedule of Rates and Charges and any other fees, rates or charges that are imposed by the MWPA from time to time on the Ship or any of the Ship's Associates for access to or use of any Facilities, Services or Hire Equipment in connection with the Vessel's visit to the Port.

"Force Majeure Event" means any event or situation that arises due to something beyond the reasonable control of the MWPA.

"Harbour Master" means the Port's harbour master appointed under the Act and includes any assistant harbour master, duty harbour master, or other person authorised to carry out any harbour master's functions or duties in the Port or to whom the whole or part of harbour master's functions have been delegated at any relevant time, including any appointed duty marine controllers.

"Hire Equipment" means any plant, equipment, chattel, labour or service hired, licensed or leased and made available for loading or unloading of the Vessel, storage, cargo movement, repairs or any other purpose requested or required by the MWPA, the Ship or any of the Ship's Associates in connection with the Vessel and use of the Port by the Ship or any of the Ship's Associates.

"**Port**" means the Port of Geraldton and its seabed and port waters together with all wharves, piers, land and seabeds that are owned, vested in, occupied by, licensed to or controlled by the MWPA.

"**Port Standards and Procedures**" means all obligations, standards, rules, powers, policies, codes, licences, practices and procedures relating to operations, environmental protection, traffic, security, emergencies, health, safety, welfare or other matters concerning the Port, the Facilities, the Hire Equipment or the Services that are put in place by the MWPA from time to time and communicated to the Ship or the Ship's Agent including any details published on the MWPA's website at www.midwestports.com.au (details of which shall be deemed to have been communicated as soon as they are published on the website).

"**Port User**" means any person or entity in the Port at any time for any reason.

"**Rates and Charges**" means the MWPA's Schedule of Tariffs or other rates and charges as amended from time to time which may be available on the MWPA's website at www.midwestports.com.au or on request from the MWPA.

"**Services**" means any services that are provided by or arranged by the MWPA in connection with the Vessel's visit to the Port.

"**Terms**" means the terms and conditions set out in this document as varied from time to time by the MWPA.

"**Vessel**" means the vessel named in the Application for Berth.

"**Vessel's Owner**" means the owner of the Vessel and includes any charterer of the Vessel.

1.2 Interpretation

In these Terms:

- (a) words importing the singular will include the plural and vice versa and any word or expression defined in the singular has the corresponding meaning if used in the plural and vice versa;
- (b) a reference to any act or statute or regulation will include a reference to any amendment, re-enactment or extension thereof or any statutory or regulatory provision that may be substituted from time to time.
- (c) references to any deed, document, instrument or other writing will be deemed to include references to the deed, instrument or other writing as varied or supplemented from time to time;
- (d) where any party to the Contract is comprised of more than one person or entity then those people or entities will be bound jointly and each of them will be bound severally by the terms of the Contract; and
- (e) any reference to "Port", "Facilities", "Hire Equipment" or "Services" shall be read as a reference to all or any part of the "Port", the "Facilities", the "Hire Equipment" or the "Services".

2. APPLICATION OF THESE TERMS

- 2.1 These Terms form part of the Contract that arises out of the submission of an Application for Berth to the MWPA.

- 2.2 A contract will automatically bind the Ship with respect to the Vessel's visit to the Port as soon as the Vessel enters the Port and the contract will comprise the terms and details set out in the Ship's Application for Berth, these Terms and the MWPA's Rates and Charges.
- 2.3 Any variation to the details set out in the Application for Berth shall be deemed to operate as a variation to the Contract.
- 2.4 These Terms cannot be varied unless the variation is agreed in writing and has been signed by authorised representatives of both the Ship and the MWPA.

3. PORT AUTHORITIES ACT 1999

- 3.1 The Contract shall operate in augmentation of the MWPA's rights, powers, defences, immunities or limitations of liability under the Act. Nothing in or arising out of these Terms or the Contract:
- (a) in any way diminishes the MWPA's rights, powers, defences, immunities, indemnities or limitations of liability under the Act;
 - (b) in any way fetters any discretions that the MWPA has under the Act; or
 - (c) in any way precludes the MWPA from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under the Act in relation to any matter concerning the Port, the Ship or the Vessel or any matter arising out of the Contract.
- 3.2 If there is any inconsistency between anything in these Terms or the Ship's Contract and anything in the Act, then the Act will prevail to the extent of the inconsistency.

4. USE OF AND ACCESS TO FACILITIES, SERVICES AND HIRE EQUIPMENT

4.1 Allocation of Facilities, Services and Hire Equipment by the MWPA

Subject to these Terms and the Contract, the MWPA agrees to allocate the Vessel a berth in the Port and give the Ship access to and use of the Facilities, Services and Hire Equipment.

4.2 No interest in Facilities

Nothing in these Terms will create any tenancy, estate or proprietary interest of any kind in or over the Facilities or any Hire Equipment.

4.3 Availability of requested Facilities, Services and Hire Equipment

Allocation of Berths, Facilities, Services or Hire Equipment requested by the Ship or the Ship's Associates will always be subject to availability and suitability for the use intended by the Ship or the Ship's Associates. The MWPA will determine availability and suitability in its discretion.

4.4 Additional Services, Facilities or Hire Equipment

In addition to the use of any Facilities, Services or Hire Equipment requested by the Ship or any of the Ship's Associates, other Services, Facilities and Hire Equipment shall be utilised (and paid for as part of the Fees and Charges) in circumstances where the MWPA considers the use of additional or alternative Services or Facilities is necessary to ensure, safety, security, Port operational efficiency, general expediency, compliance with the Act or compliance with any other laws or industry standards.

4.5 **Withdrawal, suspension, reallocation and termination of access and use**

If the MWPA considers it necessary to do so for any reason then the MWPA may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted to the Ship or any Vessel. If the MWPA exercises any of its rights under this clause then nothing will relieve the Ship or the Ship's Agent from liability to pay any Fees and Charges already accrued or incurred and nothing will entitle the Ship to any compensation for any loss, damage, demurrage, delay or inconvenience suffered.

5. **FEES, CHARGES AND INTEREST**

5.1 **Fees and Charges**

The Ship shall pay the MWPA all applicable Fees and Charges arising out of the Vessel's visit to the Port.

5.2 **Interest on outstanding Fees and Charges**

The Ship shall pay the MWPA interest on all Fees and Charges that are not paid to the MWPA by the date that they are due for payment. Interest on all outstanding amounts shall accrue daily at the rate per annum prescribed from time to time by Regulation 119 of the *Port Authorities Regulations 2001 (WA)* pursuant to section 136 of the Act ("**Interest**"). Interest may be capitalised by the MWPA on the last day of each month and Interest shall be payable by the Ship to the MWPA as a debt due on demand.

6. **OTHER OBLIGATIONS**

6.1 **Maintenance and repair**

The Ship shall ensure that any Facilities and Hire Equipment used by the Ship, the Vessel or any of the Ship's Associates are kept and maintained in good condition (having regard to their age and general condition) and the Ship shall ensure that any Facilities and Hire Equipment used are left in a good, clean and operational condition after use.

6.2 **MWPA may rectify**

If any Facilities or Hire Equipment are not left in the condition required under clause 6.1, the MWPA may carry out any work necessary to put the Facilities and Hire Equipment into the condition required under clause 6.1 and the costs of the work shall be paid by the Ship on demand.

6.3 **Port Security**

The Ship shall ensure that it and the Ship's Associates comply with the MWPA's security procedures and requirements relating to cargo, Vessels, Facilities, Hire Equipment and access to and from the Port when such procedures and requirements are communicated to them. For the purposes of this clause 6.3, where the MWPA places the relevant procedures and requirements on its website, it shall be deemed to have communicated those procedures and requirements to the Ship and Ship's Associates.

6.4 **Professional standards**

The Ship shall ensure that all work carried by it or any of the Ship's Associates in or around the Port in connection with the Vessel's visit:

- (a) is carried out by personnel who are fit for work and have the appropriate training, experience and qualifications to do the work; and

(b) is carried out with a high degree of skill, competence and professionalism at all times.

6.5 **No damage**

The Ship shall ensure that neither it nor any of the Ship's Associates causes any damage to the Facilities, Hire Equipment or anything else in the Port.

6.6 **No interference with other users**

The Ship shall ensure that neither it nor any of the Ship's Associates obstructs or causes any interference to the MWPA or any other Port User.

6.7 **Comply with all Acts and Regulations**

The Ship shall ensure that it and the Ship's Associates comply with all aspects of the Act and all other laws relating to the Vessel or the use of or access to the Port, the Services, the Hire Equipment or the Facilities.

6.8 **Not to cause spills or pollute**

The Ship shall ensure that neither it nor any of the Ship's Associates causes any spills, pollution or contamination of any kind in the Port.

6.9 **Comply with directions etc.**

The Ship shall ensure that it and the Ship's Associates:

- (a) comply with all Port Standards and Procedures (which augment these Terms);
- (b) comply with all directions given by the MWPA in connection with the Vessel's visit to the Port and activities in the Port;
- (c) comply with all directions given by anyone working with the Australian Quarantine Services, the Australian Customs Services or any other relevant regulatory authority in connection with the Vessel's visit to the Port;
- (d) comply with all occupational health, safety, environmental and operational requirements and associated policies and procedures of the MWPA that are advised to the Ship or any of the Ship's Associates from time to time; and
- (e) comply with all directions given by the Harbour Master.

6.10 **Induction**

The Ship shall ensure that it and the Ship's Associates attend any Port induction briefings or courses as and when required by the MWPA in relation to anything connected with the Vessel's visit to the Port.

6.11 **Notification of accidents, damage or injury**

As soon as the Ship or any of the Ship's Associates become aware of any accident, incident, damage to the Facilities, the Hire Equipment or anything else in the Port, injury to any person or any circumstances likely to cause any damage or injury during or as a result of the Vessel's visit to the Port:

- (a) the Ship shall ensure that the MWPA is informed of the damage, injury or circumstance; and
- (b) if the Ship or the Vessel's Master is requested to do so by the MWPA, the Ship shall ensure that it or the Vessel's Master, provides a detailed written report to the MWPA about the accident, incident or other event causing the damage, injury or any other consequence. Any report shall be provided to the MWPA within 24 hours of a request being made.

For the purpose of this clause:

"accident" means any event where damage of any kind is caused to any vessel, person or property; and

"incident" means any event occurring, which gives rise to a hazardous or potentially hazardous situation.

6.12 MWPA access

The Ship shall ensure that the MWPA is given prompt access to the Facilities, the Vessel and any information that is reasonably required by the MWPA in order for the MWPA to check and monitor the Ship's compliance with its obligations under these Terms and the Contract.

6.13 Cargo Manifests

- (a) The Ship must ensure that the MWPA receives an accurate, legible and complete copy of a manifest written in English, which details the cargo to be unloaded from the Vessel at the Port by submitting a completed manifest of cargo inwards ("**Manifest of Cargo Inwards**") in the form approved by the MWPA, as soon as practicable after arriving in the Port.
- (b) The Ship must ensure that the MWPA receives an accurate, legible and complete copy of a manifest written in English, which details the cargo that has been loaded on the Vessel at the Port by submitting a completed manifest of cargo outwards ("**Manifest of Cargo Outwards**") in the form approved by the MWPA, as soon as practicable after the cargo has been loaded.

6.14 Dangerous Goods in the Port

- (a) The Ship acknowledges and agrees that:
 - (i) Port Users may import and export dangerous and hazardous products to and from the Port ("**Dangerous Goods**");
 - (ii) as a consequence of the movement of Dangerous Goods in the Port, the MWPA may make or be required to make rules ("**MWPA's Rules**"), which may affect other Port Users' access to or efficient use of the Port;
 - (iii) as a consequence of the MWPA's Rules and the movement of Dangerous Goods through the Port, the Ship may incur delays or may be restricted from accessing certain parts of the Port or the Port waters, resulting in costs and expenses being incurred by the Ship, such as demurrage fees; and
 - (iv) it will promptly comply with the MWPA's Rules.

- (b) The Ship agrees to release and hold the MWPA harmless from and against any costs, losses, expenses and claims (including any consequential loss or damage) arising out of the MWPA's Rules or the movement of Dangerous Goods in the Port.

6.15 Loading Plan

The Ship must ensure that the MWPA receives an accurate, legible and complete copy of a Loading Plan written in English, which includes information as to the number of deballasting pumps and rate at which they pump out at least 48 hours prior to the expected arrival of the vessel.

7. LIMITATION OF LIABILITY

Except to the extent that any rights or warranties cannot be excluded or limited as a matter of law, the liability of the MWPA to the Ship for anything arising out of the Contract shall be strictly limited to either of the following remedies as elected by the MWPA:

- (a) the re-supply of equivalent Services, Facilities or Hire Equipment; or
- (b) the payment of the costs necessary to have the Services, Facilities or Hire Equipment supplied again.

8. TERMINATION

8.1 MWPA may terminate

Without prejudice to any other rights or remedies the MWPA may have under these Terms or the Contract or at law or in equity, the MWPA may terminate the Contract with immediate effect if the Ship is in breach of its obligations at any time.

8.2 No release

On termination of the Contract:

- (a) nothing will release or discharge the Ship from liability to the MWPA in relation to anything occurring prior the date of termination; and
- (b) nothing will release or discharge the Ship's Agent or Ship from liability for any Fees and Charges imposed by the MWPA in relation to anything occurring prior the date of termination.

9. GOODS AND SERVICES TAX

9.1 GST provisions

For the purpose of this clause unless the context otherwise requires:

- (a) "**GST Legislation**" means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition act (whether imposing tax as a duty or customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such acts; and
- (b) where any other term is used in this clause, which is defined in the GST legislation, it will have the meaning given in the GST Legislation.

9.2 Amounts in Schedule of Rates and Charges are GST inclusive

Every item in the Rates and Charges payable under these Standard Terms and Conditions shall be expressed as being inclusive of GST.

9.3 Tax invoices

The MWPA will provide the Ship or the Ship's Agent with tax invoices and/or adjustment notes with respect to the Fees and Charges (but will not be obliged or required to create tax invoices for amounts in excess of amounts received from the Ship). The tax invoices and adjustment notes will show the Fees and Charges exclusive of GST and the relevant GST amount payable on those Fees and Charges.

10. FORCE MAJEURE

Despite anything to the contrary contained elsewhere in these Terms or the Contract, the MWPA will not be in breach of any obligation it may have in circumstances where the MWPA's ability to reasonably comply was interfered with, obstructed, delayed or prevented by a Force Majeure Event.

11. LIMITATIONS AND EXCLUSIONS**11.1 Limitations**

(a) Regardless of any contributing acts or omissions (tortious or otherwise) on the part of the MWPA or any of its employees, agents or contractors, the MWPA will not be responsible for or liable to the Ship in any way whatsoever.

11.2 Acknowledgements

Nothing in any circumstances whatsoever:

- (a) obliges the MWPA to stop (either temporarily or permanently) any third party from carrying on any activity in the Port in order to enable the Ship to do anything;
- (b) precludes the MWPA from granting third parties rights to use any part of the Port or anything in the Port for any purpose whatsoever;
- (c) is intended to create any duty of care on the MWPA's part in favour of the Ship; or
- (d) is intended to incorporate into these Terms any implied obligations or implied responsibilities of any kind on the MWPA's part in favour of the Ship.

11.3 Act and Regulations

All provisions in the Act and its regulations that state that a port authority is not liable or does not become liable in relation to anything are deemed to be incorporated into these Terms as contractual provisions and shall limit the MWPA's liability.

12. MISCELLANEOUS**12.1 No assignment**

The rights and entitlements under the Contract are not capable of being assigned or transferred by the Ship.

12.2 Severance

If any term or part contained in these Terms or elsewhere in the Contract is declared or becomes unenforceable, invalid or illegal for any reason then that term or part will be severed and the other terms and parts will remain in full force and effect.

12.3 **Governing law and jurisdiction**

The Contract is governed by and will be construed in accordance with the laws of Western Australia and the Ship irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

12.4 **Website**

The MWPA undertakes to place these Terms on its website, so that the Ship can easily access them.

12.5 **Variation**

The MWPA undertakes to notify the Ship and the Ship's Agent of any variation by placing the varied Terms on its website immediately following any determination by the MWPA to vary these Terms.