NEWCASTLE STEVEDORES

TERMS AND CONDITIONS

PART A

Definitions

In these terms and conditions:-

"Abandoned Goods" shall mean Goods within clause 43.

"Claim" means any action, claim, suit, demand, loss, liability, damage or cost of whatsoever nature, brought on any basis including in tort (including alleging negligence), contract, bailment or otherwise, arising out of or relating to the Services, or for loss of or damage to Goods, or for delay.

"Company" shall mean Newcastle Stevedores Pty Ltd.

"Consequential Loss" means any special or economic loss, expense or damage including loss of production, profit, use or opportunity, whether direct or indirect.

"Container" means any package, case, pallet, container or other unit or other article of transport which conveys, carries, contains, protects or supports cargo or is designed or made to do so.

"Dangerous Goods" means Dangerous Goods as defined in the International Maritime Dangerous Goods (IMDG) Code and any Goods which are dangerous, volatile, explosive, flammable or offensive or which may become dangerous, volatile, explosive, flammable or offensive or which may become harmful to any person or property or the environment

"Goods" means cargo of any description whatsoever whether containerised, breakbulk, or dry bulk.

"Port Authority" means Port of Newcastle and/or Newcastle Port Corporation trading as the Port Authority of New South Wales.

"Premises" means those areas wherever the Company provides the Services pursuant to these terms and conditions.

"SDR" meads special drawing rights within the meaning provided by the International Monetary Fund.

"Services" means everything that the Company agrees to do for the Customer, and everything ancillary to that and includes any measures that the Company deems necessary to comply with applicable laws and regulations or for the safety of the Cargo and/or the Premises. The Services may include stevedoring services, transport services or storage services or some combination of those.

"Subcontractor" means any company or other entity that the Company may contract with in connection with the performance of the Services and includes the Subcontractor's employees and agents.

"User" means the owner, lessee, charterer (including but not limited to a demise, time voyage or slot charterer) operator (whether a vessel or container operator), agent or manager of any vessel or operator that uses the Services of the Company and any other person acting for or on behalf of or as Subcontractor to the Company or which the Company acts as Subcontractor.

"User Visitor" means all servants, agents, Subcontractors of the User (including any employee), all persons having any interest in the vessel or the cargo or any other person that may enter the Premises in connection with the Services provided by the Company to the User.

Agreement, relationship and variation

1. These conditions together with the Company Tariff and any documents issued by the Company in relation to specific Goods:-
   (a) form the entire agreement and understanding between the parties on everything connected with the provision of Services by the Company; and
   (b) supersede any prior representation, agreement or understanding (whether written or verbal) on anything connected with the Services.
2. The Company is not a common carrier and accepts no liability as such. All Services provided by the Company are subject to these terms and conditions.
3. An amendment or variation to these conditions is not effective unless it is in writing and signed by a manager or a director of the Company.
4. Nothing in these terms and conditions, whether express or implied, will impose upon the Company any responsibility for any matter not strictly within the particular Services that the Company has agreed to provide. The Company accepts no responsibility for the trim of, stresses upon, safe securing or sea or roadworthiness of any vessel or vehicle.

PART B

Services

5. The Company may subcontract the Services (in whole or in part) on any terms.
6. The Company shall provide the Services that the Company:--
   (a) agrees to provide; and/or
   (b) deems necessary to perform the Services.
   The Company shall provide the materials and handling equipment which the Company deems necessary to perform the Services.
7. Unless otherwise agreed the Company shall perform the following Services in respect of the User's vessel at the rates set out in the Tariff:

(a) receive, deliver and consolidate Goods and/or Containers in the Premises;
(b) plan the arrangement of Goods and/or Containers within the Premises;
(c) load onto or discharge from or restow or reposition within vessel Goods and/or Containers;
(d) make every reasonable endeavour by liasing with the User, the User Visitors or User Clients to achieve the orderly transportation of Goods and/or Containers into and from the Premises by road, rail or water whichever is applicable. However, the Company shall not be liable for any demurrage which occurs or for any failure in the securing of Goods and/or Containers on road vehicles, rail wagons, barges, lighters or other means of conveyance.
(e) Store Goods and/or Containers subject to all applicable laws and regulations and in accordance with the Tariff.

8. The Company may at its sole discretion provide - Services not prescribed within the Tariff or these terms and conditions. Such other services shall be provided on the terms and conditions and rates as mutually agreed between the Company and the User.
9. Instructions whether communicated electronically or otherwise and contained in the User's bill of lading, delivery order or the document evidencing the contract of carriage shall entitle the Company to deliver to the bearer notwithstanding that such bill of lading, delivery order or other document provides for delivery to a named party or to its order. The Company is entitled to assume that the person presenting such bill of lading, delivery order or other document is the person lawfully entitled to take delivery. The Company is not required to verify signatures appearing on such bill of lading, delivery order or other document.
10. The Company does not accept any responsibility for the accuracy and correctness of the description of the Goods.

User obligations and warranties

11. The User undertakes to provide the Company prior to delivery of the Goods at the Premises whether communicated electronically of otherwise with:
    (a) A full correct, accurate and timely description of the Goods and their particulars including but not limited to packaging, weight, content, measure, quality, quantity, condition, marks and numbers and where applicable written instructions as to the care and control of any Goods.
    (b) Particular instructions concerning the handling, care and control of the Goods having regard to their nature and packaging and shall indemnify the Company in respect of all liability whatsoever and howsoever arising (including without limiting the foregoing arising form negligence, breach of contract, wilful act or default of the Company or others) against any loss, fine, damage, cost and expense arising from a breach of the above undertakings howsoever caused.
12. The User warrants:
    (a) that all Goods are properly packed, labelled, and if received already packed in Containers, are properly stowed and secured within the Container.
    (b) that all Goods and/or Containers are in a fit and proper condition to be or otherwise dealt with in the ordinary course of business by the equipment and operating procedures employed
    (c) that all Goods and/or Containers comply with the requirements of all applicable laws and regulations to the carriage, handling and storage of such Goods and/or Containers and further the Company in consultation with the User may expend monies it considers necessary in order to comply with any such laws and regulations in order to put the Goods and/or Containers in a condition considered suitable of their proper carriage handling and storage and the User shall upon demand refund to the Company any amounts so expelled in this respect
    (d) that all laws, and regulations in relation to the vessel and/or Goods and/or Container relevant to their carriage handling and storage, are observed by the User.
13. The User will ensure that each User Visitor to the Premises shall at all times abide by any applicable regulations, rules and/or codes of practice including any safety procedures promulgated from time to time by the Port Authority and/or the Company.
14. The User will be responsible for the cost of labour where:
    (a) labour is ordered to work on any shift in accordance with the instructions of the User but is unable to work due to circumstances beyond the Company's control.
    (b) the performance of the Services is prevented and/or interrupted by any cause for which the vessel irresponsible
15. Subject to any applicable regulations of the port authority, all Goods and/or Containers shall be removed from the Premises three (3) normal working days after completion of the discharge of the vessel. Failing compliance with this clause 3(2) the Company at its discretion may charge for storage and/or may handle, remove to warehouse

or bond store or otherwise deal with, such Goods and/or Containers at the risk and expense of the User.

16. The Company may at its sole discretion dispose of, move, quarantine, fumigate, render harmless or otherwise treat Goods which are Dangerous Goods and/or in danger of deterioration at the risk and expense of the User.

Himalaya Clause

17. Every exemption, limitation, condition, liberty, right, exemption from liability, defence and immunity available to the Company will also be available and shall extend to protect all Subcontractors and any party or person who may be liable vicariously or by contract for the acts or omissions of the Company, and to any party for whose acts or omissions the Company may be liable vicariously or by contract.
18. The Company is or shall be deemed to be acting as trustee or agent on behalf of and for the benefit of all such persons and each of them shall to the extent be or be deemed to be parties to these terms and conditions.
19. The User shall ensure that any contracts of carriage for Goods incorporate a clause by which the Company, its servants, agents and Subcontractors obtain the benefit of every exemption, limitation, condition, liberty, right, exemption from liability, defence and immunity contained in that contract of carriage ("Himalaya clause"). The benefit of the Himalaya clause must apply to the whole of the Services whether or not any formal documents (such as bills of lading) have been issued, and whether or not such documents are or are not to be issued.
20. Where the User fails to incorporate a Himalaya clause in their bill of lading or contract of carriage the User shall indemnify the Company for any liability whatsoever or howsoever arising which would have otherwise been limited, excluded or modified by the incorporation of a Himalaya clause.
21. Unless otherwise agreed payment for the Services provided shall be on the basis of full payment 21 day from the date of invoice.
22. The User shall not withhold payment of moneys due and payable by reason of any dispute that exists between the User and the company or by reason of any set-off or counter claim by the User.
23. Goods shall be at the risk of the User at all times.

PART C

Risk, Liability and Claims

24. Except as expressly provided in this clause, the Company will not be liable for any Claim whatsoever.
25. The User shall not make any Claim and warrants that no other party shall make any Claim against any party except the Company.
26. Subject to clause 27, in respect of any Claim for loss or damage the Company shall only be liable for direct and physical loss or damage and shall be liable at most for the depreciated value or the market value or the cost of repair to the property lost of damaged, whichever is the lesser.
27. The Company's liability for the first $5,000 of any claim shall be nil, and then the maximum total liability of the Company for any Claim shall be:-
    (a) subject to subclause (b), for a claim for loss or damage to Goods, two SDR's per kilogram of gross weight of the Goods lost or damaged;
    (b) for a Claim for loss of or damage to a shipping Container (excluding any contents), $10,000;
    (c) for claims in connection with a vessel, for any incident or series of related incidents arising out of one event, $250,000 in total;
    (d) for a Claim relating to any other property, for any incident or series of related incidents arising out of one event, , $10,000;
    (e) for a Claim relating to death or personal injury, $500,000.
    (f) (f)) where a Claim falls within more than one sub-clause above, whichever limit that results in the lowest total limit will apply.
28. Where under any applicable law (including the *Competition and Consumer Act 2010* (Cwth)) any condition, warranty or guarantee may be implied into these terms and conditions and rights and remedies are conferred which cannot be excluded, restricted or modified by agreement (Inexcludable Rights) then:-
    (a) notwithstanding any other provision of these terms and conditions, the Inexcludable Rights are not restricted, modified or excluded by these terms and conditions except to the extent permitted by law;
    (b) the Company's liability for a breach of any Inexcludable Right is limited, at the Company's option, to:
        (i) the supplying of the Services again;
        (ii) the payment of the cost of having the Services supplied again.
29. The User shall indemnify the Company in respect of all liability whatsoever and howsoever arising (including without limiting the foregoing arising from negligence, breach of contract, or default of the Company or others) pursuant to this clause 1 to the extent that such liability exceed the financial limits at clause 27.
30. The User undertakes that no claim or allegation shall be made whether by the User or an other person who is or may be interested in the Goods and/or Containers or in the provision of Services

against the Company or Subcontractor) of the Company (hereinafter referred to in this clause as "such persons") other than by the User against the Company which imposes or attempts to impose or demands to impose upon the Company or any such persons any liability whatsoever or howsoever arising (including without limiting the foregoing form negligence or breach of contract or wilful act or default of the Company or such persons) in connection with the Goods and/or Containers or the provision of Services. In the event of any such claim or allegation nevertheless being made the User shall indemnify and shall keep indemnified the Company and all such persons against the consequences thereof. Without prejudice to the foregoing and for the purposes of this clause the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons shall to this extent be or be deemed to be parties to these terms and conditions.

31. Where any Goods and/or Containers are received by the Company prior to the issue of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage (and in particular as set out in this clause 2(3)) shall apply in all respects and shall bind all Users as though such bill of lading or contract of carriage had then been established.
32. The User shall be liable for any damage done by any vessel or by any plant or equipment owned or operated by the User or User Visitor or by any persons employed on or about such plant or equipment to any installation structure or fixed or movable property of any kind of vessel in or in the possession of the Company, the crown or any port authority and situated at the Premises and for all costs and expenses reasonably incurred in the repair and reinstatement of the installation, structure or property so damaged and the User hereby indemnifies and shall keep indemnified the Company and such persons for any liability whatsoever or howsoever arising against all consequences of such damage.
33. The User shall be liable for damage done and loss suffered as a result of any repairs of whatsoever nature to any vessel and hereby indemnifies and shall keep indemnified the Company and such persons for any liability whatsoever or howsoever arising against all consequences of such damage and loss.
34. The User shall indemnify and keep indemnified at all times the Company and such persons for any liability whatsoever or howsoever arising from and against all actions, proceedings and claims whatsoever brought against the Company and/or costs and expenses incurred by the Company which arise directly or indirectly from the actions or omissions of any User Visitor causing or relating to any of the following matters:
    (a) loss of life or personal injury to any User Visitor;
    (b) loss of or damage to the property of any User Visitor or the Company;
    (c) loss of life or personal injury to any person which may be directly or indirectly attributable to the negligence of any User Visitor.
    (d) loss of or damage to the property of any person which may be directly or indirectly attributable to the negligence of any User Visitor;
35. In the event of any accident, claim, expense, damage or loss resulting from the failure of the User to comply with rules in respect of dangerous and obnoxious cargo and/or to obtain the appropriate certificates, the User hereby indemnifies and shall keep indemnified the Company and such persons for liability whatsoever or howsoever arising in respect thereof and as set out in the rules.
36. The User shall indemnify the Company from any liability for duty, sales tax, penalties, or other charges whatsoever and howsoever arising in respect of any Goods within the custody of the Company, and all costs and expenses incurred in connection with or incidental to any claim and/or liability which might arise in respect of such Goods or for such duty, sales tax, penalties, or charges.
37. All defences, limitations, immunities, exclusions and exemptions of liability shall apply to all claims whether any such claim be founded in contract or tort.
38. In any case where liability attaches pursuant to these terms and conditions to more than one party which can be defined as the "User" such liability shall be joint and several and may be enforced against any one or more parties to the exclusions of other parties.
39. All claims in respect of any loss, damage, costs, expenses, death or injury must be made to the Company by the User in writing setting out particulars thereof. In any event the Company shall be discharged from all liability in respect of such loss, damage, costs, expenses, death or injury unless suit is bought within twelve months of the before mentioned incident.
40. Notwithstanding anything herein and in any event the Company shall not be liable for any Claim for delay or Consequential Loss whatsoever and howsoever arising.

Liens, storage and Abandoned Goods

41. Goods and related carriage documents are subject to a general and particular lien in favour of the Company for monies due or which become due

and owing by the User to the Company whatsoever. The Company's lien is a security interest within the meaning of the *Personal Property Securities Act 2009.*

42. The Company and User agree that pursuant to section 115 of the *Personal Property Securities Act 2009* that sections 125, 142 and 143 of the Act do not apply to this agreement and that the User waives its right to receive any notice, details or other document from the Company under Sections 95, 121 (4), 130, 135, 132(3)(d) and 132(4) of the *Personal Property Securities Act 2009*.
43. Goods shall become Abandoned Goods if:-
    (a) the User has not removed the Goods from the Premises within fourteen (14) days of being required to do so;
    (b) if for any reason whatsoever the Goods are unable to be delivered for a period in excess of fourteen (14) days;
    (c) the Company is unable for a period of 10 days to contact the User or the party apparently entitled to the Goods.
44. The Company may at the risk and cost of the User either:-
    (a) store the Abandoned Goods; or
    (b) return the Abandoned Goods to the User
45. If Goods are subject to a lien in favour of the Company or if they are Abandoned Goods, the Company may as agent for and at the risk and expense of the User on reasonable written notice to the Customer, dispose of the Goods in any manner which in the Company's opinion appears reasonable including:-
    (a) opening packages or containers and unpacking and/or dividing the Goods;
    (b) selling the Goods by public auction or by private treaty; or
    (c) destruction of the Goods.
46. Where Goods are sold by the Company, the Company is entitled to retain from the sale proceeds any sums due to it including all charges, costs and expenses associated with the storage and sale of the Goods.

Force Majeure

47. The Company will be released from its obligations to the User to the extent of and for the duration that performance of the Services is delayed, hindered or prevented by a Force Majeure Event.
48. A Force Majeure Event shall be anything outside the Company's reasonable control including acts of God, war, civil war, revolution, rebellion, insurrection, civil commotion, terrorism, sabotage, government regulations, acts of any semi-government or other authority, including Port Authority, strikes, lock-out or other industrial disturbance, accidents, the breakdown, insufficiency or unsuitability of any plant or machinery supplied by the Company, or the effect of any applicable laws, orders, rules or regulations.

Law, jurisdiction and disputes

49. The Company shall use best endeavours to provide the User of notice of any Force Majeure Event or any potential Force Majeure Event.
50. These terms and conditions are governed by the laws of New South Wales.
51. Any dispute, controversy or Claim arising out of, relating to or in connection with the Services including any question regarding the existence of the contract for Services, its validity or termination, shall be resolved by arbitration in accordance with the Australian Maritime and Transport Arbitration Commission Arbitration Rules. The seat of the arbitration shall be Sydney, Australia. The language of the arbitration shall be English.

Notice and time limit on Claims

52. (1) The Company shall not be liable for any loss unless**:**
        (a) notice of such loss is given to the Company at the time of the relevant incident giving rise to the loss and, in any event, prior to the time of sailing of the relevant vessel: and
        (b) written notice of such loss is given to the Company within fourteen days of the relevant incident giving rise to the loss.
    (2) The Company shall be discharged from all liability for loss unless proceedings are commenced within one year of the date that written notice of the loss is given or should have been given to the Company.

Newcastle Stevedores Pty Ltd
A.C.N. 076 866 156
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