

Terms and Conditions for Temporary Berthing and Mooring (Port of Eden NSW)

1 Acceptance of these Terms

1.1 Acceptance of these Terms

- (a) These Terms form part of the contract that is formed between You and Port Authority when You submit a booking for the hire of a Berthing Facility.
- (b) The contract is made up of Your booking, these Terms and the Port Charges.

1.2 Definitions

Capitalised terms in these Terms have the meaning given in clause 15.

1.3 Term

These Terms commence when You submit a booking for the hire of a Berthing Facility and end at the conclusion of the Hire Period.

2 Your use of Port Authority's berthing facility

2.1 Hire of Berthing Facility

Port Authority grants You the temporary non-exclusive use of a Berthing Facility and You agree to use the Berthing Facility for the Hire Period subject to the following conditions:

- (a) You must comply with these Terms and all other applicable terms and conditions of Port Authority;
- (b) You must pay all applicable charges as specified by Port Authority and these Terms;
- (c) You must comply with all applicable laws and regulations;
- (d) You must comply with all Harbour Master's Directions;
- (e) You must comply with all reasonable directions and instructions of Port Authority and permit reasonable access to the vessel for all relevant purposes;
- (f) You may only use the allocated Berthing Facility for the duration of the Hire Period;
- (g) the allocated Berthing Facility may only be used by You for the Permitted Use;
- (h) You must ensure the vessel is seaworthy; and
- (i) You do not have any tenancy or other interest in the allocated Berthing Facility.

2.2 Breach of terms and conditions

If You breach any of the Terms, Port Authority may terminate this licence and refuse to accept any future booking made by You.

2.3 Your Obligations

You must ensure that:

- (a) the Berthing Facility is left in the same condition and state as at the start of the Hire Period;

- (b) You do not cause any nuisance or interference to any person, including Port Authority;
- (c) at the end of the Hire Period You remove anything that you bring to the Berthing Facility; and
- (d) You are sufficiently experienced and act in compliance with the Terms.

2.4 **No alterations to Berthing Facility**

You must not make any alterations, improvements or additions to the Berthing Facility.

2.5 **Damage and repairs**

- (a) You are responsible for any damage to the Berthing Facility (including damage to the Environment), Pollution Incident or Environmental Hazard to the extent caused or contributed to by You.
- (b) In such circumstances, the repair and remediation to the Berthing Facility (including the Environment) will be undertaken by Port Authority at Your expense. You 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.
- (c) You are responsible for all rubbish associated with the vessel, including but not limited to bilge, engine and other oils, discarded equipment, barnacles, marine growth, paint scraping and similar waste.

2.6 **Work, Health & Safety**

- (a) You must operate and maintain a safe environment at a Berthing Facility at all times.
- (b) You must comply with all applicable work health and safety laws and any work, health and safety policies and procedures that apply to You and the Berthing Facility.
- (c) You must notify Port Authority immediately of any serious injury or near miss incident that occurs at the Berthing Facility using the contact details in clause 4.2.

2.7 **Relocation**

- (a) Port Authority may change the Berth Facility at any time by notifying You (**Relocation Notice**) and You must move the vessel to the berth set out in the Relocation Notice by the date and time specified in the Relocation Notice.
- (b) You authorise Port Authority to move the vessel to another berth at Your risk and expense in the following circumstances:
 - (i) if You fail to comply with a Relocation Notice;
 - (ii) in the event of an emergency; or
 - (iii) if otherwise reasonably required for the safe operation of the Port of Eden.

2.8 **Cranes**

- (a) You must, prior to bringing any cranes onto the Berthing Facility, obtain Port Authority's written approval, and such approval may be given or withheld at Port Authority's absolute discretion.
- (b) You must ensure that any conditions of such approval are strictly complied with by the operator of any crane.

2.9 **Bunkering**

You must obtain Port Authority approval prior to commencing any bunkering activities and must comply with the Port of Eden Fuel Transfer Procedure.

2.10 Public Safety

You acknowledge that the Berthing Facility is open to the public and as such You must ensure all activities associated with the Permitted Use, including, but not limited to, mooring, bunkering and cargo handling are conducted safely and in accordance with all Laws.

3 Environmental Responsibilities

3.1 Environment obligations

- (a) You must not:
 - (i) cause a Pollution Incident; or
 - (ii) cause an Environmental Hazard,
 - at, or in the vicinity of, the Berthing Facility.
- (b) You must immediately report to Port Authority any Pollution Incident, Environmental Hazard, fire, or any other environmental damage, pollution or hazards.
- (c) If there is a fire on board the vessel, the master of the vessel must sound a continuous ringing of the vessel's electrical bell or continuous sounding of the vessel's horn to indicate a fire on board.
- (d) You must comply with the environmental management requirements set out in Annexure A.
- (e) Vessels berthing at the Breakwater Wharf Extension must comply with:
 - (i) the SSI Approval;
 - (ii) the Extended Use OEMP; and
 - (iii) the environmental management requirements set out in Annexure A.

3.2 Water

- (a) No discharges to water are permitted while at the Berthing Facility whether or not these discharges are considered to be a Pollution Incident, including contaminated bilge water, grey water, open loop scrubber wash water and treated sewage discharges or any other discharges from vessel activities.
- (b) In the event of a spill in the Port which may constitute a Pollution Incident, You must report immediately to Port Authority using the contact details in clause 4.2.

3.3 Dangerous goods

- (a) You must not use or allow the Berthing Facility to be used for the storage and handling (whether temporary or permanent) of Dangerous Goods.

4 Provision of information by You to Port Authority

4.1 Obligation to keep Port Authority informed

- (a) You warrant that the information supplied by You was or will be complete, true and accurate in all respects.
- (b) You must notify Port Authority immediately on becoming aware of any:
 - (i) damage, injury, death or loss occurring in the Berthing Facility and any defect or want of repair in the Berthing Facility;

- (ii) circumstances likely to cause emergency, danger, risk or hazard to any person, property or the Environment in the Berthing Facility;
- (iii) Incident; and
- (iv) event or occurrence which will or is likely to result in a Claim being made by or against You, Port Authority or any other person in connection with the Berthing Facility.

4.2 Port Authority Emergency Contact Details

In the event of an emergency, fire, spill, Incident, Pollution Incident, Environmental Hazard, work health and safety incident, injury or near miss or any other matter contemplated by clause 4.1, You must report to:

Harbour Master / Pilot
 Port of Eden Main Jetty
 PO Box 137
 Eden NSW 2551

phone: +61 2 6496 1719
 fax: +61 6496 3024
 email: edenpilots@portauthoritynsw.com.au

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 berthing facilities and non-terminal berthing facilities.
- (b) Port Authority may cancel or terminate a vessel booking at any time for any reason and Port Authority does not incur any liability to You or any other person whatsoever as a result of the cancellation or otherwise of its vessel booking.
- (c) If Port Authority withdraws permission for use or occupation of, or access to, a Berthing Facility, other than for a breach by You of these Terms, Port Authority will refund to You any monies paid in advance by You in respect of applicable Port Charges for any proposed Hire Period that does not proceed, or for the use of the Berthing Facility. Port Authority is not liable to pay any other remedy, compensation or damages.

6 Security

6.1 Provision of security services

You are responsible at all times for security of the vessel including against entry of unauthorised persons and goods between the vessel and the Berthing Facility.

6.2 Your responsibilities

You must comply with all security related directions and instructions of Port Authority or its appointed security services provider.

7 Other Services

- (a) Port Authority may provide other services, including the provision of electricity, water and/or a hose connection. You must pay the applicable charges for any such services as specified in the Port Authority Schedule of Port Charges.
- (b) If You take on fresh or grey water whilst alongside a Berthing Facility, You must pay the applicable fresh or grey water charge.

8 Insurance

8.1 Insurance requirements

You must take and out maintain the following insurances during the Hire Period:

- (a) insurance for the vessel and its contents, fittings and equipment with an insurer of recognised standing;
- (b) public liability insurance for an amount not less than \$20 million per event; and
- (c) such other insurances as prescribed from time to time by Port Authority.

8.2 Evidence of insurance

You are required to produce evidence of the currency of the insurance policies required under clause 8.1 if requested by Port Authority.

9 Termination

9.1 Breach by You of Terms

If You breach the Terms, Port Authority may at any time terminate Your right to use any Berthing Facility. Such termination does not release You from any Claim, Loss or liability caused by any breach, default or omission.

9.2 No liability

You will have no Claim against Port Authority for, or in connection with, any Loss suffered by You as a result of Port Authority terminating Your right to use any Berthing Facility pursuant to the Terms.

9.3 Cancellation of a booking by You

If You cancel a booking of a Berthing Facility, You must pay on demand the applicable cancellation charge specified in the Port Authority Schedule of Charges.

10 Release

The hire and use of a Berthing Facility is entirely at Your own risk in all respects. You release Port Authority from all Claims that You 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 Berthing Facility or any plant, equipment or infrastructure provided by Port Authority at a Berthing Facility.

11 Indemnity

- (a) You indemnify 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 Berthing Facility by You;
 - (ii) the carriage of any cargo by You;
 - (iii) any breach of or default under these Terms;
 - (iv) any negligence or wilful misconduct or other wrongful act or omission of You; or
 - (v) any Pollution Incident or Environmental Hazard caused by You.

12 Limitation on Liability

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

13 Charges

13.1 Berthing Facility charges

You must pay Port Authority for the use of a 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. You are liable to pay the applicable charges without any deduction or right of set-off.

14 Miscellaneous

14.1 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.

14.2 Assignment and sub-licensing

You must not transfer, novate, assign or sub-licence the benefits and/or rights You have under these Terms, to any other party.

14.3 Indemnities to Survive

Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Hire Period and these Terms.

15 Definitions and Interpretation

15.1 Definitions

Berthing Facility means each of the:

- (a) area of navigable water and sub-adjacent maritime land in the Port adjacent to the face of a berth at Break Water Wharf and Break Water Extension Wharf (also known as the Cruise Wharf) and as described in the Berths and Channels published by Port Authority and available at <https://www.portauthoritynsw.com.au/port-of-eden/port-services-facilities/berths-facilities/>; and
- (b) wharves, fenders, piers, hardstands, jetties, berthing facility, scour aprons, seawalls, terminals and other facilities owned or controlled by Port Authority for the purposes of berthing of vessels.

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.

Dangerous Goods has the meaning given in the *Australian Standard 3846-2005 "The handling and transport of dangerous cargoes in port areas"*.

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

- (a) the physical characteristics of those surroundings such as land, water (whether fresh water or sea water) and the atmosphere; and
- (b) the biological characteristics of those surroundings such 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.

Extended Use OEMP means the Extended Use Operational Environmental Management Plan approved by the Department of Planning Industry and Environment under the SSI Approval and available on the Port Authority website (<https://www.portauthoritynsw.com.au/port-of-eden/port-services-facilities/eden-cruise-wharf/>).

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 available at <https://www.portauthoritynsw.com.au/port-of-eden/pilotage-navigation/harbour-masters-directions/> (as 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 Berthing Facility as confirmed by Port Authority and means the period commencing from the earliest time at which the vessel enters the Berthing Facility and expires when the vessel departs the Berthing Facility.

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.

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.

Permitted Use means the temporary berthing and/or mooring 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 Port of Eden, New South Wales, as defined by the *Ports and Maritime Administration Regulation 2012* (NSW).

Port Authority means Newcastle Port Corporation trading as Port Authority of New South Wales established under the *Ports and Maritime Administration Act 1995* (NSW) (ABN 50 825 884 846).

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.

SSI Approval means the State Significant Infrastructure Approval No. 7734 available on the Department of Planning, Industry and Environment website:
<https://www.planningportal.nsw.gov.au/major-projects/project/3566>.

Terms means these terms and conditions, Your booking, the Port Charges and Port Authority rules and policies governing berthing of vessels at Berthing Facilities.

You refers to the person (natural or corporate) that has made a booking pursuant to these Terms (including the vessel's owners and any person on the vessel). **Your** has a corresponding meaning. If there are more than one, it refers to each of them severally and any two or more of them jointly.

Annexure A

Environmental Management Requirements

General	<ul style="list-style-type: none"> • All activities must be carried out in a competent manner and in a way that minimises risks and impacts on the natural environment (including water quality, aquatic flora and fauna, air quality, acoustic environment, etc.) and the community. Vessel operators must exercise duty of care to the environment at all times. • Vessels must maintain speed limits of 10 knots or less in the Port, except in circumstances where the Harbour Master or a pilot considers that a higher speed is necessary to maintain safe navigation in the Port. • Breakwater Wharf Extension: <ul style="list-style-type: none"> ○ Vessels up to 100m in length are permitted to remain at berth 24 hours per day when a cruise ship is not at berth. Vessel activities while at berth at the breakwater wharf extension (loading/unloading, refuelling, maintenance, servicing, passenger embarkation and disembarkation, etc) are restricted to between 7:00am and 10:00pm only. ○ No bulk liquid cargo loading and unloading is allowed while at berth at the Breakwater Wharf Extension.
Air Quality	<ul style="list-style-type: none"> • Vessels are required to meet the emission restrictions specified in MARPOL (International Convention for the Prevention of Pollution from Ships) Annex IV (Regulations for the Prevention of Air Pollution from Ships), which limits sulfur content of ship fuel to 0.5%. • Vessel engines and generators must be maintained and operated efficiently to reduce air emissions while at berth. • Should an investigation as a result of an air quality complaint or other indicate that vessel operations cause odour or other significant air quality impacts, then the Harbour Master will require that such operations be modified or stopped as to reduce any odour or air quality impacts.
Noise	<ul style="list-style-type: none"> • The use of shore power is encouraged for overnight berthing of vessels. • Any mobile equipment at berth must use broadband reversing alarms, or 'quackers' if required during non-day periods. • No deck announcements and/or music from open decks are allowed whilst at berth, with the exception of safety announcements. • Machinery and vehicles not in use must be turned off. • Should an investigation as a result of a noise or visual amenity complaint indicate that vessel activities cause excessive impacts, then the Harbour Master will require that such operations be modified or stopped so as to reduce impacts. • Breakwater Wharf Extension: <ul style="list-style-type: none"> ○ Noise generated from vessel related activities at the Breakwater Wharf Extension must meet or be below the predicted noise levels presented in Section 6.4 of the Extended Use OEMP (available in the Port Authority's website https://www.portauthoritynsw.com.au/port-of-eden/port-services-facilities/eden-cruise-wharf/)
Water	<ul style="list-style-type: none"> • No discharges to water are permitted at the site, including contaminated bilge water discharges or other discharges from vessels activities. • In the event of a spill in the Port or other marine pollution incidents, vessel operators are required to report immediately to: <i>Harbour Master/Pilot, PANSW, Port of Eden</i>

	<p><i>Main Jetty, Eden, NSW 2551</i> <i>T: +61 2 6496 1719</i> <i>E: edenpilots@portauthoritynsw.com.au</i></p> <ul style="list-style-type: none"> • In-water cleaning is only allowed on anti-fouling coatings suitable for in-water cleaning (obtainable from coating manufacturer) and in compliance with <i>Anti-fouling and In-water Cleaning Guidelines</i> (DAWR, 2015) and subject to agreement with relevant authorities including Port Authority, DPI-Fisheries and the Environmental Protection Authority. • Vessel operators are required to comply with The Code of Practice Non-Cargo Oil Transfers in the Port of Eden (Issued by the Harbour Master, Eden, March 2012). • Any oils and hazardous chemicals must be stored in appropriately bunded and covered storage areas with containment for no discharge. Surfactants, dispersants and detergents are to be restricted to the minimum amount required to complete tasks. Low Environmental Health and Safety (EHS)-risk cleaning products must be preferentially selected (i.e. biodegradable detergents and dispersants). • If a release, spill or leak is identified the vessel activity causing the release, spill or leak must cease immediately. Spills and leaks must be contained in accordance with Port of Eden Marine Oil and Chemical Spill Contingency Plan, the Code of Practice Non-Cargo Oil Transfers in the Port of Eden, and the technical guidelines section of Bunding and Spill Management of the Authorised Officers (refer Environmental Planning Authority website)
Ecology	<ul style="list-style-type: none"> • All vessels at sea must adhere with the amendments to MARPOL Annex V (IMO, 1988) which came into force on 1 March 2018 – which prohibits certain discharges into the sea. MARPOL is implemented in Australia through the Protection of the Sea (Prevention of Pollution from Ships) Act 1983. • Vessel operators must adopt appropriate speeds and clearance when cetaceans are nearby. • Vessel operators must maintain awareness and exchange information with the Port Authority and tug operators as required on known marine mammal activity. • Vessel personnel must be educated on the risk of vessel strike. • Any injured marine mammals must be immediately reported to the ORRCA 24-hour hotline on 02 9415 3333 or NPWS on 1300 361 967. • Vessel operators must report any fish kills associated with its activities at berth to DPI-Fisheries (1800 043 536) immediately and any water-based activities must cease until emergency response procedures are implemented and the issue is rectified and written approval to proceed is provided by DPI-Fisheries. • Vessels must manage any ballast water in accordance with the Australian Ballast Water Management Requirements (DAWE, 2020).
Traffic Management	<ul style="list-style-type: none"> • Any heavy wharf bound traffic associated with a vessel's operations must be aware of the existing heavy vehicle route along Calle Calle Street (Mitchel Street to Calle Calle Street to Albert Terrace). • Any temporary pedestrian access restrictions to the Licensed proposed by a vessel operator must be discussed and agreed in advance with Port Authority.
Visual Amenity	<ul style="list-style-type: none"> • Vessel lights must be operated as to minimise lighting impacts to nearby residential dwellings to the extent possible and in accordance with AS 4282:1997 – Control of the Obtrusive Effects of Outdoor Lighting and relevant Australian Standards in the series AS/NZ 1158 - Lighting for Roads and Public Spaces.
Waste	<ul style="list-style-type: none"> • Waste must be transported for disposal by a licensed contractor and be disposed of at an appropriately licensed waste management facility. Waste disposal dockets must be retained and provided to Port Authority upon request.

Incidents (Environmental Incidents and Non- Compliances)	<ul style="list-style-type: none"> • Environmental Incidents and non-compliances must be reported to Port Authority as soon as possible for corrective action and investigation. • Vessels must investigate (in a timely manner) any Incident, identify corrective actions and implement reasonable and feasible corrective actions as requested by the Port Authority.
Complaints and Inquiries	<ul style="list-style-type: none"> • All complaints and enquires are managed by Port Authority in accordance with the Community Complaints Procedure developed and implemented by Port Authority. • In the event of a complaint related to a vessel while at berth, the vessel operator must inform Port Authority. The vessel operator must investigate (in a timely manner) the complaint and implement reasonable and feasible corrective actions as requested by Port Authority. Corrective actions must be implemented while the vessel is at berth.