

12 October 2023

Ms Kimberlee McKay
Director
Utilities Commission of the Northern Territory
GPO Box 915
Darwin NT 0801

By email: utilities.commission@nt.gov.au

Dear Ms McKay

2023 – Draft Access Policy Review

In accordance with the *Ports Management Act 2015 (PMA)* Darwin Port has prepared a new draft Access Policy (**Draft Access Policy**) to take effect upon the Utilities Commission's approval.

Darwin Port is proposing to make amendments to reflect changes in law, specifically changes to the Competition and Consumer Act 2010 (Cth) (**CCA**) that are coming into force on 10 November 2023. The following amendments are proposed:

- **Access Policy**
 - No amendments
- **Payment terms**
 - Clause 2(d) – we have limited the extent that DP can reopen accounts (currently its indefinite) to six months after the invoice date and made it a parallel right so that a port user can also notify DP if an amount has been incorrectly charged.
- **Standard terms**
 - Clause 2(f)(ii) – we have clarified that all cancellation charges are detailed in the port tariff on our website, this provides greater certainty to the port user.
 - Clause 6(b) – we have amended this clause to expressly state that it is subject to the consumer guarantees under the Australian Consumer Law.
 - Clause 7(b)(i) – we have deleted the indemnity for breach of contract as this is not reasonably necessary to protect DP's interests.

Partnering in growth, connecting people and supporting potential

- Clause 11(a)(ii) – we have amended this clause so that the termination only applies to a breach of a material term (not any term as currently drafted).
- Clause 17(b) – we have made this clause subject to the Australian Consumer Law.

As required under the PMA, Darwin Port will be going out to Port Users today for consultation. The proposed changes will be published on the Darwin Port website, which is the primary tool that Darwin Port uses to communicate with Port Users. Additionally, Darwin Port will be issuing an email to the Port User Group notifying them of the amendments and encouraging them to review the documents on the website. Darwin Port will be providing 14 days for Port Users to provide feedback, this is considered reasonable given the limited number of changes and the fact that all changes are in favour of the port user.

Enclosed with this letter is the following documentation:

- Draft Access Policy – no changes made to previously approved version;
- Updated Standard Terms and Conditions – all changes showing in track; and
- Updated Payment Terms – all changes showing in track.

As previously discussed, the changes to the CCA come into force on **10 November 2023**, as such we would appreciate the UC's approval, if possible, prior to this date.

Sincerely

Chief Executive Officer