

# PORT OF DARWIN STANDARD SERVICES TERMS AND CONDITIONS

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## **1 Introduction and scope of Terms and Conditions**

- (a) These Terms and Conditions apply to the provision of Services and use of the Facilities which are Standard Services.
- (b) To the extent there are inconsistencies, the following terms will apply in the order of precedence below:
  - (i) first, the Priority Principles;
  - (ii) second, the Port Requirements;
  - (iii) third, these Terms and Conditions; and
  - (iv) fourth, any agreements with the particular User other than these Terms and Conditions (except if and to the extent those agreements expressly vary the order of precedence set out above).
- (c) Notwithstanding any other provision of these Terms and Conditions nothing is intended to or operates to limit Darwin Port's obligations, rights or powers under the *Ports Management Act 2015* or its regulations.

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## **2 Request for use of the Facilities and the Services**

- (a) A User may request Darwin Port to provide Standard Services and access the Facilities by submitting to Darwin Port, at least 48 hours (where the User is a Prequalified User) or 5 Business Days (for all other Users) prior to the earliest requested time for the provision of Services, a completed Notice of Arrival (either on-line or other form required by Darwin Port and published on the Website from time to time), together with all information required by Darwin Port, to the email address published on the Website from time to time. It is the User's responsibility to ensure that the information provided to Darwin Port is complete and accurate and not misleading.
- (b) Darwin Port may accept or reject a Notice of Arrival in accordance with the Access Policy.
- (c) A User may submit a written request to Darwin Port to vary or withdraw a Notice of Arrival previously submitted by the User. Darwin Port may accept or reject a request to vary or withdraw a Notice of Arrival. If a Notice of Arrival is varied or withdrawn (other than where such variation or withdrawal is solely due to a delay caused by Darwin Port or is solely due to Darwin Port's failure to provide the Services in accordance with these Terms and Conditions), the User will be liable for all Loss incurred by Darwin Port in connection with that variation or withdrawal.
- (d) Each User will only use the Facilities for the Permitted Use.
- (e) A User is not granted any exclusive use of the Facilities, and Darwin Port may allow access to the Facilities to any other person for any purpose, including without limitation, access by agents, staff, contractors and representatives of Darwin Port.

- (f) In the case of pilotage services only:
  - (i) Users may submit a Notice of Arrival or a request to vary or withdraw a Notice of Arrival without incurring any cancellation Fees, provided that the Minimum Notice is given.
  - (ii) If a User has not provided the Minimum Notice under paragraph 2(f)(i) or the User's vessel is a 'no show' (other than where such variation or withdrawal is solely due to a delay caused by Darwin Port or is solely due to Darwin Port's failure to provide the Services in accordance with these Terms and Conditions), then the User must pay Darwin Port the applicable cancellation Fees as stated in Darwin Port's Schedule of Port Charges, published on the Website from time to time.
  - (iii) Darwin Port may impose a Fee where a Pilot is detained on board the User's vessel that is not ready to sail (other than where the detention of the Pilot is solely due to a delay caused by Darwin Port or is solely due to Darwin Port's failure to provide the Services in accordance with these Terms and Conditions).
- (g) Where a shipping agent submits a Notice of Arrival on behalf of a User, the User and the shipping agent each warrant and represent to Darwin Port that the User has engaged the shipping agent to act as its agent with the User's full authority for all purposes arising out of or in connection with the Notice of Arrival and the shipping agent is fully authorised to enter into, and bind the User, to these Terms and Conditions. Prior to the User accessing the Facilities and Services, the shipping agent must:
  - (i) notify the User of these Terms and Conditions, the Fees and the Payment Terms; and
  - (ii) ensure that the User is made aware of all Port Requirements.

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### **3 Access to the Facilities and Services provided by Darwin Port**

- (a) Subject to this paragraph 3 and the User's compliance with these Terms and Conditions, Darwin Port will provide the Services and access to the Facilities as requested by the User.
- (b) Priority of provision of Services and access to Facilities to Users will be determined by Darwin Port in accordance with the Priority Principles.
- (c) Users acknowledge and agree that Darwin Port may change the berthing order of vessels or access to the Facilities.
- (d) Darwin Port may, at the User's cost, conduct reasonable vessel inspections of new vessels to the Port of Darwin and to which these Terms and Conditions apply.
- (e) Darwin Port may change the Facilities to be used by a User by giving reasonable prior notice to that User and provided that Darwin Port makes an alternative facility available with substantially the same features (relevant to the Permitted Use) as the Facilities originally applied for by the User.
- (f) If Darwin Port has agreed to provide access to a Facility (Original Facility) and then subsequently changes the Facility in accordance with clause 3(e) (Changed Facility), the Fees to be charged will be

determined by reference to the Fees applicable to the Original Facility not the Changed Facility.

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#### **4 Payments to Darwin Port**

- (a) Users will be charged, and will pay, for the provision of Services and the use of Facilities at the Fees fixed by Darwin Port in accordance with Part 10 of the *Ports Management Act 2015* (NT).
- (b) Users will make all payments to Darwin Port for the provision of Services and the use of the Facilities in accordance with the Payment Terms and Conditions.
- (c) Users will pay Darwin Port the Fees invoiced by Darwin Port without any deduction or right of set-off.
- (d) Users will pay Darwin Port, or any relevant Utility Service provider, the charges for any Utility Services used by them at the Facilities at the rate applicable to use of those services from time to time.

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#### **5 Obligations of Users**

- (a) Any damage caused or contributed to by the User, its staff, contractors, agents or representatives to the Facilities or the Port of Darwin or surrounding areas will be repaired or remediated by Darwin Port at the expense of the User, other than fair wear and tear as reasonably determined by Darwin Port. The User must pay on demand any costs incurred under this paragraph 5(a) as a liquidated debt in accordance with the Payment Terms and Conditions, provided that where a cost is incurred due to damage contributed to by the User, its staff, contractors, agents or representatives the User is only liable for such proportion of the cost which equates to the proportion of the damage contributed to by the User, its staff, contractors, agents or representatives. Without limitation, this paragraph 5(a) will apply to any damage to the environment in or around the Facilities or the Port of Darwin resulting from or relating to damage, contamination or pollution caused by a vessel or by any materials or liquids from a vessel.
- (b) Users must at all times when within the Port of Darwin, have current all:
  - (i) required international certifications applicable to their vessel(s); and
  - (ii) certifications for their vehicles and equipment as required by Law.
- (c) Users will promptly provide all information reasonably required by Darwin Port to enable the efficient and orderly use of the Facilities in co-ordination with other Users, including without limitation, any changes to the Time of Arrival or Time of Departure, and full details of any item or substance on a vessel or which will be handled at the Facilities of a hazardous, toxic or dangerous nature.
- (d) Users must, and must ensure that their staff, contractors, agents and representatives:
  - (i) use the Facilities in a manner which prevents damage (including any environmental damage, contamination or pollution) to the Facilities or the Port of Darwin;
  - (ii) keep and maintain the Facilities in good condition (having regard

to the age of the Facilities and general condition) and leave them in a good, clean and operational condition after use; and

- (iii) leave the Facilities clean of all rubbish and in the same condition as they were in prior to use.
- (e) No improvements can be constructed on, or made to, the Facilities by Users without the prior written consent of Darwin Port. If any improvements are permitted to be made to the Facilities by a User, the User must remove those improvements upon request by Darwin Port and make good all damage arising from the improvements or the removal of the improvements. If the User does not remove improvements or make good any damage referred to in this paragraph 5(e), Darwin Port may remove those improvements or repair that damage and the User will pay all costs incurred by Darwin Port in that regard as a liquidated debt in accordance with the Payment Terms and Conditions.
- (f) Users must not operate or leave equipment at the Facilities without obtaining a 'permit to occupy' from Darwin Port. If a User is permitted to, and leaves, equipment at the Facilities the equipment is left at the User's risk and the User releases Darwin Port from all Claims in connection with the equipment.

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## **6 Use of Facilities and the Services**

- (a) Darwin Port will provide the Services and access to the Facilities in accordance with good industry practice and all applicable Laws.
- (b) Darwin Port makes no representation or warranty, and to the fullest extent permitted by Law, and subject to the consumer guarantees under the Australian Consumer Law, excludes any representation or warranty provided or implied by Law, regarding the Facilities and the Services.
- (c) Users access the Facilities and use the Services at their own risk. Subject to paragraph 6(d) and to the fullest extent permitted by Law, Darwin Port will not be liable to the User, and the User releases Darwin Port in relation to, all Claims that may be made against, and all Loss incurred by, the User at any time arising out of or in connection with, directly or indirectly, access to the Facilities or the provision of the Services to the User or in connection with these Terms and Conditions, including without limitation Loss:
  - (i) to any property;
  - (ii) arising from, or in connection with, injury or damage done or suffered to any person including death, environmental damage, pollution or contamination or a failure to deliver, or delay in the provision or delivery of, access to the Facilities or the Services;
  - (iii) suffered by a User as a result of termination of access to the Facilities and provision of the Services by Darwin Port under paragraph 11;
  - (iv) as a result of any delay in provision of access to the Facilities or provision of the Services under paragraph 12;
  - (v) as a result of any delay in provision of access to the Facilities or provision of Services due to the application of the Priority Principles; and

- (vi) arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a consent or approval under these Terms and Conditions.
- (d) Paragraph 6(c) does not apply to the extent that such Loss is caused or contributed to by the negligent act or omission or criminal conduct for which Darwin Port is responsible or breach of these Terms and Conditions by Darwin Port.

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## **7 Indemnity by Users**

- (a) Subject to paragraph 7(c), each User indemnifies and will keep indemnified Darwin Port from and against:
  - (i) any loss of or damage to the property of Darwin Port; and
  - (ii) Claims by any person against Darwin Port in respect of personal injury or death or loss of or damage to any property, caused by or arising out of or as a consequence of the access, occupation or use of the Facilities or other Port property by the User, its staff, contractors, agents or representatives.
- (b) In addition to 7(a) but subject to paragraph 7(c), each User indemnifies and will keep indemnified Darwin Port from and against any loss or damage caused by or contributed to by:
  - (i) the negligence of the User;
  - (ii) fraud or criminal conduct by the User for which the User is responsible;
  - (iii) any breach of any applicable Laws by the User; and
  - (iv) any pollution or contamination caused by the User.
- (c) The rights of indemnity in paragraphs 7(a) and 7(b) will be reduced to the extent the relevant Claim or Loss is directly caused or contributed to by the negligent act or omission or criminal conduct for which Darwin Port is responsible or breach of these Terms and Conditions by Darwin Port.
- (d) The User acknowledges the existence of equipment at the Facilities which may not be owned by Darwin Port (including ship loaders and associated gantry equipment, shore cranes and associated equipment and cargo). Without limiting paragraph 7(a), each User indemnifies and will keep indemnified Darwin Port from and against all Claims that may be brought by any person against, and all Loss incurred by, Darwin Port, directly or indirectly, whether in contract, tort or otherwise, in relation to or arising from the use of the equipment referred to in this paragraph 7(d) by the User, its staff, contractors, agents or representatives, or resulting from any damage to or destruction of such equipment or any part of such equipment, to the extent caused or contributed to by the User or its staff, contractors, agents and representatives.

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## **8 Notification of incidents to Darwin Port**

- (a) Users must report incidents in relation to or arising from the use by the User of the Facilities or the provision of the Services to the User as soon as reasonably practicable in writing:
  - (i) of a notifiable nature - to Darwin Port and any other relevant

Government Authority; and

- (ii) all other incidents - to Darwin Port.
- (b) Users must, in the event of emergency, accident or threat to security, notify the emergency services by dialing 000 and contacting Darwin Port. Users must provide Darwin Port and any emergency services with all access, assistance and information as either of them may lawfully and reasonably require.

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## **9 Insurance**

- (a) Prior to use of the Facilities, Users must obtain and maintain a comprehensive public liability insurance, including coverage for sudden and accidental pollution, for an amount of at least A\$20 million and any other insurance that may reasonably be requested by Darwin Port as published on its website.
- (b) Users warrant that any stevedore or other contractor which they engage or use in relation to the Facilities has appropriate insurance with a reputable insurance company in relation to the following:
  - (i) workers compensation or similar employee insurance as required by any Laws; and
  - (ii) damage caused by the contractor at the Facility, including damage arising from the use of vehicles, cranes or any other machinery.
- (c) Users warrant that the owner of any vessel engaged or used in relation to the Facilities has protection and indemnity insurance for the vessel connected with the Users' use of the Facilities, including coverage for pollution, spillage and wreck removal, for an amount of at least US\$50 million or, in the case of recreational vessels, A\$10 million. For the purposes of this paragraph "owner" includes Users, vessel owners and charterers.
- (d) The insurances referred to in paragraphs (a) to (c) above must be for any single event and cover all operations by the Users on or about the Facilities. The insurance policies must be with reputable insurance companies and a certificate of currency must be provided upon request. If Darwin Port requests a copy of the policy of insurance the User must also provide this to Darwin Port along with any other relevant documentation prior to use of the Facilities by the Users. Subject to the User acting reasonably it may redact commercially sensitive information from the policy of insurance prior to disclosure or arrange for the policy to be provided to Darwin Port's insurance broker or lawyer on terms that will maintain the confidentiality of the commercially sensitive information but subject to Darwin Port being able to obtain the advice required to assess the risks associated with the provision of the Services to the User.

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## **10 Conduct of Users at the Port of Darwin**

Users must, and must ensure that their staff, contractors, agents and representatives:

- (a) comply with all:
  - (i) Laws and Port Requirements; and

- (ii) reasonable directions from or on behalf of Darwin Port including directions which may be published on its Website from time to time as port notices, safe work procedures, policies, security arrangements, ancillary procedures or directions related to the Darwin Port Induction System;
- (b) not obstruct or endanger any person at the Port of Darwin;
- (c) take all reasonable steps to prevent interference, nuisance, unreasonable noise and disturbance to any other person at the Port of Darwin; and
- (d) co-ordinate their activities in consultation with other Users.

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## **11 Termination by Darwin Port**

- (a) Without limiting any other rights of Darwin Port, Darwin Port may terminate or refuse to provide access to the Facilities and provision of the Services to a User if:
  - (i) the User breaches these Terms and Conditions and such breach creates a material safety issue or materially adversely affects Darwin Port's ability to provide access to the Facilities and services to other Users; or
  - (ii) the User breaches any material term of these Terms and Conditions and, if capable of remedy, but other than in the circumstances described in clause 11(a)(i), the User fails to remedy the breach within any reasonable time period notified by Darwin Port to the User; or
  - (iii) Darwin Port (acting reasonably) considers that an Event of Force Majeure is such that it will prevent Darwin Port from providing the Facilities or the Services to the User within the time period originally contemplated by the parties and Darwin Port, acting reasonably, does not consider that it is practicable to reschedule the provision of the Facilities or the Services until such time as the Event of Force Majeure ceases; or
  - (iv) the User has not arrived within, what Darwin Port considers to be, a reasonable time after the Time of Arrival and Darwin Port, acting reasonably, does not consider that it is practicable to reschedule the provision of the Facilities or the Services.
- (b) Darwin Port must notify the User of any termination or refusal to provide access to the Facilities or provision of the Services under this clause 11.
- (c) For the avoidance of doubt, where access to Facilities or Services has been terminated or refused under this clause 11 the User is entitled to submit a new application or Notice of Arrival.

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## **12 Events of Force Majeure**

If Darwin Port is prevented or delayed in providing use of the Facilities or the Services by an Event of Force Majeure then for so long as that situation continues, Darwin Port is excused from providing use of the Facilities and the Services to the extent that it is so prevented or delayed.

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## **13 Assignment, novation and subcontracting**

- (a) Darwin Port may subcontract any of its obligations under these Terms

and Conditions.

- (b) Users must not assign or novate any rights or obligations under these Terms and Conditions without the prior written consent of Darwin Port, which may not be unreasonably withheld.
- (c) A User will be deemed to have assigned its rights or obligations under these Terms and Conditions if, without the prior written consent of Darwin Port, there is a Change in Control of the User.

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## 14 Notices to Darwin Port

- (a) All notices and other communications to Darwin Port in relation to these Terms and Conditions must be in writing and sent to:

Address: 880 Berrimah Road, East Arm NT 0822 Australia  
Mail Address: P.O. Box 65, Berrimah NT 0828 Australia  
Email: darwinport@darwinport.com.au

or to such other address or persons specified on the Website from time to time.

- (b) Notices are deemed to be received by Darwin Port at the time when they are actually received by Darwin Port.

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## 15 Safety, stevedores and other contractors

- (a) Users must, and must ensure that their staff, contractors, agents and representatives, maintain a safe environment at the Facilities at all times.
- (b) Users must ensure that their worksites at the Facilities are fit for purpose prior to undertaking any activities at the Facilities, including without limitation undertaking appropriate and adequate risk assessments and preparing an appropriate safety plan having regard to the Permitted Use and foreseeable risks ("**Safety Plan**"). A Safety Plan must include a consideration of, and risk mitigation strategies in respect of:
  - (i) mooring and letting go of vessels;
  - (ii) stevedoring operations;
  - (iii) receiving and delivery of cargo;
  - (iv) appropriate numbers of suitably qualified and competent personnel to perform the activities intended to be carried out at the Facilities;
  - (v) site access and management of that access (including for contractors, invitees and agents);
  - (vi) stores to vessels; and
  - (vii) evacuation plans.
- (c) Users must, on request, provide their Safety Plan to Darwin Port.
- (d) Users must ensure that all stevedores and other contractors which they engage and who use the Facilities:
  - (i) are reputable;



- (ii) have sufficiently experienced personnel to properly undertake their duties at the Facilities; and
- (iii) operate under the conditions of all applicable permits issued in relation to the User at the Port of Darwin and management plans relevant to their operations.

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## 16 Pilotage services

This paragraph 16 applies where the Services provided, or to be provided, are pilotage services.

- (a) Users may not bring any Claim against a Pilot involved in the provision of Services, whether in tort, contract or otherwise.
- (b) Users, and not a Pilot or Darwin Port, are liable for any Loss caused by a vessel, or by a fault of the navigation of the vessel, whilst under pilotage.
- (c) Users are responsible for the safety and well-being of their Pilot during the provision of the Services.
- (d) Users must ensure that their Pilot is provided with safe access to their vessel and a safe operating environment while on their vessel. Without limiting this paragraph, Users must ensure that any equipment used by their Pilot in the provision of the Services is protected from all Losses.
- (e) Prior to a Pilot boarding a vessel, the User must provide to Darwin Port:
  - (i) complete and accurate information about the vessel requirements, its sailing condition, access, safety procedures or any other matters that may reasonably be expected to effect the provision of the Services; and
  - (ii) details of any vessel policy the User requires the Pilot to comply with, which compliance is subject to Darwin Port's prior approval.
- (f) Nothing in this clause 16 is intended to or operates to limit the protections in section 92 of the *Ports Management Act 2015*.

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## 17 Limitation of liability

- (a) Darwin Port is a party to these Terms and Conditions in its capacity only as trustee for the Trust.
- (b) Notwithstanding any other clause in these Terms and Conditions and only to the extent permitted by Law but subject to this clause 17 and the Australian Consumer Law, Darwin Port's maximum liability under these Terms and Conditions for any Loss or Claim and under any contract formed upon the acceptance by a User of these Terms and Conditions is limited to two times the Service Fee payable by the User to Darwin Port for the provision of the Services to the User.
- (c) The limitation of liability in clause 17(b) does not apply to any Loss or Claim for which Darwin Port is entitled to claim indemnity under any relevant policy of insurance maintained by Darwin Port (the "**Policy**") but in such case, Darwin Port's maximum liability is limited to the greater of such amount received by Darwin Port under the Policy or which would have been received had:
  - (i) Darwin Port complied with the terms of the policy; and

- (ii) Darwin Port promptly claimed under the policy and taken all reasonable steps to maximise recoveries under the policy.
- (d) The limitations of liability and restrictions in this clause 17 do not apply where and to the extent they would have the effect of enabling an insurer to deny indemnity under an insurance policy.
- (e) The limitation of liability in paragraph 17 applies despite any other provision in these Terms and Conditions.
- (f) The limitations in clause 17(b) and clause 17(c) do not apply where the liability arises due to fraud or dishonest or criminal acts of Darwin Port for which Darwin Port is responsible.

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## **18 General**

- (a) If a person is bound by these Terms and Conditions as agent, attorney or representative for the User (the Agent) they are not themselves the User, and they are not liable to carry out the obligations of the User under these Terms and Conditions. An Agent does however warrant to Darwin Port at all times that it has full authority to bind the User to these Terms and Conditions.
- (b) These Terms and Conditions constitute the entire agreement between the parties relating to the subject matter of these Terms and Conditions.
- (c) These Terms and Conditions are governed by and will be construed in accordance with the Laws of the Northern Territory. They are deemed to have been entered into in Darwin, Northern Territory. Any action relating to these Terms and Conditions may be instituted and heard in a court of competent jurisdiction in the Northern Territory, and each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action and irrevocably waives any objection to having such action brought in such court, or to Claim that the action has been brought in an inconvenient forum.
- (d) A variation or waiver of any provision of these Terms and Conditions will be of no effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it.
- (e) Where the User may be constituted by more than one party, the failure by one or more of those parties to perform these Terms and Conditions does not relieve any of the other parties who constitute the User of any of their obligations, and those other parties will be bound by these Terms and Conditions.
- (f) Any provision of these Terms and Conditions which is void, illegal or otherwise unenforceable, will be severed to the extent permitted by law without affecting any other provision and, if reasonably practicable, will be replaced by another provision of economic equivalence which is not so void, illegal or unenforceable.
- (g) If the doing of any act, matter or thing under these Terms and Conditions is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless express provision to the contrary has been made.

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**Definitions** The following definitions apply unless the context requires otherwise:

**Access Policy** means the access policy of Darwin Port Operations Pty Limited that is published on the Website from time to time.

**Change in Control** means that a change occurs in the persons or entities which directly or indirectly:

- (a) control the composition of the board of the User; or
- (b) are directly or indirectly in a position to cast, or control the casting of, more than one-half of the maximum number of votes that may be cast at a general meeting of the User; or
- (c) hold more than one-half of the issued share capital of the User (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Claim** means any claim, demand, action, suit or proceeding, whether under contract, tort or otherwise.

**Darwin Port** means:

- (a) in the case of pilotage services—Darwin Port Pilotage Pty Ltd as trustee for the Darwin Port Pilotage Trust ABN 98 744 318 229; and
- (b) otherwise—Darwin Port Operations Pty Limited as trustee for the Darwin Port Manager Trust ABN 60 269 541 845.

**Event of Force Majeure** means an event or circumstance beyond the reasonable control of Darwin Port, including without limitation:

- (a) war (declared or undeclared), civil commotion, military action, act of sabotage or vandalism;
- (b) an act or potential or threatened act of terrorism which could impact in any way on the Facilities or the Port of Darwin;
- (c) a strike, lockout, blockade, picketing action or industrial action, dispute or disturbance of any kind;
- (d) an act or omission of a Government Authority, including any change of Law;
- (e) an act of god;
- (f) storm, tempest, fire, flood, earthquake or other natural calamity; or
- (g) breakdown or failure of any plant, services, machinery or equipment, or unavailability of essential goods, supplies or services.

**Facilities** means the facilities required to provide a Service.

**Fees** means the fees and charges applicable to access to the Facilities and (if applicable) use of the Services stated in Darwin Port's Schedule of Port Charges, as published on the Website from time to time.

**Government Authority** means the Crown, a Minister, a government or government department, authority constituted for a public purpose, including the regional harbourmaster, a local authority or a court.

**Laws** means applicable international laws and requirements, statutes, regulations, requirements, by-laws, policies and ordinances of Government Authorities and principles of law or equity established by decisions of Australian Courts.

**Loss** means any damage, loss (including special, indirect or consequential loss, or loss of profits), liability, compensation, cost, charge, expense or other obligation whether arising under contract, tort or otherwise, and whether arising directly or indirectly.

**Minimum Notice means:**

- (a) in respect of inbound vessels, by 1500 hours (Australian Central Standard Time) on the day prior to the Time of Arrival nominated in the Notice of Arrival; or
- (b) in respect of outbound vessels, at least 2 hours' notice prior to the Time of Departure.

or such other reasonable minimum notice published on the Website from time to time.

**Notice of Arrival** means a notice of arrival form available on the Website.

**Payment Terms and Conditions** means the payment terms and conditions forming part of the Access Policy.

**Permitted Use** means the purpose of using the Facilities and (if applicable) the Services specified by a User in their Notice of Arrival.

**Pilot** means the licensed pilot providing the pilotage services.

**Port of Darwin** means the port of Darwin as defined from time to time by the Laws of the Northern Territory.

**Port Requirements** means any port notices or other direction or notice issued by Darwin Port pursuant to the *Ports Management Act 2015* or its regulations or any other notices, directions or regulations issued by the regional harbourmaster or any other Government Authority having jurisdiction over the Port or its facilities.

**Prequalified User** means a user who has, within the last 12 months, been assessed by Darwin Port as satisfying the Prudential Requirements as defined in the Access Policy.

**Priority Principles** has the same meaning in the Access Policy and includes the Priority principles in clause 5.7, the Berthing Scheduling Principles and Pilotage Scheduling Principles in clauses 5.8 and 5.9 of the Access Policy.

**Regional Harbourmaster** means the regional harbourmaster appointed for the Port of Darwin from time to time.

**Services** means those Services the User has requested and Darwin Port has accepted in accordance with clause 2 of these Terms and Conditions.

**Standard Services** has the meaning given to that term in the Access Policy.

**Time of Arrival** or **Time of Departure** means the date and time of arrival or departure (as applicable) specified by the User in a Notice of Arrival.

**Terms and Conditions** means these standard services terms and conditions (but excluding the Schedule).

**Trust** means:

- (a) in the case of pilotage services—the Darwin Port Pilotage Trust ABN 98 744 318 229; and
- (b) otherwise—the Darwin Port Manager Trust ABN 60 269 541 845.

**User** means each user of the Facilities and (if applicable) the Services.

**Utility Services** means any utility services provided at the Facilities including water, electricity, gas, telephone or computer connections.

**Website** means [www.darwinport.com.au](http://www.darwinport.com.au)

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## 19 Interpretation

The following rules apply unless the context requires otherwise:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to an agreement or document (including, without limitation, a reference to these Terms and Conditions) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Terms and Conditions or that other agreement or document.
- (f) A reference to a party to these Terms and Conditions or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to dollars and \$ is to Australian currency.
- (i) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- (j) Nothing in these Terms and Conditions is to be interpreted against a party solely on the ground that the party put forward these Terms and Conditions or any part of them.