

PASSENGER VESSEL BERTHING TERMS FOR NEWCASTLE HARBOUR BERTHING FACILITY

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 the Port Authority berthing facility located in Newcastle Harbour¹ but to the extent of any inconsistency, these Terms will prevail.

1. Acceptance of these Terms

1.1 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 the 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 the Port Authority berthing facility upon the use by the Hirer of any services necessary to access the Port Authority berthing facility and that contract shall comprise the Hirer's booking, Port Authority's Cruise Booking Policies and Procedures, 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 the Port Authority berthing facility, these Terms cannot be subsequently varied unless the variation is effected in accordance with clause 20.1 of these Terms.

1.2 Definitions and interpretation

- (a) Capitalised terms in these Terms have the meaning given in clause 21.
- (b) The rules for interpretation of these Terms are set out in clause 22.

1.3 Joint and several liability

- (a) Any obligation imposed on the Hirer in these Terms must be construed as imposing joint and several liability on the entities comprised in the Hirer.
- (b) A reference to the Hirer is, unless expressly stated otherwise, a reference to each of the entities comprised in the Hirer separately.

1.4 Term

These Terms commence when a vessel of the Hirer submits a booking for the hire of a Port Authority berthing facility and end at the conclusion of the Hire Period.

¹ Newcastle Harbour cruise terminal contains a cruise berthing facility under licence by Port Authority as Licensee from the Port of Newcastle as Licensor and Port Operator.

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

2.1 Hire of Port Authority berthing facility

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

- (a) Hirer must at all times comply with, and must ensure the Hirer's Staff 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 the 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 and co-operate with Port Authority and all other users of the Port to ensure compliance 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 reasonable directions and instructions of Port Authority and any officer authorised by statute to give directions including pursuant to the *Marine Safety Act 1998* (NSW) and permit reasonable access to the vessel for all relevant purposes;
- (f) Hirer must at all times comply with all relevant Management Plans and all relevant cruise vessel berthing plans of Port Authority or the Port Operator;
- (g) Hirer must at all times comply with all applicable Port Authority or Port Operator policies concerning the use of the Port Authority berthing facility, which are notified to the Hirer;
- (h) Hirer may only use the allocated Port Authority berthing facility for the duration of the Hire Period confirmed by Port Authority;
- (i) Hirer may only use the allocated Port Authority berthing facility the Permitted Use;
- (j) Hirer must provide all personnel, property and equipment required for the berthing of vessels and activities approved by Port Authority and ancillary to the berthing of vessels;
- (k) Hirer must minimise the Environmental impacts of vessels on local residents in the vicinity of the Port Authority berthing facility; and
- (l) Hirer has no tenancy or other estate or interest in the allocated Port Authority berthing facility.

2.2 Breach of conditions

Without limiting any other rights of Port Authority in these Terms, 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 vessel.

2.3 Non-exclusive use

The Hirer acknowledges and agrees that:

- (a) the 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) the Hirer must not, at any time, create any unnecessary interference to any other users of the Port Authority berthing facility and prevent any nuisance and/or unreasonable noise and disturbance in using the Port Authority berthing facility.
- (d) without limiting this clause 2.3, Port Authority may at any time exercise its rights to enter, use, possess and enjoy the whole or any part of the Port Authority berthing facility.

2.4 Hirer's Obligations

The Hirer must ensure that:

- (a) the Port Authority berthing facility is left in the same condition and state as at the commencement of the Hire Period;
- (b) passengers and other visitors are safely and efficiently moved through the Port Authority berthing facility and the appropriate number of Hirer's Staff are available to properly achieve the obligation in this clause at the sole expense of the Hirer;
- (c) 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;
- (d) 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 the Port Authority berthing facility; 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 the Port Authority berthing facility without the prior written consent of Port Authority.

2.7 Hirer's equipment & property

The Hirer acknowledges and accepts that:

- (a) it must not install any plant or equipment and/or erect advertisements, signs or notices at the Port Authority berthing facility without Port Authority's prior written consent;
- (b) any equipment or property the Hirer brings to the 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;
- (c) any plant or equipment installed or used in connection with the Permitted Use:
 - (i) must be maintained in a proper and efficient condition; and

- (ii) must be operated in a proper and efficient manner.

2.8 Environment Management

The Hirer must:

- (a) ensure that all activities are carried out in a competent manner and in a way that minimises the likelihood of an Environmental Hazard, a Pollution Incident or impacts the Environment and the community.
- (b) exercise a duty of care to the Environment at all times and must use all reasonable endeavours to avoid any Environmental Hazard or Pollution Incident.
- (c) take all steps reasonably necessary to prevent the outbreak of fire or damage likely to cause Loss on or from the allocated Port Authority berthing facility.
- (d) comply with Port Authority's Operational Environmental Management Plan.
- (e) ensure it meets all statutory requirements imposed on passenger vessels, including:
 - (i) having in place a biosecurity incident response procedure;
 - (ii) compliance with the Ballast Water Management Requirements;
 - (iii) compliance with all Environmental Laws, planning approval or exempt development to the extent that such laws are applicable to the Hirer's use and occupation of the Port Authority berthing facility.
- (f) 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 the Port Authority berthing facility.

2.9 Air Quality

The Hirer must:

- (a) operate and maintain ship engine, generator, exhaust and ventilation systems efficiently to minimise air emissions, black smoke and odour while at berth at the allocated Port Authority berthing facility.
- (b) take all reasonable steps to minimise air emissions and must comply with the emission restrictions specified under MARPOL Annex VI, from when these restrictions come in force in Australia on 1 January 2020 and as may be updated under law from time to time.

2.10 Noise

The Hirer must:

- (a) ensure that noise generated from vessel-related activities do not exceed the noise management levels presented in the Management Plans;
- (b) ensure that vessels are operated on the minimum generator/engine power required while at the berth;
- (c) ensure that all machinery and vehicles not in use are turned off; and
- (d) carry out any required maintenance activities during the periods 7am to 6pm period, where reasonably practicable. Should maintenance operations be required outside the hours of 7am to 6pm, all reasonable and feasible efforts must be undertaken to ensure noise levels do not exceed the noise management level presented in the Management Plans.

2.11 Protection of Waters

The Hirer acknowledges and agrees that:

- (a) vessels are not permitted to discharge liquid into the waters of the Port while at the Port Authority berthing facility, including any contaminated bilge water;
- (b) Port Authority will only permit the Hirer to carry out in-water cleaning on vessels containing anti-fouling coatings certified by the manufacturer as suitable for in-water cleaning and provided that such activities full comply with Anti-fouling and In-water Cleaning Guidelines; and
- (c) any discharge of marine pollutants into the waters of the Port must be reported immediately to the Harbour Master, Port Authority, Newcastle Harbour, 100 Wharf Road Newcastle NSW 2300.

2.10 Ecology

The Hirer acknowledges and agrees that:

- (a) vessels within the Port are required to adhere to:
 - (i) speeds of 10 knots or less, except as authorised by the Harbour Master or the Pilot conducting pilotage of the Vessel within the Port; and
 - (ii) appropriate speeds and clearance when cetaceans are nearby.
- (b) the Hirer must ensure that relevant members of the crew of the vessel are educated on risk of vessel strikes on marine mammals and make available vessel operators upon reasonable notice to participate in exchange of information and awareness of known marine mammal activity; and
- (c) the Hirer must ensure that any injured marine mammals are immediately reported to the Organisation for the Rescue and Research of Cetaceans in Australia's (ORRCA) 24-hour hotline on 02 9415 3333 or National Parks and Wildlife Service's (NPWS) on 1300 361 967.

2.11 Visual amenity

The Hirer must:

- (a) ensure that a vessel staying overnight at a Port Authority berthing facility has the appropriate lighting required to be displayed at night;
- (b) ensure that the vessel's lights are operated to the extent possible to minimise lighting impacts nearby residential dwellings, including by turning off non-essential lighting and external lighting when not in use, and directing external lighting away from residential areas (subject to safety and security requirements); and
- (c) subject to clause 2.11(a), minimise the use of external lighting on vessels.

2.12 Work, Health & Safety

The Hirer must:

- (a) ensure that it and the Hirer's Staff maintain a safe environment at the Port Authority berthing facility at all times;
- (b) ensure it complies with all applicable work health and safety laws and any work, health and safety policies and procedures notified by Port Authority or the Port Operator to the Hirer in respect to the Port Authority berthing facility;
- (c) 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;
- (d) within forty-eight (48) hours after the Hirer receives any notices or legal proceedings in respect of the impact of the activities of the Hirer on human health and safety, including notices or proceedings issued by a statutory or governmental authority, the Hirer must provide Port Authority with a copy of such notice or proceedings;
- (e) the Hirer must comply with any and all statutory notices referred to in paragraph (d) and is liable for any costs of compliance with such statutory notices; and
- (f) the Hirer must notify Port Authority immediately of any serious injury or near miss incident that occurs at the Port Authority berthing facility.

2.13 Damage and repairs

- (a) The Hirer is responsible for any damage (excluding fair wear and tear) to the 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 or the Port Operator at the expense of the Hirer. The Hirer must immediately pay to Port Authority any costs incurred by Port Authority or the Port Operator in undertaking such repair and remediation upon receipt of an invoice from Port Authority for such costs.

2.14 Costs of compliance with Legislative Requirements and Environmental Laws

If Port Authority reasonably incurs costs as a result of complying with any Legislative Requirements or Environmental Laws in relation to a vessel or the Hirer's use of the Port Authority berthing facility, then the Hirer is liable to reimburse Port Authority such costs and those costs are recoverable as a debt due and payable by the Hirer within twenty-eight (28) days after the date of the relevant invoice.

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 use or 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 the 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

The Hirer must promptly provide to Port Authority the following 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 the 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 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; and
- (c) 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 the 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 berth arrival and departure times.
- (b) 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 the Port Authority berthing facility whenever a passenger vessel is berthed at the Port Authority berthing facility.

6.2 Hirer's responsibilities

Notwithstanding clause 6.1, 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, Pollution Incident or Environmental Hazard in or around the Port Authority berthing facility; 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

Port Authority shall be responsible for the provision of security services within the Port Authority berthing facility whenever a passenger vessel is berthed at the 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. 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 clause 7.1, the Hirer:

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

8. Gangways

8.1 The Hirer acknowledges and agrees:

- (a) the Hirer is responsible for providing all gangways or other equipment used for the conduct of persons, baggage, stores or any other item moving between the vessel and the wharf;
- (b) the Hirer indemnifies Port Authority against any Claim or Loss arising out of or in connection with such gangways or other equipment; and
- (c) the Hirer is solely responsible for the safe connection between the wharf and the passenger vessel and Port Authority will not be in any way liable for any Loss to property or injury to person of whatever nature and howsoever arising in relation to the method of transfer between the vessel and the wharf.

9. Use of Information Technology Infrastructure

9.1 Use of Information Technology Infrastructure

The Hirer may utilise the available IT Infrastructure at Port Authority's berthing facilities (if available) on the following conditions:

- (a) the Hirer acknowledges Port Authority is under no obligation to provide IT Infrastructure at Port Authority Berthing Facilities;
- (b) use of the IT Infrastructure is at the Hirers' risk and cost;
- (c) support for the IT Infrastructure is available during business hours only;
- (d) the Hirer is responsible for the security and integrity of any data or applications utilising the IT Infrastructure; and
- (e) the Hirer must have a back-up and disaster recovery plan, which incorporates connectivity, processes and systems.

9.2 Port Authority not liable

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 the Port Authority berthing facility. To the full extent allowed by law, Port Authority excludes all warranties, whether express or implied by law.

9.3 Indemnity

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.

10. Other Services

10.1 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 or as otherwise provided by the Port Operator.

10.2 If the Hirer takes on fresh water whilst alongside a Port Authority berthing facility, the Hirer shall pay on demand the applicable fresh water charge.

11. Insurance

11.1 Insurance requirements

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:

- (a) Protection and Indemnity Insurance to a sum not less than \$100,000,000 with a P&I Club;

- (b) Hull and Machinery insurance to the reasonable market value of the passenger vessel;
- (c) Public Liability insurance for a minimum sum of \$20,000,000 for any single event which notes Port Authority as an interested party;
- (d) Workers Compensation Insurance policy for all workers for whom the Hirer may at any time be responsible to pay workers compensation (including if applicable voluntary workers). In addition, the Hirer shall indemnify and hold harmless Port Authority from and against any and all claims, liabilities, losses, damages, costs, and expenses (including legal fees) arising out of or related to any claims for workers compensation or occupational injury benefits filed by any workers covered under the Hirer's workers compensation policy. This indemnity shall extend to claims arising from acts, errors, omissions, or negligence of the Hirer, its employees, agents, contractors, or representatives, in connection with the Permitted Use under these Terms; and
- (e) Any other insurance (for such sum or level of cover as specified by Port Authority) as Port Authority may reasonably require.

11.2 Evidence of insurance

The Hirer is required to produce evidence of the currency of the insurance policies required under clause 11.1 upon request by Port Authority and upon each renewal of the policies.

11.3 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) Environmental Hazard or Pollution Incident in the allocated Port Authority berthing facility;
- (c) circumstances likely to cause danger, risk or hazard to any person or property in the allocated Port Authority berthing facility; and
- (d) 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.

12. Incidents, complaints and inquiries

The Hirer:

- (a) must report any Incidents including any Pollution Incident to Port Authority as soon as practicable;
- (b) will appoint and advise Port Authority of its community contact in relation to the Hirer's operations at the Port prior to commencing operations. Port Authority may refer any queries from members of the public and community regarding the Hirer's operations to the Hirer's community contact; and

- (c) must investigate (in a timely manner) and implement reasonable and feasible corrective actions and as requested by Port Authority. Corrective actions must be implemented while the ship is at berth (where possible) and for the next hire of Port Authority's berthing facility by the Hirer.

13. Termination

13.1 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:

- (a) terminate the Hirer's right to use any Port Authority berthing facility; or
- (b) suspend the Hirer's right to use any Port Authority berthing facility, and, at the Hirer's sole cost, comply with Port Authority's request to relocate the vessel from the berthing facility to any location within or outside the Port during the times specified by Port Authority in its absolute discretion.

13.2 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.

14. Force Majeure

14.1 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.

14.2 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.

14.3 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.

15. Release

- (a) The hire of the Port Authority berthing facility is entirely at the Hirer's own risk in all respects.

- (b) 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 the Port Authority berthing facility.
- (c) The release in this clause 15 extends to any industrial dispute, power failure or failure in or inadequacy of any service (including any security service referred to in clause 7) and any damage, interruption or disturbance arising from any activity being carried on, in or adjacent to the Port Authority berthing facility and includes a release in respect of economic loss and consequential damages.

16. 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:
 - (i) the access, occupation or use of a Port Authority berthing facility by the Hirer or the Hirer's Staff;
 - (ii) the access, occupation or use of a Port Authority berthing facility by the Hirer or the Hirer's Staff;
 - (iii) any breach of or default under these Terms and/or any other part of the contract referred to in clause 1(b);
 - (iv) any negligence or wilful misconduct or other wrongful act or omission of the Hirer or the Hirer's Staff; or
 - (v) any Pollution Incident or Environmental Hazard caused by the Hirer or the Hirer's Staff to the extent permitted by law.
- (b) Subject to clause 17, 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.

17. Limitation on Liability

Any liability of Port Authority in any way related to these Terms and/or any other part of the contract referred to in clause 1(b) will be limited to the amount of \$1,000.

18. Charges

18.1 Port Authority berthing facility charges

The Hirer will pay Port Authority for the use of the Port Authority berthing facility the applicable contractual charges as specified in the then current version of Port Authority Schedule of Port Charges, which is available from the Port Authority website. For the avoidance of doubt, the charges for usage of the Newcastle berthing facility by the Hirer are a contractual charge under these Terms and not a statutory site occupation fee chargeable by the Port Operator. The Hirer is liable to pay the applicable charges without any deduction or right of set-off.

18.2 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.

18.3 Right to withhold services

The Hirer acknowledges Port Authority's right to withhold or withdraw the provision of services or facilities under section 72 of the *Ports and Maritime Administration Act 1995* (NSW).

19. 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 "Harbour Master – Newcastle Harbour" and sent by mail or delivered by hand to the address or sent by email to the email address as follows:

Port Authority of New South Wales

Newcastle Harbour

100 Wharf Road Newcastle NSW 2300

Email: enquiries@portauthoritiesnsw.com.au

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.

20. Miscellaneous

20.1 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 OnePort 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.

20.2 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.

20.3 Subcontracting

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

20.4 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.

20.5 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.

20.6 Entire Agreement

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

20.7 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.

20.8 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.

20.9 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).

21. Definitions and Interpretation

21. Definitions

'Anti-fouling and In-water Cleaning Guidelines' means the Anti-fouling and In-water Cleaning Guidelines published in April 2015 by the Department of Agriculture and Water Resources and available at [Anti-fouling and in-water cleaning guidelines - DAFF \(agriculture.gov.au\)](https://www.daff.gov.au/anti-fouling-and-in-water-cleaning-guidelines) as may be updated from time to time.

'Ballast Water Management Requirements' means the Australian Ballast Water Management Requirements published by the Department of Agriculture in 2017 and available at [Australian Ballast Water Management Requirements - DAFF \(agriculture.gov.au\)](https://www.daff.gov.au/ballast-water-management-requirements) as may be updated from time to time.

'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.

'Environment' includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surrounding such as land, water (whether fresh water or sea water) and the atmosphere; and
- (b) the biological characteristics of those surroundings as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

'Environmental Hazard' means a state of danger to human health or the Environment, whether imminent or otherwise, resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious, irritant or otherwise dangerous or damaging characteristics.

'Environmental Laws' means a law relating to the Environment (whether statute law or common law or otherwise), including but not limited to a law relating to land use, planning environmental assessment, environmental heritage, coastal protection, water catchments, pollution of air or water, noise, soil or ground water contamination, chemicals, pesticides, hazardous substances, the ozone layer, water, dangerous goods, building regulation, occupation of buildings, fire safety, public health, work health and safety, noxious trades, any Environmental Hazard, any aspect of protection of the Environment, or the enforcement or administration of any of those laws.

'Harbour Master' means a person appointed under Part 7 of the *Marine Safety Act 1998* (NSW) and, in relation to any Harbour Master Directions made pursuant to this part, includes a person appointed to exercise the functions of a Harbour Master.

'Harbour Master Directions' means the Harbour Master Directions published on Port Authority's website and may be updated or amended from time to time) and any directions issued by the Harbour Master.

'Hire Period' means the hire period for the allocated Port Authority berthing facility as confirmed by Port Authority and means the period commencing from the earliest time at which the vessel enters the Port Authority berthing facility and expires when the ship departs the Port Authority berthing facility.

'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 the 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.

'Incident' means an occurrence or set of circumstances that cause, or threatens to cause, material harm to the environment, community or any member of the public being actual or potential harm to the health or safety of human beings or to threatened species, endangered ecological communities or ecosystems that is not trivial.

'Legislative Requirements' means:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the

Commonwealth and the State of New South Wales;

- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the State of New South Wales;
- (c) any permit or licence concerning use of the Port or Port Authority berthing facility;
- (d) any Environmental Laws;
- (e) directions of the Harbour Master or the Port Authority; and
- (f) directions of any statutory bodies or authorities with relevant jurisdiction.

'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.

'Management Plans' means all management plans relating to the Port Authority berthing facility including but not limited to the Incident/Emergency Response Plan, the Site Safety Management Plan, the Operational Environmental Management Plan, the Traffic Management Plan, Maritime Security Plans and Ship Handling Safety Guidelines supplied by Port Authority or the Port Operator.

'OnePort' means Port Authority's Harbour management system.

'Permitted Use' means the berthing of vessels and activities approved by Port Authority and ancillary to the berthing of vessels.

'Pollution Incident' means the occurrence of 'pollution' within the meaning the *Protection of the Environment Operations Act 1997* (NSW).

'Port' means the waters and areas described as the Newcastle Harbour in the *Ports and Maritime Administration Regulation 2012*.

'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, wharves and other facilities, including adjacent land owned, operated or licenced by Port Authority for the purposes of berthing of passenger vessels, embarking or disembarking of passengers to or from passenger vessels at Newcastle Harbour.

'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 the Port Authority berthing facility, including its employees, agents, subcontractors and invitees and anyone claiming by, through or under any of them.

'Port Operator' means the Port of Newcastle Operations Pty Limited as trustee for the Port of Newcastle Unit Trust ABN 97 539 122 070

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

22. 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 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;
- (e) 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);
- (f) 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;
- (g) the words "including" and "includes" are not words of limitation; and
- (h) a reference to dollars or \$ is to the Australian currency (AUD).