

PASSENGER VESSEL BERTHING TERMS

Port Authority of New South Wales (**Port Authority**) seeks to fulfil the organisation's objectives under section 9 of the *Ports and Maritime Administration Act 1995* (NSW) to be a successful business, to promote and facilitate a competitive commercial environment in port operations and to improve productivity and efficiency by effective management of its berthing facilities. These Terms are to be read together with any terms applicable to the booking of a Port Authority berthing facility, but to the extent of any inconsistency, these Terms will prevail.

1. Acceptance of these Terms

- a) These Terms form part of the contract that arises out of the submission of a booking by the Hirer for the hire of a Port Authority berthing facility.
- b) Notwithstanding the above, a contract will automatically form and bind the Hirer with respect to the visit of a passenger vessel to a Port Authority berthing facility upon the use by the Hirer of any services necessary to access a Port Authority berthing facility and that contract shall comprise the Hirer's booking, these Terms and the Port Authority Schedule of Port Charges.
- c) Unless otherwise agreed in writing by the Hirer and Port Authority at the time of booking a Port Authority berthing facility, these Terms cannot be subsequently varied unless the variation is effected in accordance with clause 18.1 of these Terms.

2. Hirer's use of Port Authority's berthing facility

2.1 Hire of Port Authority berthing facility

Port Authority grants the use of a Port Authority berthing facility and the Hirer agrees to the use of a Port Authority berthing facility subject to the following conditions:

- a) Hirer must at all times comply with these Terms and all other applicable terms and conditions of Port Authority, including the terms applicable to the booking of a Port Authority berthing facility;
- b) Hirer must pay all applicable charges contained in the Port Authority Schedule of Port Charges;
- c) Hirer must at all times comply with all applicable laws and regulations;
- d) Hirer must at all times comply with all directions of the Harbour Master;
- e) Hirer must at all times comply with all applicable Port Authority policies concerning the use of a Port Authority berthing facility, which are notified to the Hirer;
- f) Hirer must at all times comply with all reasonable directions and instructions of Port Authority and permit reasonable access to the passenger vessel for all relevant purposes;
- g) Hirer may only use the allocated Port Authority berthing facility for the duration of the hire period confirmed by Port Authority (**Hire Period**);
- h) The allocated Port Authority berthing facility may only be used by the Hirer for the berthing of passenger vessels and activities approved by Port Authority and ancillary to the berthing of passenger vessels; and
- i) Hirer has no tenancy or other estate or interest in the allocated Port Authority berthing facility.

2.2 Breach of conditions

Should the Hirer breach one or more of the conditions specified in 2.1, in Port Authority's absolute discretion, Port Authority may terminate or refuse to accept any future booking made by the Hirer for the relevant passenger vessel.

2.3 Non-exclusive use

- a) Hirer's right to occupy or use the allocated Port Authority berthing facility is a non-exclusive right to be enjoyed in common with other persons authorised by Port Authority.
- b) Port Authority may allow access to the allocated Port Authority berthing facility at all times by any other person for any purpose but will exercise reasonable endeavours to ensure that these other activities do not significantly interfere with the Hirer's activities permitted under these Terms.
- c) Hirer must not, at any time, create any unnecessary interference to any other users of a Port Authority berthing facility and prevent any nuisance and/or unreasonable noise and disturbance in using a Port Authority berthing facility.

2.4 Hirer's Obligations

The Hirer must ensure that:

- a) passengers and other visitors are safely and efficiently moved through the Port Authority berthing facility;
- b) the appropriate number of Hirer's Staff are available to properly achieve the obligation specified at (a), at the sole expense of the Hirer;
- c) the Hirer must use its best endeavours to ensure all Hirer's Staff are reputable, are sufficiently experienced and act in compliance with these Terms in undertaking their duties at a Port Authority berthing facility;
- d) all property and equipment utilised by the Hirer's Staff is maintained and operated in accordance with best industry practice, manufacturers' instructions and all applicable standards; and
- e) as directed by Port Authority, all property and equipment is either removed at the end of the Hire Period or is stored solely within the areas designated by Port Authority for use by the Hirer. If the Hirer does not comply with this clause 2.4(e) within a reasonable period of time, Port Authority may deal with the property and equipment in any manner it deems fit (including by way of sale or disposal).

2.5 Hirer's Staff

The Hirer shall remain at all times responsible for the acts and omissions of the Hirer's Staff.

2.6 No alterations to Port Authority berthing facility

The Hirer must not make any alterations, improvements or additions to a Port Authority berthing facility without the prior written consent of Port Authority.

2.7 Hirer's equipment & property

- a) The Hirer must not install any plant or equipment and/or erect advertisements, signs or notices at a Port Authority berthing facility without Port Authority's prior written consent.
- b) Any equipment or property the Hirer brings to a Port Authority berthing facility shall be entirely at the Hirer's risk and Port Authority shall have no liability in relation to any Loss of such equipment or property.

2.8 Environment

- a) The Hirer must take all steps reasonably necessary to prevent the outbreak of fire, pollution and hazards or any other environmental damage likely to cause Loss on or from the allocated Port Authority berthing facility.
- b) The Hirer must also ensure it meets all statutory requirements imposed on passenger vessels, including having in place a biosecurity incident response procedure.
- c) The Hirer must ensure that it and the Hirer's Staff comply with all applicable environmental policies and procedures notified by Port Authority to the Hirer in respect to a Port Authority berthing facility.

2.9 Work, Health & Safety

- a) The Hirer must ensure that it and the Hirer's Staff maintain a safe environment at a Port Authority berthing facility at all times.
- b) The Hirer must at all times ensure it complies with all applicable work health and safety laws and any work, health and safety policies and procedures notified by Port Authority to the Hirer in respect to a Port Authority berthing facility.
- c) The Hirer must provide, upon request and in a form satisfactory to the Port Authority, the Hirer's or any of its subcontractors' work, health and safety management plan to apply to the use and occupation of the Port Authority's berthing facility.

2.10 Damage and repairs

- a) The Hirer is responsible for any damage (excluding fair wear and tear) to a Port Authority berthing facility (including damage to the environment) to the extent caused or contributed to by the Hirer's use.
- b) In such circumstances, the repair and remediation to the relevant Port Authority berthing facility shall be undertaken by Port Authority at the expense of the Hirer. The Hirer must immediately pay to Port Authority any costs incurred by Port Authority in undertaking such repair and remediation upon receipt of an invoice from Port Authority for such costs.

3. No representations & warranties

- a) To the maximum extent permitted by law, Port Authority makes no representation nor provides any warranties to the Hirer as to the suitability or adequacy of the allocated Port Authority berthing facility for the Hirer's requirements.
- b) The Hirer acknowledges that it has independently assessed the suitability of the allocated Port Authority berthing facility for the Hirer's purposes and understands that tides and weather may affect the suitability of the allocated Port Authority berthing facility, and that Port Authority has no responsibility or liability to the Hirer for the allocated Port Authority berthing facility being or becoming unsuitable.

4. Provision of information by Hirer to Port Authority

4.1 Obligation to keep Port Authority informed

The Hirer shall promptly provide to Port Authority the following information:

- a) the manifested number of passengers that will be disembarking and embarking from the passenger vessel at the allocated Port Authority berthing facility during the Hire Period;
- b) any material alterations to the time of arrival and/or time of departure of the passenger vessel from the allocated Port Authority berthing facility;

- c) any unique considerations relevant to the passenger vessel within the knowledge of the Hirer;
- d) any other information which may affect the safety and security of a Port Authority berthing facility; and
- e) all other information relevant to the pilotage and berthing of a passenger vessel as reasonably requested by Port Authority.

4.2 Passenger manifest information

- a) No later than 48 hours prior to the arrival of a passenger vessel at the allocated Port Authority berthing facility, the Hirer must provide Port Authority in writing and in accordance with the policy notified to the Hirer by Port Authority with details of the total number of inbound passengers aboard the passenger vessel.
- b) Upon the berthing of a passenger vessel at a Port Authority berthing facility, the ship's officer of the relevant passenger vessel shall provide to the on duty Port Authority Duty Manager Cruise Operations at the respective Port Authority berthing facility and in the format provided by Port Authority, with details of the actual total number of passengers aboard the passenger vessel at the time of berthing.
- c) The Hirer shall also promptly provide upon request by Port Authority, all other documentation or information reasonably necessary for Port Authority to accurately calculate any charges applicable to the use of a Port Authority berthing facility by the Hirer.

5. Discretion of Port Authority in its allocation of berthing facilities

- a) Port Authority retains, at all times, full discretion in the allocation of:
 - i. berth arrival and departure times; and
 - ii. specific cruise berthing facilities and non-terminal berthing facilities.
- b) A visit can be split between berthing facilities in the absolute discretion of Port Authority.
- c) Port Authority may cancel or terminate a passenger vessel booking at any time for any reason, in its absolute discretion, and Port Authority bears no liability to the Hirer or any other person whatsoever as a result of the cancellation or otherwise of its vessel booking.

6. Cleaning

6.1 Provision of cleaning services

Port Authority shall be responsible for the provision of cleaning services within a Port Authority berthing facility whenever a passenger vessel is berthed at a Port Authority berthing facility.

6.2 Hirer's responsibilities

Notwithstanding the above, the Hirer:

- a) must exercise reasonable endeavours to ensure that the Hirer's Staff place all rubbish and waste in appropriate receptacles;
- b) must keep the areas allocated for use exclusively by the Hirer in a clean and tidy condition;
- c) must promptly notify the appropriate member of Port Authority Staff of all spillages; and
- d) will be liable to pay the cleaning charge specified in the Port Authority Schedule of Port Charges.

7. Security

7.1 Provision of security services

- a) Port Authority shall be responsible for the provision of security services within a Port Authority berthing facility whenever a passenger vessel is berthed at a Port Authority berthing facility, including the period of two hours immediately before a passenger vessel is anticipated to arrive at the berthing facility and the period of an hour immediately after a passenger vessel departs from the berthing facility.
- b) The Hirer shall be responsible at all times for security of the passenger vessel and against entry of unauthorised persons and goods between the passenger vessel and the allocated Port Authority berthing facility.

7.2 Hirer's responsibilities

Notwithstanding the above, the Hirer:

- a) must comply with all security related directions and instructions of Port Authority or its appointed security services provider; and
- b) shall be liable to pay the security services charge specified in the Port Authority Schedule of Port Charges.

8. Gangways

The Hirer acknowledges and agrees:

- a) The gangway(s) may only be connected and operated by Port Authority Staff;
- b) The gangway(s) will only be provided by Port Authority where the passenger vessel has appropriate fittings, and there are no external factors which would hinder the safe connection to the passenger vessel;
- c) Notwithstanding 8(b), the connection and operation of the gangway(s) is at the sole discretion of Port Authority.
- d) The Hirer shall be responsible for the conduct of persons using the gangway(s) and shall ensure that their use is in accordance with Port Authority's directions and instructions.

9. Use of Information Technology Infrastructure

- a) The Hirer may utilise the available IT Infrastructure at Port Authority's berthing facilities on the following conditions:
 - i) Use of the IT Infrastructure is at the Hirers' risk and cost;
 - ii) Support for the IT Infrastructure is available during business hours only;
 - iii) The Hirer is responsible for the security and integrity of any data or applications utilising the IT Infrastructure; and
 - iv) The Hirer must have a back-up and disaster recovery plan, which incorporates connectivity, processes and systems.

- b) Port Authority is not liable (including in negligence) for any Loss that the Hirer may suffer in connection with the IT Infrastructure, including in circumstances where Port Authority does not provide or maintain the IT Infrastructure within or at a berthing facility. To the full extent allowed by law, Port Authority excludes all warranties, whether express or implied by law.
- c) The Hirer indemnifies Port Authority against any Claim or Loss arising out of or in connection with the use of the IT Infrastructure by the Hirer, Hirer's Staff or any person utilising the IT Infrastructure (apart from Port Authority or Port Authority Staff) during the Hire Period.

9. Other Services

Port Authority may provide other services, including the provision of furniture, water and/or a hose connection, on request by the Hirer and the Hirer shall be liable to pay the applicable charges specified in the Port Authority Schedule of Port Charges.

10. Insurance

10.1 Insurance requirements

- a) The Hirer must ensure that the passenger vessel and Hirer's Staff using the allocated Port Authority berthing facility are adequately insured at all times, by an insurer, and on terms, acceptable to Port Authority, including:
 - i) Protection and Indemnity Insurance to a sum not less than \$100,000,000 with a P&I Club;
 - ii) Hull and Machinery insurance to the reasonable market value of the passenger vessel;
 - iii) Public Liability insurance for a minimum sum of \$20,000,000 for any single event which notes Port Authority as an interested party; and
 - iv) any other insurance (for such sum or level of cover as specified by Port Authority) as Port Authority may reasonably require.

10.2 Evidence of insurance

The Hirer is required to produce evidence of the currency of the insurance policies required under the clause 10.1 upon:

- a) request by Port Authority; and
- b) each renewal.

10.3 Obligation to inform Port Authority

The Hirer must, during the Hire Period or such other period as Port Authority permits the Hirer to use the allocated Port Authority berthing facility, notify Port Authority without delay on becoming aware of any:

- a) damage, injury, death or loss occurring in the allocated Port Authority berthing facility and any defect or want of repair in the allocated Port Authority berthing facility;
- b) circumstances likely to cause danger, risk or hazard to any person or property in the A allocated Port Authority berthing facility; and
- c) event or occurrence which will or is likely to result in a Claim being made by or against the Hirer, Port Authority or any other person in connection with the allocated Port Authority berthing facility.

11. Termination

11.1 Breach by Hirer of Terms

Should there be a material breach of these Terms by the Hirer, Port Authority may at any time and in its absolute discretion upon written notice to the Hirer, terminate the Hirer's right to use any Port Authority berthing facility.

11.2 No liability

The Hirer shall have no Claim against Port Authority for, or in connection with, any Loss suffered by the Hirer as a result of Port Authority terminating the Hirer's right to use any Port Authority berthing facility pursuant to these Terms.

12. Force Majeure

12.1 Event of Force Majeure

If Port Authority is prevented or delayed in making the allocated Port Authority berthing facility available to the Hirer due to an Event of Force Majeure, Port Authority is excused from providing the Hirer with use of the allocated Port Authority berthing facility to the extent of the impact of the Event of Force Majeure on Port Authority.

12.2 Termination

Port Authority may in its absolute discretion and at any time terminate the use by the Hirer of the allocated Port Authority berthing facility if Port Authority considers an Event of Force Majeure will prevent Port Authority from being able to provide that Port Authority berthing facility, or an alternative Port Authority berthing facility, for use by the Hirer within the Hire Period.

12.3 No liability

Port Authority shall have no liability to the Hirer or to any other person for any Loss suffered, or Claim made, in connection with an Event of Force Majeure.

13 Release

The hire of a Port Authority berthing facility is entirely at the Hirer's own risk in all respects. The Hirer releases Port Authority from all Claims that the Hirer may have now or in the future for any Loss to property or injury to person of whatever nature and howsoever arising in connection with the hire and use of a Port Authority berthing facility.

14. Indemnity

- a) The Hirer indemnifies Port Authority from and against any and all Claims and Losses that may be brought by any person against, or incurred by Port Authority, whether directly or indirectly and howsoever arising, in connection with the use by the Hirer of a Port Authority berthing facility or a breach of these Terms and/or any other part of the contract referred to in clause 1(b).
- b) Subject to clause 15, the indemnity provided by this clause does not apply to the extent that any Claim or Loss is the direct result of the negligence or wrongful act or omission of Port Authority.

15. Limitation on Liability

Any liability of Port Authority in any way related to these Terms will be limited to the amount of \$1,000.

16. Charges

16.1 Port Authority berthing facility charges

The Hirer will pay Port Authority for the use of a Port Authority berthing facility the applicable charges as specified in the then current version of Port Authority Schedule of Port Charges, which is available from the Port Authority website. The Hirer is liable to pay the applicable charges without any deduction or right of set-off.

16.2 Invoices

The Hirer is liable to pay an issued Port Authority invoice in accordance with the terms and procedures established in Port Authority's terms of trade, which are detailed in the then current Port Authority Schedule of Port Charges.

17. Notices

All notices and other communications to Port Authority in relation to these Terms must be written in English, marked to the attention of the "Chief Operating Officer & Harbour Master – Sydney" and sent by mail or delivered by hand to the address as follows:

Port Authority of New South Wales
Level 4
20 Windmill Street
Walsh Bay NSW 2000,

or such other address (or marked to the attention of such other person) as Port Authority may specify in writing to the Hirer from time to time.

18. Miscellaneous

18.1 Variation

Port Authority may vary these Terms as it sees fit from time to time by notification in writing to the Hirer by letter, notification on SHIPS or publication of the revised terms on the Port Authority website. Unless otherwise expressed, any such variation to these Terms shall have immediate effect.

A variation of any provision of these Terms requested by the Hirer will be of no effect unless such variation is agreed in writing by an authorised representative of Port Authority.

18.2 Statutory authority

The position of Port Authority as a statutory authority under various laws overrides the provisions of these Terms and, in particular:

- a) these Terms do not reduce or affect the statutory powers of Port Authority or any officer or employee of Port Authority; and

- b) these Terms, or any approval or consent under these Terms, cannot be taken as a consent by Port Authority as a statutory authority or fetter its discretion and obligations as a regulatory authority.

18.3 Subcontracting

Port Authority may subcontract any of its obligations, in whole or in part, under these Terms.

18.4 Waiver

The failure by a party to exercise or the delay by a party in exercising a right or remedy pursuant to these Terms or at law, does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of the same right or remedy in other instances, or of other rights or remedies.

18.5 Severability

If at any time any provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of these Terms;
or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these Terms.

18.6 Entire Agreement

These Terms constitute the entire agreement between the parties relating in any way to the subject matter of these Terms.

18.7 Governing Law

These Terms are governed by and shall be construed and interpreted in accordance with the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals from those courts.

18.8 Disputes

Without prejudice to the rights of the parties, the parties will attempt in good faith to resolve any dispute or Claim arising out of or in relation to these Terms through negotiations between the respective representatives of the parties having authority to settle the matter.

18.9 Indemnities to Survive

Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligation of the parties, and survives termination, completion or expiration of these Terms and the contract referred to in clause 1(b).

19 Definitions and Interpretation

19.1 Definitions

'**Claim**' means all claims (including at law or in equity), requests, accusations, allegations, assertions, complaints, petitions, demands, suits, actions, proceedings and causes of action of every kind.

'Event of Force Majeure' means any occurrence of an event or circumstance beyond the reasonable control of Port Authority, and includes any industrial dispute, act of terrorism, power failure or failure in the adequacy of any service or utility, actions or requirements of a lawful authority, acts of nature and any other cause that Port Authority could not reasonably avoid or prevent.

'Hirer' refers to the person (natural or corporate) that has made a booking pursuant to these Terms or on whose behalf a booking is made (including the ship's owners, operators manning or crewing agents, ship managers) pursuant to these Terms. If there are more than one, it refers to each of them severally and any two or more of them jointly.

'Hirer's Staff' means all people engaged or utilised by the Hirer in connection with the use of a Port Authority berthing facility, including its employees, agents, subcontractors and invitees and anyone claiming by, through or under any of them, but excludes Port Authority Staff.

'IT Infrastructure' means the equipment and facilities (including, without limitation, conduits, cables, switches and electricity) that form the physical network used to support information technology services.

'Loss' means any damage, loss (whether direct, indirect or any loss that otherwise does not naturally arise from an event or breach), liability, compensation, cost, charge, expense or other obligation of any kind or nature, howsoever arising and whether present or future, fixed or unascertained, actual or contingent.

'Port Authority' means Newcastle Port Corporation trading as Port Authority of New South Wales (ABN 50 825 884 846).

'Port Authority berthing facility' means each of the terminals and other facilities owned or controlled by Port Authority for the purposes of berthing of passenger vessels.

'Port Authority Schedule of Port Charges' refers to the document issued by Port Authority (as updated by Port Authority from time to time and displayed on the Port Authority corporate website outlining the charges and fees applicable to the provision of services by Port Authority, including the use of Port Authority berthing facilities.

'Port Authority Staff' means all people engaged or utilised by Port Authority in connection with a Port Authority berthing facility, including its employees, agents, subcontractors and invitees and anyone claiming by, through or under any of them.

'SHIPS' means Port Authority's Sydney Harbour Integrated Ports System.

'Terms' means these terms and conditions governing berthing of passenger vessels at Port Authority facilities.

19.2 Interpretation

In these Terms, unless the context otherwise requires:

- a) headings used in these Terms are for convenience only and shall be ignored when construing these Terms;
- b) reference to a statutory provision shall be construed as including a reference to any modification, re-enactment or extension of such statute or statutory provision for the time being in force;
- c) a reference to an agreement or document (including, without limitation, a reference to these Terms) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- d) a reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);

- e) the singular includes the plural and vice versa; any gender includes all genders; reference to “person” shall include bodies corporate and unincorporated, partnerships and individuals; and reference to “party” or “parties” is to a party or the parties to these Terms;
- f) the words “including” and “includes” are not words of limitation; and
- g) a reference to dollars or \$ is to the Australian currency (AUD).