

PORT TARANAKI LIMITED

STANDARD CONDITIONS OF BUSINESS

Effective from 1 June 2018



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1 JUNE 2018

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1. Parties

- 1.1 These Standard Conditions of Business (the "Conditions") apply between Port Taranaki Limited ("Port Taranaki"), who owns and operates wharves, premises, floating plant and equipment in the Taranaki region, and the Port User (as defined in Section 10), who wishes to use the services which Port Taranaki provides and/or has a cause to work within the Port Area.
- 1.2 The provision of services by Port Taranaki will be upon the Terms and Conditions which follow, subject to any other specific terms and conditions expressly agreed in writing between Port Taranaki and the Port User.

2. Services To Be Provided by Port Taranaki

- 2.1 Port Taranaki may provide berthage for the Port User's vessels at the Port, but reserves the right not to provide berthage at its discretion.
- 2.2 Berthage will be subject to the right of Port Taranaki to require a vessel berthed at any wharf to be moved or relocated to another berth in the Port, or to vacate the allocated berth and to moor in or outside the harbour as directed, and any such requirement will be carried out by the master, with the assistance of a Pilot where necessary.
- 2.3 Port Taranaki will use reasonable endeavours to provide a berth for the Port User's vessel on a date convenient to the Port User's sailing schedules, but Port Taranaki will be under no liability for the consequences (direct or indirect), if any, if for any reason Port Taranaki does not provide berthage as requested by the Port User.
- 2.4 Where Port Taranaki provides tug, towage, line boat or similar services, such services will be subject to the UK Standard Conditions for Towage and Other Services (the "UKSC Towage Conditions"), except that the expression "whilst towing" as defined in the UKSC Towage Conditions shall also include any time where any tug (or line boat or other such vessel) is approaching the Port User/Hirer's vessel for the purpose of towing, or is alongside the Hirer's vessel, whether or not the tug is in a position to receive orders direct from the Hirer's vessel to commence pushing, holding, moving, escorting or guiding the vessel or to pick up ropes or lines.
- 2.5 For the avoidance of doubt, references in the UKSC Towage Conditions to "Tugowner" and "Hirer" are, respectively, references to Port Taranaki and the Port User under those UKSC Conditions. The Port User is deemed to be familiar with the UKSC Towage Conditions.

- 2.6 Port Taranaki may provide services for the loading and/or discharging of vessels, for the handling and transport of Cargo and Containers on and between the Wharf and the marshalling area (including, without limitation, the delivery to road or rail vehicles), and for the transport, storage and packing of Cargo and Containers and all other services referred to in the Schedule of Charges provided for in Section 3.

3. Port Charges and Payment for Services

- 3.1 Unless otherwise agreed in writing, and at the expiry of any negotiated contracts, the charges for services provided will be those contained in Port Taranaki's Schedule of Charges in force at the time of actual provision of services. The particulars of the Schedule of Charges are available upon request and online at www.porttaranaki.co.nz, and may be amended by Port Taranaki from time to time.
- 3.2 Unless otherwise agreed in writing prior to provision of the services requested, the terms of payment for services will be payment in full 14 days following the date of the invoice.
- 3.3 If any amounts payable by the Port User under these Conditions are not paid by the due date, Port Taranaki reserves the right, entirely at its discretion, to apply an interest charge of 2.5% per month on the amount outstanding calculated from the due date until payment is made in full. In addition to the interest charge, Port Taranaki may recover from the Port User all legal fees and costs associated with the recovery of unpaid charges for services.
- 3.4 Port Taranaki shall be entitled to retain possession of any Cargo passing through or stored on the Property and prohibit any vessel from leaving its Wharves, until payment of all charges in respect of such Cargo or vessel is made in accordance with the terms of payment.
- 3.5 In addition to any other rights of lien or retention, Port Taranaki shall have a general lien over the Cargo and all property of the Port User, passing through or stored on Port Taranaki's Wharves or premises and any documents relating thereto (the "Port User's property"), for all sums due by the Port User to Port Taranaki and for the cost of recovering the same. Port Taranaki shall be entitled to sell any Port User's property subject to the general lien after the expiration of one month's notice to the Port User without prejudice to any other rights and remedies Port Taranaki may have. If on sale the proceeds fail to cover the amount due and the costs incurred, then Port Taranaki shall be entitled to recover the deficit from the Port User out of all Cargo presented to Port Taranaki by the Port User in the future.

- 3.6 As between Port Taranaki and the persons liable to pay charges, Port Taranaki's lien and right to detain Cargo or vessels at law or hereunder shall apply notwithstanding that such Cargo or vessels may have left Port Taranaki's possession.
- 3.7 The following persons shall be jointly and severally liable to pay all charges due to Port Taranaki in respect of any vessel: (a) The owner of the vessel; (b) The master of the vessel; (c) The agent or any person who has held him/herself out as the agent of the vessel.
- 3.8 The following persons shall be jointly and severally liable to pay all charges due to Port Taranaki in respect of any Cargo passing through or stored on the Property: (a) The owner of the Cargo; (b) The consignor of the Cargo; (c) The consignee of the Cargo; (d) The master or owner of the vessel to or from which the Cargo has been or will be loaded or landed; and (e) The agent or any person who has held him/herself out as the agent of the vessel.

4. *Entry To and Use of Property and Port Area*

- 4.1 The Property is owned by Port Taranaki. All persons who enter the Property shall at all times obey the orders and instructions of Port Taranaki whether written, verbal or displayed on signs.
- 4.2 All Port Users working in the Port Security Area must attend and complete a Port Security Area and site induction course. The induction is valid for two (2) years.
- 4.3 All Port Users, and Ships' Crew shall comply with the Port Taranaki Minimum Standards, including Drug and Alcohol policies, available at Port Taranaki's website www.porttaranaki.co.nz.
- 4.4 All Port Users and Ships' Crew shall comply with Port Taranaki's smoke-free Workplace Policy which states:
- a) All areas of the Port Security Area (including indoor areas, outdoor areas, vehicles and above and below Wharves) are designated non-smoking areas.
 - b) All Port Taranaki motor vehicles operating in any location are designated non-smoking areas.
 - c) All areas of Port occupied buildings and all areas of Port Taranaki owned floating plant are designated non-smoking areas.
- 4.5 a) Access to the Port Area shall be governed by the requirements of the Maritime Security Act 2004 and the Port Taranaki Security Plan.
- b) All road access to the Port Security Area shall be via the main gate on Breakwater Road, or where authorised by Port Taranaki, via the Blyde Gate East located at the western end of Ocean View Parade.
- c) All visitors entering the Port Security Area must report to security at the main gate and show valid photo identification. Port Users must carry their assigned pass at all times within the Port Security Area.
- d) All Port Users and visitors must carry valid photo identification at all times while in the Port Security Area and this must be presented upon request by Port Taranaki.
- 4.6 All vehicles must be parked appropriately in the designated parking areas within the Port Area.
- 4.7 Any non-routine operation (i.e. does not occur on a daily basis) where Cargo, Container or equipment is transferred using a vehicle or crane requires Port Users to contact the Port Permit Office before any Cargo, Container or equipment is transferred using vehicle or crane.
- 4.8 Every Port User shall, on a timely basis, clean up the Port Area and remove any rubbish arising from their use. If cleaning up and removal is not done on a timely basis or to Port Taranaki's satisfaction, it may be done by Port Taranaki and the associated costs recoverable from the Port User.
- 4.9 All equipment and plant is to be clearly marked with the Port User's name. Port Taranaki may remove and dispose of any unnamed equipment and/or plant.
- 4.10 Port Users must ensure that all equipment and plant used for cargo handling is removed from the Wharves immediately after use.
- 4.11 Port Users must register all cargo handling plant at the Port Permit Office for Port Taranaki's approval prior to use within the Port Area. In registering cargo handling plant Port Users must supply details of safe working load, maximum axel loads, pad loads and footprint configurations.
- 4.12 Port Users must maintain their equipment and plant in a safe operating condition. Maintenance work may only be undertaken by a Port User within its leased area. If a Port User wishes to undertake, maintenance work outside its leased area this will be subject to a charge and permission must be obtained from the Port Permit Office prior to commencing any maintenance work.
- 4.13 Port Taranaki prohibits any Port User from fishing off the Port Security Area, Wharves and boat launches within the Port Area.
- 4.14 No person shall operate upon the Property any vehicle fitted with any metal tyre or any tyre or track having lugs, cleats or similar projections without the permission of Port Taranaki.



- 4.15 a) Vehicles complying with the axle weights and dimensions set out in NZTA Factsheet 13 (June 2013 or later) may access the Port Area's roads, yards and Wharves without an Access Permit.
- b) Vehicles not complying with NZTA Factsheet 13 (June 2013 or later) may only access the Port Area with the written consent of Port Taranaki.
- c) Port Taranaki's Wharf Load Chart lists the vehicles that are permitted to enter and operate within the Port Security Area, and sets out access restrictions for each individual approved vehicle. The latest Wharf Load Chart is available at the Port Permit Office.
- d) Vehicles not complying with NZTA Factsheet 13 (June 2013 or later) and not listed in the Wharf Load Chart will need to apply for an Access Permit to enter and operate within the Port Area.
- e) The owner, driver or person in charge of any vehicle shall, if and when required by Port Taranaki to do so, place such vehicle on Port Taranaki's weighbridge, at the owner's risk and cost (in accordance with the prescribed Schedule of Charges), for the purpose of ascertaining the correct weight of the vehicle and/or its load.
- f) No motor vehicle is permitted to operate on Blyde Wharf 3 or the Moturoa Wharf timber end.

5. Goods and Cargo

General

- 5.1 All Port Users shall comply with all applicable laws, orders, regulations and other requirements of local or governmental authorities whatsoever, including the New Zealand Customs Regulations pertaining to export/import delivery orders and to the relevant legislation in respect of handling of hazardous goods and substances.
- 5.2 The Port User shall comply with the documentation and procedures in respect of all operations in the Port Security Area as required from time to time by Port Taranaki.
- 5.3 The Port User shall ensure that all Cargo and Containers presented to Port Taranaki for storage or handling are properly packed, marked and labelled, are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity and stated weight, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed by Port Taranaki.
- 5.4 The Port User shall not bring, land or store upon the Property any goods and substances without the written consent of Port Taranaki.
- 5.5 Port Taranaki shall not be obliged to receive onto the Property any substances or any goods which, in the opinion of Port Taranaki, may cause injury or damage. When doubt exists in regard to the nature of goods and substances suspected of being dangerous, Port Taranaki may employ a suitably qualified person at the expense of the owner or agent of the goods and substances to assist in deciding upon the action to be taken in regard to such goods and substances.
- 5.6 The master of any vessel intending to visit the Port shall advise the Head of Marine Services, if any hazardous goods and substances (including fumigants) are on board or intended to be loaded onto the vessel at the Port and the quantity and stowage or intended stowage of the hazardous goods and substances. Advice to the Head of Marine Services shall be given as early as possible but no later than forty-eight (48) hours prior to the vessel's arrival at the Port.
- 5.7 All hazardous goods and substances shall be removed by the owner, agent or consignee immediately upon being landed upon the Property and, if the owner, agent or consignee shall fail to do so, he/she will be held responsible for any injury, damage or loss that may occur through any accident arising from failure to remove.
- If any such goods and substances are not removed, Port Taranaki shall not be liable and such goods and substances can be destroyed, or removed and stored in a suitable place, or rendered harmless without compensation to the Port User, and the Port User shall indemnify Port Taranaki upon demand against all loss, damage or expense arising out of such goods and substances being tendered for services to Port Taranaki, including the costs of removal, storage and/or destruction.
- 5.8 If Port Taranaki on reasonable grounds believes that any Cargo, consignment of goods or other thing represents an immediate danger to the safety of any person or Property, Port Taranaki shall be entitled to take such action as it considers appropriate to eliminate or mitigate the danger and in such circumstances the Port User shall meet all costs and take all reasonable steps to assist with the elimination or mitigation of the danger (including giving its full co-operation in relation to all steps taken or directed to be taken by Port Taranaki).
- 5.9 Where the Carriage of Goods Act 1979 (COGA) applies, then, within the meaning of the COGA, where Port Taranaki is a contracting carrier, these Conditions shall be "at limited carrier's risk". Where the COGA applies, then, within the meaning of the COGA, where Port Taranaki is an actual carrier, these Conditions shall be "on declared terms".

On the Wharves

- 5.10 a) All Cargo placed or landed on Wharves shall be placed or landed or stored as and where directed by Port Taranaki.
- b) The Port User shall not place on the Wharves any package of a greater weight than twenty (20) tonnes without the permission in writing and under the direction of Port Taranaki, provided that Port Taranaki may give a general authority in writing on such terms as it sees fit.
- c) The Port User shall not allow any Cargo to remain on the Property beyond the close of the working day when it was placed there without the permission of Port Taranaki.
- d) Port Taranaki shall be entitled to remove any Cargo placed on the Property in breach of this Section and recover the cost of removal from the persons referred to in Section 3.8.
- e) Port Taranaki shall not be responsible in any way for any loss or damage to Cargo or articles while they are on the Property or while in the course of removal.
- 5.11 The master and/or stevedore of every vessel shall be responsible for the safe and proper loading or unloading of any Cargo relating to such vessel. Without derogating from the above responsibility, the master and/or stevedore will comply with any reasonable instruction given from time to time by Port Taranaki.
- 5.12 The master, owner or agent of any vessel intending to discharge or load Cargo at the Port shall:
- a) Produce to Port Taranaki a complete cargo manifest or other similar document showing full details of the Cargo to be discharged, including accurate weights and measures of the Cargo, at least one (1) full working day prior to the Cargo being discharged from the vessel.
- b) Produce to Port Taranaki a complete cargo manifest or other similar document showing full details of the Cargo loaded, including accurate weights and measures of the Cargo, no more than ten (10) working days after the loading of the Cargo has been completed.
- 5.13 The master and/or stevedore of every vessel shall be responsible to ensure that no cargo operations will continue in conditions which may cause noise, dust or other similar substances to be a nuisance to other cargo operations, to the community, affect the operations of Port Taranaki's cargo storage sheds, or to breach or to likely breach any duty or obligation that Port Taranaki has under any Act which is likely to result in enforcement proceedings or other penalties. Cargo operations shall be carried out in accordance with the Port Taranaki's

applicable procedures and the Acts.

If cargo operations continue in conditions causing noise, dust or other similar substances, Port Taranaki, at its sole discretion, shall be entitled to instruct the master and/or stevedore to cease cargo operations and the master and/or stevedore shall at all times obey the instructions of Port Taranaki.

- 5.14 The Port User shall not remove any Cargo from the Wharves without first having obtained the necessary authority from the owner, master or agent of the vessel from which the Cargo was landed, and the New Zealand Customs Service. Any person so authorised to remove the Cargo from the Wharves shall, upon the request of any employee or contractor of Port Taranaki, produce documentation to prove authorisation has been properly obtained.

Subject to the relevant authority having been obtained, Port Taranaki shall be entitled to release the Port User's Cargo to any person holding a delivery order (whether in conventional or electronic or any other customary form) entitling it to uplift the Port User's goods. Port Taranaki shall not be responsible for verifying such delivery order and Port Taranaki will not be liable for any loss to the Port User in the event that the delivery order is subsequently shown to be incorrect or fraudulent.

Environmental Warranties

- 5.15 The Port User warrants to Port Taranaki that it will at all times comply with Port Taranaki's duties and obligations under the Acts and that it will not do anything which breaches or is likely to breach any duty or obligation under such Acts or which is likely to result in the issue of an abatement order or enforcement proceedings or other penalties under the Acts.
- 5.16 The Port User warrants to Port Taranaki that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation of the Port User or Port Taranaki under the Resource Management Act 1991 and/or the Maritime Transport Act 1994 (including subsequent amendments) or which is likely to result in the issue of an abatement order or enforcement proceedings or other penalties.
- 5.17 Any time the Port User becomes aware that it is in breach, or is likely to be in breach, of the warranty in Section 5.15 or 5.16, the Port User agrees to immediately notify Port Taranaki and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
- 5.18 The Port User will ensure that its agents, subcontractors and employees are aware of these Conditions and will abide by them.



6. Shipping

6.1 Applications for the provision of Marine Services shall be made to the Head of Marine Services, as follows:

- a) The Port User shall if possible give the Head of Marine Services seven (7) days' notice of a vessel's expected date of arrival at the Port, with an updated ETA forty eight (48) hours prior to the vessel's arrival and thereafter according to the requirements stipulated on the "Vessel Arrival Information Sheet" issued by the Head of Marine Services.
- b) Port Taranaki will charge a cancellation fee for any changes of orders for Marine Services within four (4) hours of Pilot boarding time.
- c) The Head of Marine Services shall allocate the berth, facilities and services as being, in his/her opinion, necessary or desirable to fulfill the Marine Services required and otherwise in a reasonable manner having regard to the general and safe operations of the Port.
- d) The Head of Marine Services may instruct that a vessel vacates a berth, if he/she considers it necessary, having reasonable regard for the general and safe operations of the Port.
- e) The master or agent of a vessel must give the Head of Marine Services an arrival crew list twenty-four (24) hours prior to arrival of every vessel.

6.2 The master of every vessel must comply with any verbal or written direction or request given by the Harbourmaster or Enforcement Officer appointed by the Taranaki Regional Council under the navigation provisions of the Maritime Transport Act 1994.

6.3 Whenever the services of a Pilot are ordered, required by legislation or applicable Maritime Rules and/or bylaws, or whenever in the interests of the safe operation of the Port the Head of Marine Services considers it necessary or desirable, the Head of Marine Services shall have the authority, without application having been made, to order such services and hireage as he/she sees fit, including, but not limited to, pilotage, tugs, launches, mooring lines and labour.

6.4 The Port User shall not use any tug at the Port except those tugs owned and operated by Port Taranaki or otherwise specifically approved for such use by the Head of Marine Services. Any approval should be in writing and subject to any conditions, which the Head of Marine Services may consider necessary for the safe operation of the Port.

6.5 In the event of a tug being required for salvage, to assist a vessel in distress or reported to be in distress, or for any other reason the Head of Marine

Services may think fit, Port Taranaki may, through its Head of Marine Services:

- a) cancel an allocation of the tug; or
- b) deviate from a tow or other work; or
- c) suspend a tow or other work; or
- d) terminate or suspend a hire.

The powers contained in this Section shall be exercised having regard to the general operations of the Port.

Pilotage, Towage Services and Transfer of Persons at Sea

6.6 Pilotage services shall include any service or advice provided by the Pilot:

- a) while on board the vessel to be piloted; or
- b) from on board the pilot launch, or from on board any other vessel involved in the pilotage, or from the shore - in circumstances, where the master has been informed by the Pilot that:
 - i) the Pilot is unable to transfer to or from the vessel safely; and
 - ii) in the opinion of the Pilot, the movement of the vessel within the Pilotage Area can be completed safely, with the Pilot's advice.

6.7 Where Port Taranaki provides the Pilotage, Towage and/or Transfer of Persons at Sea services, nothing contained in these Conditions will operate so as to affect any statutory right of limitation that the Pilot may have, but in no event will Port Taranaki and/or the Pilot be under any liability to the Port User for any negligent act or want of skill of the Pilot, or omission in the provision of Pilotage, Towage and/or Transfer of Persons at Sea services by Port Taranaki or for any loss or damage suffered or incurred by the Port User howsoever arising during the provision of the Pilotage, Towage and/or Transfer of Persons at Sea services (including, but not limited to, any damage from whatever cause to any vessel, or to any person on board such vessel, tug or launch, or to any person's belongings on board such vessel, tug or launch).

6.8 Any Pilot provided by Port Taranaki may, in his/her absolute discretion and without redress, decline to undertake or terminate any act of pilotage once commenced on grounds of:

- a) the weather conditions; or
- b) mechanical defects of the vessel; or
- c) trim or stability issues; or
- d) non-availability or incapacity of crew of the vessel; or

e) mechanical defects or non-availability for any reason of any required tug assistance; or

f) any other reason which, in the opinion of the Pilot, the provision of Pilotage, Towage and/or Transfer of Persons at Sea services compromises or may jeopardise the safe navigation of the vessel or the safety of the crew and/or its Cargo, or the safety of any other vessel, person or property.

6.9 The Port User agrees to indemnify and hold harmless Port Taranaki against any and all claims, suits, actions, loss and/or damage whatsoever (whether direct or consequential) and howsoever caused that may arise as a direct or indirect result of the provision of a pilot and/or Pilotage, Towage and/or Transfer of Persons at Sea services by Port Taranaki to the Port User.

Port User Responsible for the Safe Management and Operation

6.10 The master of every vessel shall be absolutely responsible for the safe navigation, security and proper management of their vessels at all times while their vessels are within the Port or Pilotage Area, including stowage, trim and stability, and all berthing, mooring, unmooring and unberthing operations, and under no circumstances shall Port Taranaki be liable for any loss received by or done to, or damage done to or received by such vessels.

6.11 The Port User warrants that the vessel is and remains in all respects seaworthy. The Port User will fully indemnify and keep indemnified Port Taranaki from and against any claims howsoever arising relating to the navigation and management of the vessel.

6.12 The Port User shall comply with its duties and obligations under all Acts.

6.13 If at any time the Port User becomes aware that it is in breach, or is likely to be in breach, of any such duty or obligation, the Port User agrees to immediately notify Port Taranaki and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.

Marine Pollution

6.14 The master of every vessel shall be responsible for any marine pollution (including, but not limited to, discharges of sewage, dumping of rubbish from vessels, spills of oil and other harmful substances, ballast water discharges etc) associated with his/her vessel and must:

a) Immediately notify Port Taranaki after a spill has occurred, or any other event likely to cause pollution, regardless of whether or not the pollutants have reached the water, and

b) take immediate and appropriate action to contain and clean up the pollution.

6.15 The master and owner of every vessel shall be liable for and agree to indemnify, defend and hold harmless Port Taranaki from all claims, costs, expenses, actions, proceedings, suits, demands, liabilities, loss or damage whatsoever arising out of or resulting from any actual or potential marine pollution damage associated with his/her vessel, even where caused wholly or partially by the provision of pilotage, Towage and/or Transfer of Persons at Sea services by Port Taranaki.

Other

6.16 The master of every vessel at the Port shall ensure that garbage is deposited and contained in the receptacles provided by Port Taranaki. Such receptacles shall not be placed on Wharves, but shall be uplifted by Port Taranaki from the vessel at a time prescribed by Port Taranaki.

6.17 No person on any vessel, while such vessel is at any Wharf, shall blow or sound or cause to be blown or sounded, the whistle, siren or horn thereof, or cause any other noise which may be a nuisance without the prior consent of the Head of Marine Services; providing that nothing in this Section shall preclude the testing of such whistle, siren or horn before a vessel leaves the Wharf or in an emergency.

6.18 a) The master of every vessel lying alongside any Wharf shall provide and keep fixed an approved gangway or accommodation ladder including the provision of lights.

b) The master of every vessel lying alongside any Wharf shall cause a safety net to be suspended beneath the gangway to the satisfaction of the Head of Marine Services.

6.19 No master shall careen, heave down or haul any vessel on shore without the permission of the Head of Marine Services.

6.20 No person shall work or cause to be worked the propeller of any vessel while such vessel is lying at any Wharf, without having first sought and obtained the permission of the Head of Marine Services and, notwithstanding that permission has been given, no person shall work a propeller or cause it to be worked where the working of it may cause damage to any property or injure any person; provided that nothing in this Section shall preclude the turning of any propeller for the safe berthing and unberthing of any vessel.

6.21 In the event of an accident or incident involving a vessel, the Head of Marine Services may, in the interests of the safe operation of the Port and



safety of the vessel, instruct that an underwater inspection of the vessel be carried out.

The payment of any costs associated with the inspection shall be the responsibility of the owner, master or agent of the vessel as provided for in Section 3 herein.

6.22 Nothing contained in these Conditions shall be construed as or held to deprive Port Taranaki, as against any person of any right to claim limitation of liability provided by any applicable law, statute or convention.

7. Liability Regime

Liabilities of Port Taranaki

7.1 Subject to the provisions of Section 7.2 (Maximum Liabilities of Port Taranaki), 7.3 (Notification of Claims) and 7.4 (Exclusions of Liability), Port Taranaki shall only be liable for physical loss or physical damage caused directly by the negligence of Port Taranaki to:

- a) The Port User's vessel and/or equipment of the vessel;
- b) Containers;
- c) Cargo; and/or
- d) Ancillary equipment (not part of the Port User's vessel's equipment) (including clip-on refrigeration units, generators, trailers and chassis) owned by the Port User or any other persons.

Port Taranaki shall not be liable to the Port User or any other person for any losses, damages or other injuries suffered by any person (all of which are referred to as "loss") howsoever arising, except in the circumstances specified in this Section 7.1.

Maximum Liabilities of Port Taranaki

- 7.2 a) Notwithstanding any other Section in these Conditions, the maximum liability of Port Taranaki, its employees, agents and subcontractors (together) to the Port User or any person claiming through the Port User ("Maximum Liability") is set out in the Liability Table below;
- b) The maximum aggregate liability of Port Taranaki, its employees, agents and subcontractors of all claims for loss or damage by whomsoever made, arising out of any one event or series of events ("Maximum Aggregate Liability") is set out in the Liability Table below;
- c) The excess of any claim shall be in accordance with the Liability Table. The excess amount will be deducted from the amount payable by Port Taranaki for any loss or damage and shall not be payable by Port Taranaki; and
- d) All amounts of loss and damage referred to in this Section 7.2 including those referred to in the Liability Table are in New Zealand Dollars and are GST inclusive.

Liability Table

Loss/ Damage	Port Taranaki's Maximum Liability	Port Taranaki's Maximum Aggregate Liability	Excess first deductible by Port Taranaki per event/claim
User's Vessels & Vessel's Equipment	Lesser of reasonable cost of repair, or market value	\$200,000	\$1,000
Containers	Lesser of reasonable cost of repair, or market value, or		\$300
	(i) Refrigerated \$7,500	\$100,000	\$300
	(ii) Insulated \$4,000	\$100,000	\$300
	(ii) Other \$1,000	\$100,000	\$300
Cargo	(i) In a closed of sealed container \$5,000	\$75,000	\$300
	(ii) on board a vessel \$750 per manifest tonne or part thereof	\$50,000	\$300
	(iii) elsewhere \$1,000 per tonne or	\$50,000	\$300
Ancillary equipment	Lesser of reasonable cost of repair or market value or \$7,000	\$40,000	\$300

Overall Limit of Liability

e) Port Taranaki will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss or liability caused in any manner whatsoever to any person or property, in respect of the sum claimed or the aggregate of sums claimed under any cause of action or entitlement, including the negligence of Port Taranaki, its employees, agents or subcontractors in respect of any one event or interconnected series of events, beyond the maximum aggregate sum of NZ \$2,000,000.00.

Notification of Claims

- 7.3 a) For loss of or damage to Cargo, Port Taranaki will be liable only, if notice in writing of any loss or damage is given to Port Taranaki by the Port User within ten (10) days after the delivery of the Cargo or the date when the Cargo should have been delivered to the consignee.
- b) For all other loss, damage, expense, accident or injury Port Taranaki will be liable only, if notice in writing is given to Port Taranaki by the Port User within thirty (30) days after the date when the loss, damage, expense, accident or injury occurred.
- c) If no such notice is given within the above periods, any claim will be deemed waived and absolutely barred, and Port Taranaki will have no liability.

Exclusions of Liability

- 7.4 Notwithstanding Sections 7.1 and 7.2, Port Taranaki, its employees, agents or subcontractors will not be liable in any circumstances whatsoever (in contract or tort including negligence) to the Port User or anyone else:
- a) Where liability might otherwise be attributable to Port Taranaki, but New Zealand law excludes Port Taranaki's liability, or imposes liability on another party or parties (e.g. including, without limitation, circumstances in which Port Taranaki provides Pilots).
- b) Where the UKSC Towage Conditions so provide.
- c) Where any loss, damage, expense, cost, accident or injury to any property or person has been caused or contributed to wholly or principally by the failure of the Port User or any of its representatives to comply with any of these Conditions.
- d) For any demurrage, delay or other costs of transportation of any kind howsoever caused, including the negligence of Port Taranaki, its employees, agents or subcontractors; but Port

Taranaki will make every reasonable endeavour by liaison with the Port User, and its carriers and others to achieve the orderly transportation of Cargo and Containers to and from the Port.

- e) Port Taranaki will not be responsible to the Port User for any claim, loss or damage arising directly or indirectly by reason of any:
- i) Insufficient depth of water; or
 - ii) Inability to provide a safe berth or anchorage; or
 - iii) Provision of information to the Port User (including relating to weather, sea or tidal conditions, keel depths, dredging, advisory services, notice(s) to mariners and/or warnings as to navigation); or
 - iv) The actual forecast weather, sea or tidal conditions; or
 - v) The conditions of Port Taranaki's Wharves, berths or the approaches to them; or
 - vi) The condition of (or absence of) any lights, markers, beacons or other navigational aids or the inadequacy of any buoys, moorings lines or bollards,

whether caused or arising in whole or in part from the negligence of Port Taranaki or otherwise howsoever arising, and the Port User further agrees to indemnify Port Taranaki with respect to any third party claims made against Port Taranaki in respect of these matters.

- f) To pay any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure by Port Taranaki or any person, whether or not an agent, employee or subcontractor of Port Taranaki, to properly and adequately secure any Cargo or Container on any rail or road vehicle, or on any other form of transport.
- g) For any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any failure to inspect Containers or Cargo, any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any Container; and Port Taranaki undertakes no responsibility to inspect Containers for damage or to report any damage to the Port User, but will make every reasonable endeavour to refer all apparent damage to Containers to the Port User and to take any appropriate step necessary to protect the contents of any Container noted to be damaged.



- h) For anything that happens to any person, indirect, special or consequential loss or damage, or economic loss (including loss of profits, income and revenue) or any related cost (including legal and lawyer/client cost) howsoever caused, including, without limitation, the negligence of Port Taranaki, its employees, agents or subcontractors.
- i) For any direct or indirect consequences of Port Taranaki's inability to provide services or facilities or equipment on demand. This includes where any service is not available, is not promptly or properly performed, or is changed, for any reason.
- j) Where any loss, damage, expense, accident or injury to any property or person has arisen or resulted from unseaworthiness caused by want of due diligence on the part of the Port User to make its vessel seaworthy, and to secure that the vessel is properly manned, equipped and supplied, and to make the holds, refrigerating and all other parts of the vessel in which Cargo is carried fit and safe for their reception, carriage and preservation in accordance with the provisions of The Amended Hague Rules as set out in Schedule 5 to the Maritime Transport Act 1994.
- k) In addition to and without limiting the other limits and exclusions of liability under these Conditions, Port Taranaki and its employees, agents and subcontractors shall be entitled to rely on any limitation of liability available under New Zealand law and Port Taranaki, its employees, agents and subcontractors shall not be liable in any event in excess of those limits.

Port User Indemnifies Port Taranaki Where Liability Excluded or Liability is in Excess of Limits.

- 7.5 The Port User hereby holds Port Taranaki, its employees, agents and subcontractors free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and court expenses of Port Taranaki), damages, compensation or other monies whatsoever (the "Amount") in respect of all loss, liability, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent that the liability of Port Taranaki, its employees, agents and subcontractors for the Amount has been excluded under Section 7.4 or any other Section hereof and to the extent that the Amount exceeds the Maximum Liability, Maximum Aggregate Liability or Overall Limit on Liability under Section 7.2.

Port User's Liability and Indemnity

- 7.6 a) The Port User will be liable for loss or damage caused to Port Taranaki where the UKSC

Towage Conditions so provide and/or where such loss or damage is caused by the breach of these Conditions or by the fault or negligence of the Port User, its employees, agents and/or subcontractors.

- b) The Port User shall be liable for loss or damage caused to Port Taranaki's cranes, where such loss or damage is caused by the negligence or fault of the Port User, its employees, agents or subcontractors.
- c) The Port User will reimburse and indemnify Port Taranaki from and against all proceedings, claims, demands, losses (including loss of income and consequential loss), damages, costs, expenses, judgements, awards or orders incurred by Port Taranaki or for which Port Taranaki may suffer or become liable in respect of, or arising from or in any way attributable to:
 - i) any act or omission by the Port User or any employee, agents, or subcontractors of the Port User, which contributes to any limitation, restriction, postponement, delay or cancellation being made in respect to any entitlement or authority of Port Taranaki or its Port Users to use the berth / Wharf, which may be imposed by any relevant authority; and
 - ii) loss, damage or injury from any cause whatsoever to the berth / Wharf, any property or person within or outside the berth / Wharf, any waters comprising the Port or any financial or consequential loss in whole or in part directly or indirectly occasioned or contributed by any act, neglect, omission, default or misconduct by the Port User or its respective employees, agents, subcontractors or visitors; and
 - iii) any pollution incident, including all costs or expenses incurred by Port Taranaki or directed by the Harbourmaster in the cleaning-up or removal of any pollution or reasonably incurred by Port Taranaki in anticipation of any pollution arising from the Port User's vessel; and
 - iv) the removal (in whole or in part) of any wreck or the making safe of any hazard to navigation arising from the presence of the Port User's vessel in the Port.

The indemnity referred to in this Section continues to apply notwithstanding that:

- v) the loss, damage or injury was also contributed to by an act of God, inevitable accident, without negligence or wrongful act or omission on the part of any person or otherwise due to the circumstances beyond the control of Port Taranaki; or

vi) the vessel was under compulsory pilotage.

Force Majeure

7.7 Port Taranaki will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any services, arising (directly or indirectly) out of or contributed to by one or more of:

- Act of God, adverse or unusual conditions of sea or weather, storm, flood, earthquake, tsunami, fire or explosion;
- failure of electrical or gas or water supply;
- strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened and whether or not involving Port Taranaki's employees), any other industrial or environmental action;
- epidemic, war, civil war, hostilities, acts of terrorists or similar disturbances;
- breakdown of or accident or failure of any crane or plant or machinery or equipment or other facility from any cause whatsoever;
- improper / insufficient / erroneous / incorrect labelling or marking or packaging or addressing of any Cargo or Container, inherent vice or quality of goods;
- acts, orders, regulations or requirements of any lawful authority or any person purporting to act on behalf of any such authority; or
- any action or act whatsoever caused beyond the control of Port Taranaki.

8. Health and Safety

8.1 a) All persons while within the Port Area shall take all reasonable care and safety precautions, including, but not limited to, those listed in this Section of the Conditions.

b) All Port Users shall comply with the requirements of the Health and Safety at Work Act 2015 and have appropriate Health and Safety policies and procedures in place. All Port Users shall make such policies and procedures, which relate to their activities in the Port Area, available to Port Taranaki upon request.

When Port Taranaki considers it necessary, Port Users may be required to undergo a Health and Safety audit conducted by Port Taranaki's Health and Safety Team.

8.2 a) All persons shall wear approved safety footwear and high visibility clothing in the Port Security Area. It is the responsibility of the Port Users to ensure that they provide the necessary protective equipment to their own employees.

b) No person shall work unaccompanied when working in a potentially dangerous or any Hazardous Area or any area or location which is exposed to the perils of the sea.

8.3 All persons working within the Port Security Area must ensure that, as far as it is compatible with the work being carried out, the area in which they are working is kept free and clear of all equipment, material or property of any kind which may constitute a safety, environmental or fire hazard.

8.4 No electronic flash guns, mobile phones, battery operated cameras, radios or any other battery operated equipment shall be taken on or into any Hazardous Area except where such equipment is covered by an approved classification certificate or approved for use on a permit.

8.5 Port Taranaki reserves the right to inspect all equipment of any kind which is to be operated within the Port Area to ascertain whether such equipment complies with standard safety requirements and the requirements of these Conditions.

8.6 In the event of any incident within the Port Security Area, involving Port Taranaki's employees or assets, Port Taranaki requires an event/incident notification form (available from the Health and Safety Team) to be completed and lodged as soon as practicable with Port Taranaki. In the event of an emergency within the Port Security Area, the Port Emergency number must be called.

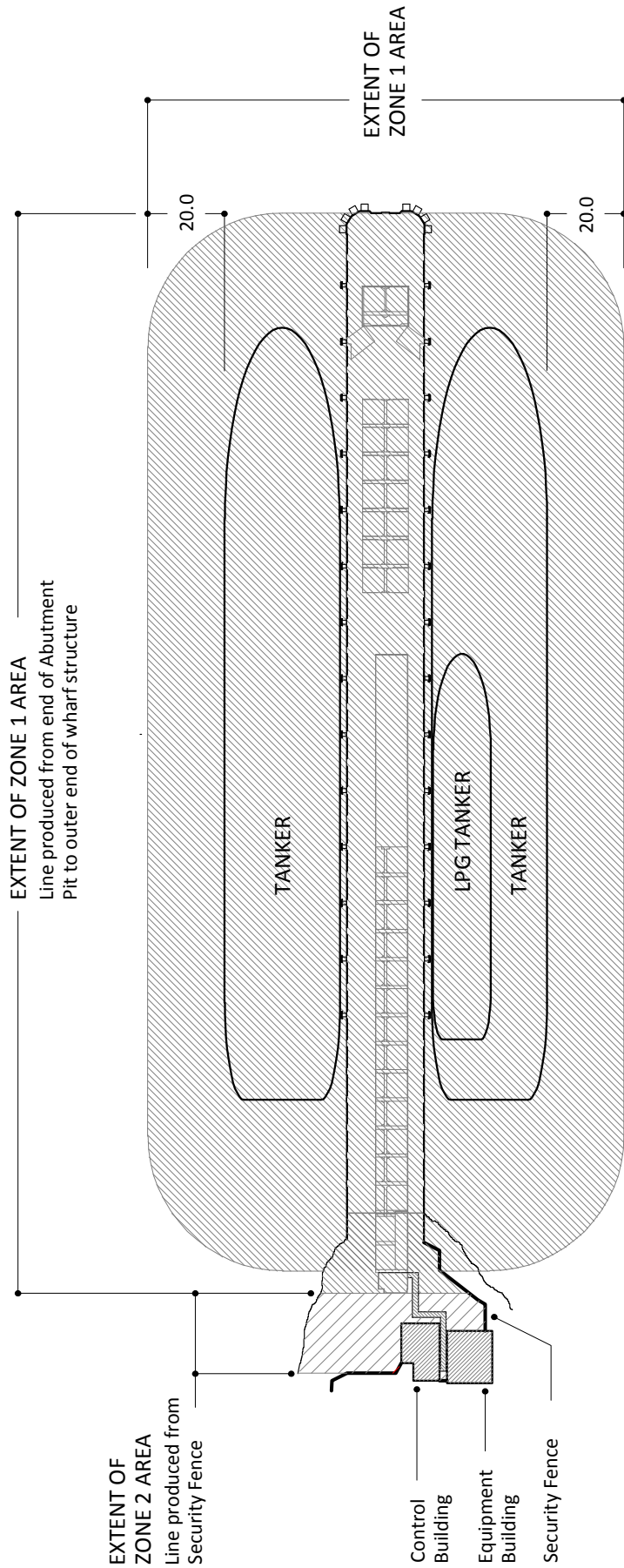
8.7 In the event of a fire or other emergency, Port Taranaki may, by any of its employees, take such steps as may be deemed advisable to extinguish or reduce such fire, or save or minimise damage to its own or any other property of every description. Port Taranaki shall not be responsible for any damage whatsoever, which may result as a consequence of any such steps taken and shall be entitled to recover from the owner of such property any costs or expenses incurred.

Work Permits

8.8 Certain work, as outlined but not limited to that in Section 8.10, to be carried out in the Port Area must be carried out in accordance with Port Taranaki's permit to work system, and a permit may be obtained from the Permit Issuer at the Port Permit Office. Persons undertaking work by permit must have undertaken a Port Taranaki induction and all signatories to the permit system must be trained in the relevant NZQA unit standard.

8.9 Permits must be obtained from Port Taranaki before any of the work (listed below in Section 8.10) is commenced. Except in cases of emergency repairs, applications for permits must be made at





PLAN VIEW WITH TWO VESSELS ALONGSIDE

Based on a 20.0 metre minimum clearance on all vessel extremities

These zones apply only when vessels are alongside and cargo operations are under way

NOTE - Extent of Zone 1 when no vessels are alongside the berth:

Length = unchanged, as shown. Width = width of wharf structure

A 50 metre restricted zones exists off the outer end of the wharf. This restriction applies at all times, regardless of whether ships are alongside

NEWTON KING TANKER TERMINAL HAZARDOUS ZONES

least twenty-four (24) hours prior to the intended commencement of any work. In most instances the issue of a permit is supported by the completion of a relevant checklist and Job Hazard Analysis, which when completed will form part of the permit issue.

8.10. A Permit to Work is required for:

- a) All work and use of equipment that will or could present an ignition source in Hazardous Zone 1 locations (e.g. work on Newton King Tanker Terminal or the Moturoa Basin).
- b) All work taking place where the location of the task involves exposing workers to a hazardous environment and requires a Port Taranaki checklist (e.g. confined space entry, work at height, excavations, under water work etc).
- c) Work where the task and Port Security Area itself has the potential to create a hazard to the workers or others.

A Port Taranaki Permit to Work is not required in leased land with the exception of excavations.

8.11 Naked flames, matches, petrol or other lighters, or any apparatus for causing ignition shall not be taken on or into any Hazardous Area or any area where explosives or dangerous goods are being handled except for use with equipment covered by a specific work permit, and then only in strict accordance with the conditions of such permit.

8.12 The Port Taranaki Emergency Plan, and any additions or alterations which may be made from time to time, shall be considered to be included as part of these Conditions. Copies of the Port Taranaki Emergency Plan may be viewed at Port Taranaki's main office.

Newton King Tanker Terminal

8.13 All of the Newton King Tanker Terminal, including the areas shown on the plan in this Section 8, is a Hazardous Area to which access is restricted.

8.14 Any Operating Procedures for the Newton King Tanker Terminal as published by Port Taranaki, and any additions or amendments which may from time to time be made to such procedures, are considered to form part of these Conditions. Copies of the Operating Procedures may be obtained from Port Taranaki's main office.

9. General

9.1 The Port User shall ensure that its agents, subcontractors and employees are aware of these Conditions and will abide by them.

9.2 The Port User shall ensure that all subcontractors employed by it will cooperate with Port Taranaki and will comply with the safety precautions required by Port Taranaki at all times.

9.3 Port Taranaki may subcontract any of its services under these Conditions.

9.4 The Port User will not directly or indirectly enter into negotiations relating to employment or labour matters with any employee or employees of Port Taranaki or any of its agents or subcontractors or with any bargaining agent or employee organisation representing or purporting to represent any such employee(s). All such negotiations will be exclusively conducted by Port Taranaki.

9.5 These Conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand, and the parties submit themselves to the exclusive jurisdiction of the New Zealand High Court at New Plymouth.

9.6 Any dispute concerning the interpretation or operation of these Conditions will be referred:

a) In the case of any dispute in which an amount by way of costs, charges, expenses, damages or other monetary compensation, amounting to NZ \$50,000.00 (GST inclusive) or less, is claimed by either party, to the arbitration of a single arbitrator who will be chosen by the agreement of the parties or failing such agreement by the President for the time being of the Taranaki Branch of the New Zealand Law Society. The arbitration will otherwise be conducted in all respects in accordance with the Arbitration Act 1996 of New Zealand:

b) In the case of all other disputes, whether involving a claim for any monetary sum or otherwise, to the decision of the courts of New Zealand in New Plymouth.

c) For the avoidance of doubt, nothing in this Section 9.6 shall prejudice Port Taranaki's right to apply for injunctive relief or interim measures, to arrest the Port User's vessel or to proceed against the Port User's vessel "in rem" in any jurisdiction.

9.7 All notices under these Conditions will be given by personal delivery or by ordinary mail or facsimile transmission:

a) To Port Taranaki Limited;

b) To the Port User at any of the Port User's last known place of business whether in New Zealand or elsewhere, or at the address of the Port User's last known agent in New Zealand;

and will be deemed to have been received two (2) days after dispatch by mail or on the day of dispatch by facsimile.

9.8 The Port User represents and warrants that it is acquiring the services provided by Port Taranaki under these Conditions solely for the purposes of a



business and Port Taranaki and the Port User agree that nothing in the Consumer Guarantees Act 1993 shall apply to the provision of such services to the Port User.

9.9 The terms of these Conditions may be varied by Port Taranaki from time to time. Such variations will be deemed effective and accepted by the Port User thirty (30) days after posting of the varied terms on Port Taranaki's website.

9.10 For the purpose of section 4 of the Contracts (Privity) Act 1982 all provisions in these Conditions providing for exemption from liability for, and indemnities in favour of Port Taranaki or its employees, agents or subcontractors are intended to be for the benefit of and enforceable by the employees, agents and subcontractors of Port Taranaki.

10. Definitions

"Access Permit" means the permit used for work undertaken by Port Users who do not have a contract or lease agreement with Port Taranaki.

"Acts" means all enactments, regulations, rules and requirements made by any Government or Local Authority and which govern the activities carried on by Port Taranaki or the Port User on or in the Port Security Area, including but not limited to the Health and Safety at Work Act 2015, the Resource Management Act 1991, the Maritime Transport Act 1994, the Maritime Security Act 2004, the Maritime Security Regulations 2004, the Customs and Excise Act 1996, the Regional Air Quality Plan for Taranaki, the Regional Coastal Plan for Taranaki, the New Plymouth District Council District Plan, the International Ship and Port Facility Security Code, the Building Act 2004 and all other relevant plans, standards, statutes, by-laws and regulations and all statutes in amendment of or in substitution for, and all regulations, rules, plans or similar made under those Acts.

"Conditions" mean these Standard Conditions of Business as defined in Section 1.1.

"Cargo" means any goods, merchandise, bulk liquids or other property whatsoever whether or not within a Container in respect of which Port Taranaki provides or is requested to provide services.

"Container" means any article of transport equipment (including lift van, moveable tank, flat or other similar structure) constructed to the specifications of the International Standards Organisation (ISO) and having standards ISO means of top corner lifting.

"Enforcement Officer" means an enforcement officer appointed by Taranaki Regional Council pursuant to section 33(G)(a) of the Maritime Transport Act 1994 with appropriate powers under the Maritime Transport Act 1994.

"ETA" means Estimated Time of Arrival.

"Harbourmaster" means a person who is appointed by Taranaki Regional Council as a Harbourmaster (or in his/her absence any Deputy Harbourmaster).

"Hazardous Area" means any area within the Port Area which Port Taranaki may from time to time class as hazardous and is defined by fencing, barriers or notices, or which is declared by Port Taranaki to be hazardous and shall include the Newton King Tanker Terminal and the area adjacent to it as shown on the plan in Section 8.

"Hazardous" has the meaning of a "hazardous substance" in the Hazardous Substances and New Organisms Act 1996, including being explosive, inflammable, capable to oxidise, corrosive, toxic and ecotoxic.

"Head of Marine Services" means the Head of Marine Services of Port Taranaki, his/her deputy, or any other employee of Port Taranaki authorised by the Head of Marine Services to represent him/her.

"Health and Safety" means regulations and procedures intended to prevent accident or injury in workplaces or public environments.

"Health and Safety Team" means Port Taranaki's Health and Safety Team.

"Job Hazard Analysis" means a technique to identify the dangers of specific tasks in order to reduce the risk of injury to workers.

"Maritime Rules" mean Maritime and Marine Protection Rules that contain detailed technical standards and procedures and form part of New Zealand's maritime law.

"Marine Services" means those services referred to in Section 6 of these Conditions.

"Newton King Tanker Terminal" is defined in Section 8.13.

"New Zealand Customs Regulations" mean regulations administered by the New Zealand Customs Service.

"NZQA" means New Zealand Qualifications Authority.

"Operating Procedures" mean Port Taranaki's Standard Operating Procedures.

"Permit Issuer" means a person who is trained, competent and authorised to issue a Permit to Work after ensuring that all of the hazards, associated with the work being done, have been identified and all necessary safety precautions are being implemented to ensure that the work can be completed safely.

"Permit to Work" is a procedure, with a written permit form, which is used to authorise and control work activities with high risk hazards.

"Port Permit Office" means Port Taranaki's Permit Control Facility located on Hutchen Place, Port Taranaki.

"Pilot" means any person duly licensed and appointed by Port Taranaki to act as Pilot within the Pilotage Area.

“Pilotage Area” means the area for Taranaki as described in “Appendix 1”: Pilotage Area and limits” of “Part 90: Pilotage” of the Maritime Rules and available at <http://www.maritimenz.govt.nz/rules/part-90/Part90-maritime-rule.pdf>

“Port” means the Wharves and all associated facilities owned by Port Taranaki Limited.

“Port Area” means and includes all those areas of Port and Property as shown outlined in red on the Port Taranaki Location Plan in Section 11.

“Port Emergency Number” of Port Taranaki is (06) 7510200, ext.8.

“Port Security Area” means those areas of the Port Area which are used for the purposes of the commercial undertakings of Port Taranaki as shown hatched on the Port Taranaki Location Plan in Section 11.

“Port Taranaki Emergency Plan” means a course of action developed to mitigate the damage of potential events that could endanger Port Taranaki’s ability to function.

“Port Taranaki Security Plan” means the plan, developed in accordance with the Maritime Security Act 2004 and the International Ship and Port Facility Security (ISPS) Code, to ensure the application of measures designed to protect the port facility and ships, persons, cargo transport units and ships stored within the Port Area from the risks of a security incident.

“Port User” means and includes the owner, lessee, charterer, operator or manager of any vessel, a road or rail carrier, a shipper, consignee, or any other party interested in the Cargo, stevedore or a combination of any two or more of those parties, or any person for whom Port Taranaki provides, or is to provide, or who requests Port Taranaki to provide, a service and/or any

person who is or who appears on reasonable grounds to be an agent for or a representative of or a visitor of any one or more of the foregoing and/or any lessee / licensee or sublessee / sublicensee of Port Taranaki and/or any contractor who has cause to work within the Port Area and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, shall be joint and several.

“Property” means all land, buildings, Wharf or Wharves as herein defined, and other structures, plant or equipment, either mobile or static, owned, leased or administered by Port Taranaki.

“Schedule of Charges” means Port Taranaki’s Schedule of Charges in force at the date of provision of the Services by Port Taranaki.

“Services” are defined in Section 2.

“Ships’ Crew” means any member of a vessel berthed at the Port who normally sleeps on board the vessel.

“Stevedore” means any person or company employed to load or unload vessels’ Cargo of any kind.

“Towage” means all those operations of a tug when it is being used to assist with the berthing, sailing or any other movement of any other vessel.

“Vessel Arrival Information Sheet” is available online at www.porttaranaki.co.nz.

“Wharf” / “Wharves” means all Port Taranaki’s wharves, including the Newton King Tanker Terminal and Blyde Terminal, jetties, breakwaters or other areas owned and/ or administered / operated by Port Taranaki.

“Wharf Load Chart” means Port Taranaki’s “Summary of cranes and other equipment and where they can operate”.

CONTACT DETAILS

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Front cover photo: pipGuthrie Photographer - www.pippphoto.co.nz



11. Port Taranaki Location Plan

